ITEM #: 37
DATE: 03-28-23
DEPT: P&H

COUNCIL ACTION FORM

SUBJECT: DEVELOPMENT AGREEMENT WITH TOWNHOMES AT CREEKSIDE, LLLP (HATCH DEVELOPMENT GROUP) IN CONJUNCTION WITH A LOW-INCOME HOUSING TAX CREDIT (LIHTC) APPLICATION FOR MULTI-FAMILY HOUSING DEVELOPMENT FOR LOT 27 IN BAKER SUBDIVISION (FORMERLY 321 STATE AVENUE)

BACKGROUND:

On February 28, 2023, City Council selected the Hatch Development Group as its partner to develop multi-family rental housing on Lot 27 in Baker Subdivision (formerly 321 State Avenue). At that meeting, the City Council directed staff to prepare a developer's agreement to partner with Hatch Development Group to submit an application for Low-Income Housing Tax Credit (LIHTC) to the Iowa Finance Authority (IFA) on or by April 19, 2023.

The Hatch Development was chosen based on the following factors:

- Housing development experience (including award-winning LITHC projects)
- The proposed site design is 100% 2-story townhome style apartments,
- The proposed project is a mix of units affordable to households that do not exceed 50% and 60% of the Average Median Income (AMI) for Ames. Six of the units will be set aside for households that earn less than 40% of AMI. Additionally, four units will be set aside for households that receive Section 8 vouchers (maximum of 30% of AMI)
- The proposal's projected IFA score is 48 of 54 points
- An on-site sister company management partner
- An on-site maintenance team
- A long-term relationship with the general contractor.

Staff from the Planning and Housing Department, the City Attorney's Office, and the Purchasing Division have been working closely with the Hatch Development Group to negotiate a developer's agreement (attached) that will meet the City's housing goals for affordable multi-family housing and for the Hatch Development Group to score well in

meeting IFA's Qualified Allocation Plan (QAP) requirements to be awarded tax credits. The developer is expected to provide a signed copy of the Development Agreement prior to the Council meeting on March 28.

The developer will be doing business under the name Townhomes at Creekside, LLLP. The agreement outlines that the developer intends to apply for a nine percent (9%) LIHTC allocation from IFA on or before the IFA due date of April 19, 2023, to develop the Site. An updated Concept Plan Exhibit is included in the agreement. The developer must submit for plan approval to the City within 180 days of notice of award from IFA and start construction by March 31, 2024. Construction is to be completed by June 30, 2025.

Upon approval of the LITHC award, the City will set aside a maximum of $1.8 million of its HOME funds for the construction of 38 units (16-2 BRs; 18-3BRs; 4-4BRs). Based on the City's commitment of its HOME funds, seven (7) of the 38 units will be set aside specifically under the City's HOME program guidelines; all seven (7) units will be 3-BR units; for households at 50% or less of the AMI. As per the City's RFP, 10% (4) units will be designated for Section 8 Housing Choice Voucher holders (1-2BR; 1-3BR; 1-4BR and 1 floater unit). These units are in addition to the City's seven (7) HOME set-aside units.

The affordable housing requirements apply for 30 years, regardless of ongoing participation in the LIHTC program. The Agreement includes a variety of terms and conditions for both parties to meet the application requirements set forth by IFA, including pre-construction activities, insurance, compliance with applicable laws, Equal Employment Opportunity, Americans with Disabilities Act compliance, and other miscellaneous provisions.

Additionally, Townhomes at Creekside, LLLP must demonstrate control of the property at the time the LIHTC application is submitted to IFA. **This requires Townhomes at Creekside, LLLP, and the City to enter into an Option Agreement to transfer the property prior to submitting the LIHTC application**. The Option Agreement commits the City to transferring the property subject to conditions (one of which is the approval of the LIHTC incentive), for a period of nine months from the time of the application submittal.

In order to satisfy state law concerning the transfer or sale of public property, a public hearing must be held before entering into the Option Agreement. Therefore, at the March 28, 2023 City Council meeting, City Council will be asked to approve the Option Agreement as part of the public hearing agenda item.

<u>Concept Plan</u>

At the February 28 City Council meeting, staff noted the concept plan required revisions to meet site development and zoning standards. Attached to this report, as part of the agreement, is the updated concept plan. The mix of floor plans and townhome design is the same as reviewed by Council in February. Each unit is of a townhome style with individual access. Twenty-two units will not have units above or below the apartment,

eight of the units to the south have will have units above, but each unit will have an individual entrance.

Access to the site has been modified to the east, front setbacks are increased, and additional parking is included to meet the two spaces per unit standard. Staff has also reviewed options for on-street parking along Tripp Street. Parking could be allowed along the south side of Tripp Street in front of this site and could continue to be prohibited along the north side of the street.

At the February 28 meeting, the City Council also initiated a zoning text amendment to consider reducing affordable housing parking rate to 1.5 spaces per unit. This action was based upon the need for a potential reduction based upon the original Hatch Development concept. This text amendment has not yet been drafted; staff anticipates presenting it in in April. A formal Major Site Development Plan will be required for final approval of the Townhomes at Creekside project once the developer has received notice of a LIHTC award. If Council modifies the parking requirements, the plan can be modified at that time to reflect fewer required parking spaces.

ALTERNATIVES:

1. Approve the Developer's Agreement with Townhomes at Creekside, LLLP, and authorize staff to assist with submittal of a LIHTC application to IFA for multi-family housing units on Lot 27 in the Baker Subdivision (formerly 321 State Avenue) by April 19, 2023, application deadline.

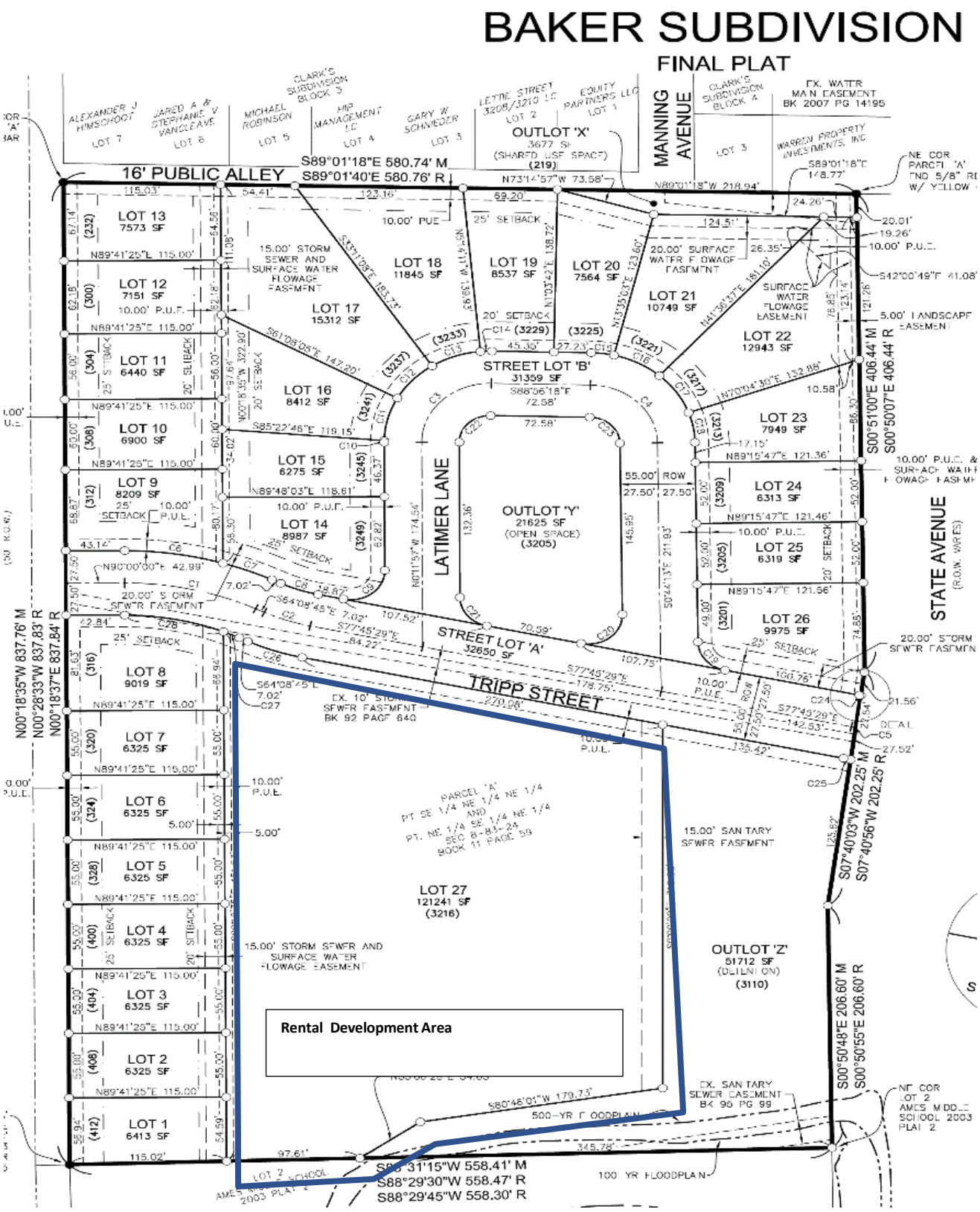
2. Approve the Developer's Agreement as described in Alternative #1, **with modifications.**

3. Do not approve the Developer's Agreement with Townhomes at Creekside, LLLP.

CITY MANAGER'S RECOMMENDED ACTION:

Staff has been working diligently with Townhomes at Creekside, LLLP to finalize the Developer's Agreement that addresses the desire of the City to move forward with a LIHTC application. The final agreement is consistent with all terms of the RFP. The separate Option Agreement will bind the sale of the property, subject to its terms, to Townhomes at Creekside, LLLP. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, as described above.

ATTACHMENT A--Location Map



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made effective as of the _____ day of March, 2023 ("Effective Date"), by and between the CITY OF AMES, IOWA ("City"), and Townhomes at Creekside, LLLP (the "Developer") as follows.

RECITALS

WHEREAS the City is an Iowa municipal corporation duly organized and existing under the Constitution and laws of the State of Iowa, which has principal offices and address for notice at 515 Clark Avenue, Ames, Iowa 50010; and

WHEREAS, the Developer is a limited liability limited partnership duly organized under Chapter 486A of the Iowa Code and is authorized to do business in the State of Iowa, which has principal offices and address for notice at 2331 University Avenue, Ste. 200, Des Moines IA 50311; and

WHEREAS, the City is the owner of certain real property locally known as 3216 Tripp Street (f/k/a 321 State Avenue), and legally described as Lot 27, Baker Subdivision, Ames, Iowa, (alternatively, the "Site" or "Property"); and

WHEREAS, the City purchased the Site using Community Development Block Grant ("CDBG") funds to carry out a wide range of community development activities directed toward neighborhood revitalization and improved community facilities and services; and

WHEREAS, the City desires to have the Site developed with affordable housing as described in its Request for Proposal No. 2023-106 dated December 20, 2022, (the "RFP"); and

WHEREAS, the Developer (itself or by an affiliate) made a proposal, which was selected by the City Council on February 28, 2023, as the proposal most responsive and best meeting the goals and objectives of the City; and

WHEREAS, the Developer intends to apply for a nine percent (9%) Low Income Housing Tax Credit ("LIHTC") allocation from the Iowa Housing Finance Agency ("IFA") to implement development of the Site on or before the IFA due date of April 19, 2023, by 4:30 p.m.; and

WHEREAS, the City has agreed to enter into an Option Agreement with the Developer (the "Option Agreement") in consideration of the mutual promises of this Agreement, which the City deems good, valuable, and sufficient consideration, such that the Developer will be able to demonstrate it IFA adequate "site control" (as defined by the IFA 2023 Low Income Housing Tax Credit Application Guide), provided however, that the option granted shall be exercisable only upon the award by IFA of the LIHTC allocation; and

WHEREAS, the creation by Developer of affordable rental housing units under the LIHTC Program for the benefit of low- and moderate-income families provides a significant public benefit to the City.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, and other good and mutual consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. The definitions in Article XII of the RFP are incorporated herein by reference as if set out fully. In addition to the definitions of the RFP and other definitions set forth elsewhere in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings:

(a) Agreement means this Agreement and all exhibits hereto, as the same may be from time to time modified, amended, or supplemented.

(b) Applicable Laws means all then applicable statutes, laws, rules, regulations, ordinances, decrees, writs, judgments, orders and administrative and judicial opinions enacted, promulgated and/or issued by any federal, state, county, municipal or local governmental, quasi- governmental, administrative or judicial authority, body, agency, bureau, department or tribunal.

(c) Concept Plan means the Site layout and architectural renderings attached hereto as Exhibit "A" prepared by the Developer. The final Site Development Plan shall be consistent with the Concept Plan as determined and approved by the City.

(d) Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction of the Minimum Improvements on the Site, including the Site Development Plan required by Chapter 29 of the Municipal Code, public infrastructure plans, to be performed by the Developer on the Site consistent with the RFP and approved Concept Plan.

(e) Cure Period means a period of sixty (60) days after written notice is given by a non-defaulting party to the defaulting party of an Event of Default, as defined in of this Agreement, during which time the defaulting party may cure any such Event of Default provided such defaulting party is pursuing such cure in good faith and with due diligence. However, if the default cannot reasonably be cured or remedied within the sixty (60) day period, the defaulting party shall not be deemed to be in default if the defaulting party shall have diligently commenced curing such default within such sixty (60) day period and proceeds thereafter to diligently and in good faith to remedy or cure the Event of Default. In no event shall the cure take longer than one hundred twenty (120) days.

(f) Effective Date means the date this Agreement is executed by and on behalf of the City and the Developer.

(g) Event of Default means any of the events described in Article VII of this Agreement.

(h) HOME means the HOME Investment Partnerships Program (HOME), a type of federal assistance provided by the U.S. Department of Housing and Urban Development (HUD) to provide affordable housing, particularly housing for low- and very low-income Americans. The City of Ames is a recipient of HOME Funds.

(i) Iowa Housing Finance Agency or "IFA" means the State Housing Agency that administers the LIHTC program for the State of Iowa.

(j) Minimum Improvements shall mean, collectively, the construction of a LIHTC Housing Development consisting of 38 new multi-family townhomes, of which,

sixteen are 2-bedroom units; eighteen are 3-bedroom units; and four are 4-bedroom units. Also included in the Minimum Improvements are all building design features, public infrastructure, geothermal system, an amenity play area and open space and on-site parking to accommodate the improvements on the site to be determined by the City.

(k) Project means the development and construction of the Minimum Improvements upon the Site consistent with the Concept Plan, the RFP, and the Site Development Plan approved by the City and includes the financing of the Minimum Improvements and operating and maintaining the Site and Minimum Improvements as a long-term LIHTC affordable housing project.

(l) State means the State of Iowa.

(m) Unavoidable Delays means delays caused by 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, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, pandemics, or the acts of any federal, State, or local governmental unit (other than the City).

Section 1.02 Headings. The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or any provision of this Agreement.

Section 1.03 Accounting Terms. Accounting terms used in this Agreement and not otherwise specifically defined shall have the meaning ascribed such terms by generally accepted accounting principles as from time to time in effect.

Section 1.04 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular shall include the plural and vice versa, and words importing person shall include entities, associations, and corporations, including public bodies, as well as natural persons.

Section 1.05 Conflicting Provisions. In the event of any conflict between the terms of this Agreement and the approved Concept Plan, the terms of this Agreement shall prevail.

ARTICLE II
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 Representations and Warranties of the City. The City makes the following representations and warranties:

(a) The City is a municipal corporation and political subdivision organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and fulfill 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) The City has initiated the rezoning of the Site from RL (Residential Low Density) to RM (Residential Medium Density) with a PUD (Planned Unit Development) overlay with Master Plan and will facilitate the completion of said rezoning to ensure that Developer is able to demonstrate the suitability of the Site in Developer's impending LIHTC application to IFA.

Section 2.02 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(a) The Developer is duly organized, validly existing and in good standing under the laws of the State ,, is qualified to do business in the State 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 the Developer and, assuming due authorization, execution, and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the 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, and will not result in a violation or breach of, the terms, conditions or provisions of the certificate of organization or operating agreement of the Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the 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 to Developer's knowledge threatened against or affecting the 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 the Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform its obligations under this Agreement.

(e) The Developer has not received any notice from any local, State, or federal official that the activities of the Developer with respect to the Site 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). The 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 Site, and the 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) The Developer warrants that the Developer will obtain prior to construction of the Project, firm commitments for the construction financing for the Project to substantially complete the Project in accordance with the Minimum Improvements contemplated in this Agreement. Developer further warrants and represents that it has the financial capacity to finance develop and operate the Project.

(g) Developer, Developer's agents, contractors, officers, successors and assigns, agree to comply with all state and federal laws affecting the Project and its development.

(h) The Developer will cooperate fully with the City in the resolution of any traffic, parking, trash removal, public safety, National Pollutant Discharge Elimination System ("NPDES") or any other problems that may arise in connection with the construction of the Minimum Improvements.

(i) The Developer will coordinate the staging for the construction of the Minimum Improvements with the City and obtain from the City any necessary temporary construction easements and parking agreements, if necessary.

(j) The Developer shall construct the Minimum Improvements and complete the Project in compliance with all federal, state, and City laws and regulations.

Section 2.03 Survival of Representations, Warranties and Covenants. All representations, covenants and warranties of the Developer and the City contained in this Agreement, in any certificate or other instrument delivered by the Developer or the City pursuant to this Agreement, or otherwise made in conjunction with the project transactions contemplated by this Agreement, shall survive the execution and delivery of this Agreement.

ARTICLE III
PROJECT AWARD & FUNDING

Section 3.01 Award of Project. In accordance with Resolution 23-100 approved by the City Council of City on February 28, 2023, City agrees to award the Project to Developer subject to the terms and conditions of this Agreement.

Section 3.02 Acceptance of Project. Developer accepts the Project subject to the terms, conditions, and contingencies of this Agreement.

Section 3.03 LIHTC Application. Developer, at the Developer's sole cost and expense, shall forthwith prepare and timely submit to IFA a nine percent (9%) LIHTC application that meets the threshold requirements of the Qualified Allocation Plan ("LIHTC Application"). The LIHTC Application shall include the design and preliminary scoring elements of the proposal submitted by the Developer and accepted by the City Council on February 28, 2023, by Resolution #23-100. Developer's LIHTC Application shall be consistent with the proposal submitted to the City in response to the RFP, except as modified by the City and the Developer by mutual agreement.

Section 3.04 Option & Sale of Site. City shall, contemporaneously with the execution of this Agreement, execute an Option Agreement substantially in the form attached hereto as Exhibit "B," whereby the City shall grant the Developer an Option to purchase and take a conveyance of marketable record title from the City of the Site, subject to the covenants, terms, and conditions of this Agreement. The consideration for the Option and for the purchase of the Site shall be the mutual promises of the parties and the agreement of the Developer to construct the Minimum Improvements. The Option shall be contingent upon the Developer securing IFA financing and exercisable upon notice to City as described therein.

Section 3.05 HOME Funding. Upon approval of Developer's LIHTC application, City will set aside up to a maximum of One Million Eight Hundred Thousand and No/100 Dollars ($1,800,000.00) of the City's HOME allocation for construction of the Minimum Improvements. City will determine the precise amount available based on HUD HOME rules. City will pay over to Developer such HOME funds in accordance with HUD HOME rules at times to be determined by the City and provided that the Developer is in compliance with the terms and conditions of this Agreement and of applicable HUD HOME rules. The City has determined that its HOME funding, to the extent it shall be provided to Developer, will support seven (7) of the 38 Project's units ("Home Units"), and those Home Units will all be 3-bedroom units. Developer will cooperate with the City in monitoring the HOME Units through the 30-year affordability period, which begins upon initial leasing of units in the Project. The City will make funds available to Developer upon the completion of construction and the leasing of the HOME Units ("Stabilization"). Developer's obligation to repay said HOME funds to the City shall be deferred for thirty (30) years from the date of Stabilization and shall be made over a 10-year amortization period, with equal annual payments to be made to the City at a zero percent (0%) interest rate.

ARTICLE IV
CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 4.01 Scope & Construction of Project. Developer agrees to construct the Minimum Improvements at its sole cost and expense in accordance with the terms and conditions of this Agreement. The Project, including all the Minimum Improvements, shall be consistent with Construction Plans approved by the City, which shall be in substantial compliance with the terms and conditions of the RFP, the Concept Plan, and the Applicable Law and regulations of federal, State, and City agencies having authority over the Project. Developer agrees to be bound by each and every one of the "Minimum Development Requirements" and the "Developer Minimum Responsibilities/Requirements" as defined in the RFP.

Section 4.02 Developer's Preconstruction Obligations. Developer shall complete each of the following activities for the Project prior to the commencement of construction of any kind upon the Site:

(a) Developer shall prepare designs for infrastructure for the Project, if and when required by the City for development of the Project, which infrastructure shall include, but not be limited to, high speed internet, geothermal connections, open space design, conduits, sanitary and storm sewer lines, storm drainage and other utilities, streetscape, landscape and lighting improvements for the Site (collectively, "Infrastructure"), all of which shall be consistent with the Concept Plan. All costs associated with the design

of any Infrastructure required to develop the Project shall be the Developer's responsibility.

(b) Developer shall obtain an Iowa DNR NPDES General Permit No. 2 and shall comply with Chapter 5A of the City of Ames Municipal Code (COSESCO). Developer shall be solely responsible for compliance with said NPDES permit and/or the City's requirements related to stormwater runoff at all times during construction of the Minimum Improvements.

(c) Within one hundred eighty (180) days of IFA's award of LIHTC to the Developer for the Project for the 2023 allocation year and prior to the City conveying the Site, Developer, at Developer's sole cost, shall prepare and submit to City for approval by the City final Construction Plans, to include particularly a Major Site Development Plan. The Major Site Development Plan shall be submitted in compliance with Chapter 29 of the Ames Municipal Code and stormwater management of Chapter 5B.

(d) Provide a plan identifying each type of unit in compliance with Section 6.02 herein.

Section 4.03 City's Cooperation. City shall cooperate with and assist Developer, at Developer's sole cost and expense, in making applications to and other reasonable efforts for obtaining necessary approvals of State and federal agencies for development funds and Site development approvals consistent with the requirements of this Agreement, provided however, that nothing in this Agreement shall in any manner obligate the City to or cause the City to become a surety. Nothing herein shall be deemed a waiver of any applicable ordinance of the City.

Section 4.04 Construction Plans. The Construction Plans must:

(a) conform to the terms and conditions of this Agreement; and

(b) conform to all applicable federal, State, and local laws, ordinances, rules and regulations and the permit requirements of all applicable federal, State, and City agencies; and

(c) be stamped and certified by a licensed architect or engineer registered as such in the State; and

(d) be adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements.

The City shall review the Construction Plans to determine that such plans are consistent with this Agreement, including the construction of the Minimum Improvements. Any such approval of the Construction Plans shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any other purpose, including 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 for the Minimum Improvements. Approval of the Construction Plans by the City shall not relieve the Developer of any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State, and local laws, ordinances, and regulations, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default nor subject the City to any liability for the Minimum Improvements as constructed.

Section 4.05 Changes in Construction Plans. No material and substantial change shall be made in the Construction Plans unless the proposed change is agreed to in writing by City and

Developer. If the Developer desires to make any material and substantial change in the Construction Plans subsequent to the approval by the City, the Developer shall submit the proposed change to the City for its approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 4.06 Commencement of Construction. Subject to Unavoidable Delays, the Developer shall cause the construction of the Minimum Improvements, to be commenced no later than March 31, 2024, subject to the receipt by Developer of a nine percent (9%) LIHTC award from IFA in the 2023 allocation cycle, or by such other date as the parties shall mutually agree upon in writing by an amendment to this Agreement. Construction commencement shall be conclusively evidenced by acts of the Developer, or Developer's agents, upon the Site to prepare it for construction.

Section 4.07 Notice of Delays. Until construction of the Minimum Improvements has been completed as evidenced by a Certificate of Completion, the Developer shall give prompt notice in writing to the City of any adverse development which would materially affect or delay the Project from completion thereof.

Section 4.08 Completion of Construction. Subject to Unavoidable Delays, the Developer shall cause the construction of the Minimum Improvements to be completed by June 30, 2025, unless City and Developer set such other date as the parties shall mutually agree upon in writing by an amendment to this Agreement. Construction of the Minimum Improvements shall be deemed to be completed for the Project when the City's building official issues a final occupancy certificate for the Minimum Improvements. Time lost because of Unavoidable Delays shall be added to extend the anticipated completion date by a number of days equal to the number of days lost because of Unavoidable Delays. After issuance by the City of a certificate of occupancy, the City shall provide the Developer with a Certificate of Completion for the Minimum Improvements in a form suitable for recording, which shall be a conclusive determination of satisfactory completion and termination of the covenants and conditions of this Agreement with respect to all of the obligations of the Developer under this Agreement to construct the Minimum Improvements for the Project.

Section 4.09 Mechanics' Liens. The Developer shall not do or suffer anything to be done by any person or entity whereby all or any part of any portion of the Site may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against all or any portion of the Site purporting to be for or on account of any labor done or materials or services furnished to Developer in connection with any work in or about any portion of the Site, the Developer shall discharge the same of record within thirty (30) days after the date of filing.

ARTICLE V
SITE RESTRICTIVE COVENANTS

Section 5.01 Use Restrictions. Developer and its successors and assigns and every successor in interest to all or any part of the Site shall, upon acceptance of title thereto:

(a) Devote all uses of the Site in accordance with and subject to the provisions of the approved Major Site Development Plan.

(b) Not discriminate on the basis of race, color, religion, sexual orientation, family status, handicap, sex or natural origin in the sale, lease or rental or in the use or occupancy of all or any part of the Site;

(c) Maintain the use of the property for Affordable Housing in accordance with Section 6.02 herein for a minimum of thirty (30) years regardless of continued participation in the LIHTC program.

(d) Comply with all Terms and Conditions and all Threshold Requirements as defined in the 2023 Qualified Application Plan adopted by IFA for City's stated 30-year affordability period.

(e) Rent each apartment dwelling with a single lease for the whole of an apartment and the apartment shall not be leased by multiple individual leases or by individual lease per bedroom.

(f) Each apartment shall be leased to eligible households as defined by LIHTC program requirement, which excludes full-time student households that do not meet eligibility requirements, regardless of continued participation in the LIHTC program.

Section 5.02 Recording. It is intended and agreed that the covenants provided in this Article V shall be set forth in a separate covenant and restriction to be filed of record running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by: the City, its successors and assigns, against the Developer, its successors and assigns, and every successor in interest to the Site, or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof.

ARTICLE VI
COVENANTS OF THE DEVELOPER

Section 6.01 Covenants of the Developer. Following the completion of the Minimum Improvements or until the Developer is no longer the owner of any part of the Site, the Developer agrees with the City as follows:

(a) Maintenance of Site. The Developer will maintain, preserve and keep the Project, 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.

(b) Books and Records. The Developer will keep at all times proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of the Developer at the Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and the Developer will provide reasonable protection against loss or damage of such books of record and account. Developer's obligation to keep books and accounts shall cease upon transfer of the Site to a successor.

(c) Compliance with Laws. The Developer will comply with all laws, rules and regulations applicable to its business.

(d) Non-Discrimination. Developer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, sexual orientation, gender identity or disability. The Developer shall ensure that applicants for employment are considered, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, age or disability.

(e) Real Estate Taxes. The Developer or its respective successors in ownership 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 Site during the period that the Developer owns the Site. The Developer agrees that, while the Developer owns the Site, it will not: (i) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained on the Site determined by any tax official to be applicable to the Site, or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings, or (ii) seek any tax deferral, reimbursement, or abatement, either presently or prospectively authorized under Iowa Code Chapter 403, 404, 427B, or any other State law, of the taxation of real property contained in the Site, except as expressly provided for herein.

Section 6.02 City Affordability Requirements. The HOME Units shall be leased to tenant households with incomes at or between 30%-50% of the Area Median Income (AMI). Additionally, Developer shall set aside and designate four (4) of the total 38 units with at least one of each bedroom configuration ("Section 8 Units") for Section 8 Housing Choice Voucher participants. The Section 8 Units are not to be part of the HOME Units. All HOME Units shall be leased at the lesser of the area fair market rents established by HUD or at the high HOME rent limit all in compliance with HUD HOME guidelines.

Section 6.03 Annual Certification. To assist the City in monitoring the performance of the Developer hereunder, during Developer's ownership of the Site, a duly authorized officer of the Developer shall annually certify to the City the total number of residential dwelling units constructed as part of the Minimum Improvements leased and occupied and the rent rates being charged to tenants of each of such units as of the anniversary of the initial certification and that the Developer is not or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such certificate shall be provided not later than November 1 of each year. The certification required shall not disclose names of tenants or other personally identifiable information. Upon written request of the City from time to time, the Developer shall permit representatives of the City to inspect and review the applicable leases and/or other supporting evidence or documentation maintained by the Developer to establish that the City Affordability Requirements set forth in Section 6.02 herein are being met. This provision and the requirements herein shall apply to successors and/or assigns of the Developer as provided in Section 10.04 herein.

Section 6.04. Indemnity. The Developer agrees to protect, defend, indemnify and hold harmless the City and the City's council members, officers, directors, employees, agents, affiliates, successors and assigns, at Developer's cost, including reasonable attorney's fees using legal counsel selected by the City, from and against all claims, demands, losses, damages, costs, expenses, liabilities, taxes, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind (including, without limitation, reasonable attorney's fees and court or similar costs) directly arising out of or attributable to in whole or in part:

(a) The material inaccuracy of any representation or the material breach of any representation, covenant or warranty of the Developer contained in this Agreement;

(b) The Developer's gross negligence or intentional misconduct in constructing the Minimum Improvements;

(c) The failure on the part of the Developer to materially perform, observe and/or comply with any covenant, obligation or duty to be performed, observed and/or complied with by the Developer pursuant to the terms of this Agreement, following the applicable notice and cure provisions and subject to the City's performance of its obligations under this Agreement, but only to the extent that the City's performance of its obligations is a prerequisite for the Developer's performance of its obligations;

(d) Any condition of or damage to all or any portion of the Site which is caused by any negligent act or omission of the Developer or the Developer's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees or invitees or any other person or entity for whose acts or omissions the Developer is otherwise responsible pursuant to Applicable Law;

(e) The negligent performance or non-performance by the Developer of any of the terms and conditions of any contract, agreement, obligation or undertaking entered into by the Developer (whether as the agent of the City or otherwise) in connection with all or any part of the Project; and/or

(f) Any negligent act or omission on the Site of the Developer or any of the Developer's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees or invitees or any other person or entity for whose negligent acts or omissions the Developer is otherwise responsible pursuant to Applicable Law.

Section 6.05. Project Environmental.

(a) The Developer covenants that, while in ownership or possession and control of all or any portion of the Site, it shall not place or cause to be placed, nor permit any other Person to place or cause to be placed, any Hazardous Substances on or about all or any portion of the Site in excess of de minimis quantities reasonably necessary to the Developer's use of all or any portion of the Site.

(b) The Developer agrees to protect, defend, indemnify and hold harmless, the City and the City's council members, officers, directors, employees, agents, affiliates, successors and assigns, from and against any and all claims, demands, losses, damages, costs, expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind (including, without limitation, reasonable and necessary attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part: (i) the breach of the covenants of the Developer contained in Section 14.02 (a); (ii) Developer's or Developer's employees', agents', contractors' or subcontractors' use, handling, generation, manufacture, production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of Hazardous Substances on, under, from or about all or any portion of the Site, provided that such claims, demands, losses, damages, costs, expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind do not arise out of or related to (x) the negligent acts or omissions of the City or (y) Developer's performance under this Agreement which is prosecuted without negligence or intentional misconduct; or (iii) any other activity carried on or undertaken on all or any portion of the Site by the Developer or any employees, agents, contractors or subcontractors of the Developer in connection with the use, handling, generation, manufacture, production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any Hazardous Substance at any time located, transported or present on, under, from, to or about all or any portion of the Site, including without limitation: (A) the cost of any required or necessary repair, cleanup or detoxification of any portion of the Site and the preparation and implementation of any closure, remedial or other required plans; and (B) liability for personal injury or property damage arising under any statute or common law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of any abnormally dangerous activity.

(c) The foregoing indemnity obligation includes without limitation: (i) the costs of removal or remedial action incurred by the United States government or the State or response costs incurred by any other person, or damages from injury to, destruction of or loss of natural resources, including the cost of assessing such injury, destruction or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. §9601 et seq.; (ii) the clean-up reasonable and necessary costs, fines, damages or penalties incurred pursuant to any applicable provisions of State law; and (iii) the reasonable and necessary cost and expenses of abatement, correction or cleanup, fines, damages, response costs or penalties which arise from the provisions of any other Applicable Law.

(d) The foregoing indemnity shall further apply to any residual contamination on, under, from or about all or any portion of the Project or affecting any natural resources, arising in connection with the use, handling, generation, manufacturing, production,

storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any such Hazardous Substance on, under, from or about all or any portion of the Project and irrespective of whether any of such activities were or will be undertaken in accordance with any Applicable Law. This indemnity is intended to be operable under 42 U.S.C. Section 9607(e)(1), and any successor section thereof, and shall survive the Closing under this Agreement in all respects.

(e) The foregoing indemnity obligations include within them all costs and expenses (including, without limitation, reasonable and necessary attorneys' fees) incurred in enforcing any right to indemnity contained in this Agreement.

(f) For purposes of this Section 6.05, the term "Hazardous Substance" shall mean any substance, (i) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Applicable Law, (ii) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, (iii) which is or becomes regulated by the City, State, or federal government, or (iv) the presence of which causes or threatens to cause a nuisance to the Site or to adjacent properties of the Site.

ARTICLE VII
DEFAULT AND TERMINATION; ESTOPPEL

Section 7.01 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by the Developer to observe and perform any covenant, term condition or agreement on its part to be observed or performed under this Agreement, which failure continues uncured following the Cure Period.

(b) The filing by the Developer of a voluntary petition in bankruptcy, or failure by the Developer to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the Developer to carry on its operation, or adjudication of the Developer as a bankrupt, or assignment by the Developer for the benefit of creditors, or the entry by the Developer into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Developer in any proceedings whether voluntary or involuntary instituted under the provisions of the federal bankruptcy laws, as amended, or under any similar acts which may hereafter be enacted.

(c) The Developer's breach of the Project Covenant defined in Section 8.01 below.

(d) The failure of the Developer through the fault of the Developer to complete the Minimum Improvements for by the Project Completion Date and subject to any extensions by the period of time equal to the delays caused by any Unavoidable Delays.

(e) Failure by the City to observe and perform any covenant, term, condition or agreement on its part to be observed or performed under this Agreement, which failure continues uncured following the Cure Period, provided that the City shall not be in default for any such failure if the City is unable to obtain funding for any City funding obligation under this Agreement due to the lack of available City funds.

Section 7.02 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, after the Cure Period, the non-defaulting party shall have the right, at its option and without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Developer or the City, as applicable, under this Agreement, including, but not limited to, terminating this Agreement on any portion of the Site then owned by the Developer, or instituting such proceedings as may be necessary or desirable, in the non-defaulting party's sole opinion, to compensate the non-defaulting party for any reasonable damages resulting from all breaches by the defaulting party, including, but not limited to, a proceeding for breach of contract and/or damages.

(b) Notwithstanding anything to the contrary set forth in this Agreement, the City shall, in no way, be limited to the terms of this Agreement in enforcing, implementing and/or otherwise causing performance of the provisions of this Agreement and/or the Development Plan or pursuant to applicable City ordinances or in exercising its right and authority to condemn the Site after the Developer's Event of Default and failure to cure during the Cure Period as provided in this Agreement.

(c) Before enforcing any remedies against the Developer due to the occurrence of an Event of Default on the part of the Developer, the City shall provide notice and an opportunity to cure such Event of Default to each holder of any deed of trust or mortgage affecting the Site which is filed of public record as of the date which is twenty (20) days prior to the issuance of such action by the City. Such notice shall provide a thirty (30) day cure period for a monetary Event of Default, and a sixty (60) day holder cure period for a non-monetary default.

Section 7.03 No Waiver. No delay or omission of a party to exercise any right or remedy occurring upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or acquiescence to such Event of Default. Every right and remedy given by this Article or by law may be exercised from time to time and as often as may be deemed expedient by the City. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement. In case of a breach, the non-defaulting Party may nevertheless accept from the defaulting Party any payment or payments made under this Agreement without in any way waiving right of the non-defaulting Party to exercise any of its rights and remedies provided for in this Agreement with respect to any such default or defaults of the defaulting Party which were in existence at the time such payment or payments were accepted by the non-defaulting Party.

Section 7.04 Rights and Remedies Cumulative. The rights and remedies set forth herein and provided by law shall be construed as cumulative and continuing rights and may be exercised

concurrently or alternatively. No one of them shall be exhausted by the exercise of such option on one or more occasions.

Section 7.05 Term. Notwithstanding anything to the contrary, this Agreement and the and the obligations hereunder and the Option Agreement shall terminate fully, and neither Party shall have any obligation to the other whatsoever, if the Project does not receive nine percent (9%) Low-Income Housing Tax Credits from IFA in the 2023 award cycle.

ARTICLE VIII
SPECIAL COVENANT AND DAMAGES FOR BREACH

Section 8.01 Project Covenant. It is acknowledged that the City's willingness to enter into this Agreement and carry out the City's obligations under this Agreement is based on the anticipated benefits to be derived in the City through the Developer's completion of the Project and the proper maintenance of the Project and/or any Project. The Developer covenants and agrees that it will at all times: (a) timely commence the Project, subject to Unavoidable Delays; (b) properly complete the Project, following commencement of the Project; and (c) properly operate and maintain the Project and the Minimum Improvements during the period in which such Project and Minimum Improvements are owned by the Developer (collectively, items (a)-(c) are hereinafter the "Project Covenant").

Section 8.02 Remedy Upon Breach of Project Covenant. The Parties acknowledge that the damages that will be incurred upon any material breach or violation of the Project Covenant would be impossible to ascertain with any reasonable degree of certainty. Nevertheless, the Parties have attempted to fairly approximate the amount of such damages, and have agreed that upon any material breach or violation of Project Covenant 8.01(a) or (b) above, the City may, but shall not be obligated to, exercise its right to enforce (but not as a penalty) one of the following remedies (individually, “Project Covenant Liquidated Damages”):

(a) If the subject property has been improved only with Infrastructure and no Minimum Improvements, then the City may terminate this Agreement and/or, immediately upon demand and following any applicable Cure Period, the Developer shall convey the Property and any and all improvements thereon, including the Minimum Improvements (collectively, “Project Property”) then owned by the Developer or its assignee or designee to the City by a special warranty deed in a form reasonably acceptable to the Parties. Such conveyance shall be made by the Developer to the City, or its designee or assignee, of an amount needed to reimburse Developer for amounts expended by Developer for Infrastructure installed by Developer, but not to exceed $50,000.00 in total, and shall be subject to Developer providing substantiation for all Infrastructure expenditures to the reasonable satisfaction of the City. Partial termination of this Agreement and/or reconveyance of the Property shall constitute Project Covenant Liquidated Damages and be the City's sole remedy for a material breach or violation of the Project Covenant.

(b) If the Property has been improved with Infrastructure and certain Minimum Improvements that are insufficient for issuance of Certificate of Occupancy, then the City may terminate this Agreement and/or, immediately upon demand and following any applicable Cure Period, the Developer shall convey any and all of the Property

then owned by the Developer or its assignee or designee to the City by a special warranty deed in a form acceptable to the Parties. Such conveyance shall be made by the Developer to the City subject to the payment by the City to the Developer or its designee or assignee of an amount needed to release all obligations, outstanding financings or mechanic's liens that could or do encumber title to the Project Property. Partial termination of this Agreement and/or reconveyance of such Project Property shall constitute Project Covenant Liquidated Damages and be the City's sole remedy for a material breach or violation of the Project Covenant.

(c) In the event of a default of the Site use restrictions or Project Covenant by Developer or any Successor Owner (defined below) in interest or title to Developer in the Project, Minimum Improvements, and/or the Property (each, an "Owner") or any party claiming an interest in the Project or the Property through, by, or under an Owner (such parties and the Owners, collectively, "Violators" and each, a "Violator"), such Owner and/or Violators shall have in the Cure Period in which to cure such default after receipt of notice of said default from the City. In the event that the defaulting Owner or Violator cannot cure a default in a timely manner, then the City shall have the right to either: 1) take such action to cure such default as City deems necessary in its sole discretion and to assess such then Owner(s) for the costs thereof as a lien against the Minimum Improvements and the Property in order to collect same; or 2) get an injunction from an applicable court of law to force specific performance to cure such default by the then Owner(s) of the Minimum Improvements and the Property, the amount of the bond for same being One Hundred and 00/100 Dollars ($100.00) and no more; or 3) to pursue such other remedies available at law or in equity as may be available to the City with respect to the Minimum Improvements, the Property, and then Owner(s) of the Minimum Improvements and the Property.

Section 8.03 Successor Owners. At such time as Developer conveys any part of the Site or Minimum Improvements to another party, whether by sale or assignment (each such party being a "Successor Owner"), Developer shall include in the conveyance instrument for such Project Property or Minimum Improvement a requirement that such Successor Owner shall be subject to (i) the Use Restrictions, and (ii) the Project Covenant (together, (i) and (ii) are hereinafter referred to as "Successor Covenants") and, in the event such Successor Owner materially breaches or violates such Successor Covenants, notice of which shall be provided by the City to the Successor Owner, the Successor Owner shall be subject to the Project Liquidated Damages as set forth above.

ARTICLE IX
RISK OF LOSS AND INSURANCE

Section 9.01 Allocation of Risk. All risk of loss with respect to such portion of the Property and the Minimum Improvements owned by Developer shall be borne by the Developer, and all risk of loss with respect to such portion of the Property owned by the City shall be borne by the City.

Section 9.02 Insurance. The Developer shall, at its expense, maintain or cause to be maintained a policy of all risk casualty insurance insuring the Property and the Minimum Improvements owned by the Developer. Such policy of insurance shall also name the City and such other persons designated by the City as additional insureds and shall each contain a provision

that such insurance may not be canceled without at least thirty (30) days' advance written notice to the City. The City's rights as an additional insured shall be subordinate to the prior rights of each holder of any deed of trust affecting any portion of the Property. Copies of such insurance policies shall be furnished to the City together with certificates of such policy bearing notations evidencing payment of premiums or other evidence of such payment. Such policy shall include a waiver of subrogation consistent with the release described herein.

Section 9.03 Blanket Insurance Policies. The Developer may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 9.04 Mutual Release. Anything in this Agreement to the contrary notwithstanding, it is agreed that each Party hereby releases the other from any claim, demand or cause of action arising out of any loss or damage to all or any portion of the Property or Minimum Improvements constructed thereon caused by a peril insurable pursuant to an all-risk casualty insurance policy in standard form available in the State.

ARTICLE X
MISCELLANEOUS

Section 10.01 Assignment of Development Rights. Developer shall not be permitted to assign this Agreement, the Option Agreement, or any development rights in the Project except as expressly consented to by the City in writing.

Section 10.02 Amendments. This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by the party against whom any such amendment, modification, termination or waiver is sought.

Section 10.03 No Oral Agreements. This Agreement, together with all exhibits referred to in this Agreement contain all the oral and written agreements, representations and arrangements between the parties, and any rights which the parties may have under any previous contracts or oral arrangements are hereby canceled and terminated and no representations or warranties are made or implied, other than those set forth in this Agreement.

Section 10.04 Binding Effect. This Agreement shall inure to, the benefit of and shall be binding upon the City and its successors and assigns and the Developer and its permitted successors and assigns.

Section 10.05 Severability. The provisions of this Agreement are severable. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, then the remaining provisions of this Agreement, and the portion of the offending provision (or any application of such provision) which is not invalid, illegal or unenforceable shall remain in full force and effect.

Section 10.06 Conflict of Interest. No council member, officer or employee of the City taking official action with respect to this Agreement or the Project shall have any personal interest, direct or indirect, in the Project, the Property or this Agreement, nor shall any such commissioner, officer or employee participate in any decision relating to the Project, the Project, Property or this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested.

Section 10.07 Execution of Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

Section 10.08 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State without regard to conflict of laws.

Section 10.09 Notices. Any notice, approval, request or consent required by or permitted under this Agreement shall be in writing and mailed by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, and addressed as follows:

To City:	City of Ames, Iowa Attn: Housing Coordinator 515 Clark Avenue Ames IA 50010
With a copy to:	Legal Department Attention: City Attorney 515 Clark Avenue Ames IA 50010
To Developer:	Townhomes at Creekside, LLLP 1620 Pleasant St., Suite 123 Des Moines IA 50314
With a copy to:	Larry James, Attorney at law Conveyance Law, PLC 2331 University Avenue – Ste. 200 Des Moines IA 50311

Each Party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days prior written notice thereof.

All notices given by mail shall be effective upon the earlier of the date of receipt or the second (2nd) business day after deposit in the United States mail in the manner prescribed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 10.10 Recording. This Agreement or a memorandum of this Agreement may be recorded by the City, from time to time, in the office of the Recorder of Story County, Iowa. The Developer shall pay the costs of recording the Contract or memorandum upon demand by the City.

Section 10.11 Further Assurances. The Developer will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the City may reasonably require for accomplishing the purposes of this Agreement.

Section 10.12 Access to Project and Inspection. During the Term of the Developer's ownership of the portion of the Property in which the City seeks to conduct an examination or inspection, the City and its duly appointed agents shall have the right, at all reasonable times, to

enter upon the Property and Minimum Improvements and to examine and inspect the Property, provided that such entry shall be at the sole risk of the City and shall be subject to reasonable coordination with and direction by the Developer, and further provided that such inspections shall not unreasonably interfere with the development activities of the Developer and its agents and contractors. The Developer covenants to execute, acknowledge and deliver all such further documents and do all such other acts and things as may be reasonably necessary to grant to the City such right of entry. The City and its duly appointed agents shall also have the right, at reasonable times and upon seven (7) days prior written notice, to examine the books and records of the Developer which relate to the Project and/or to the obligations of the Developer under this Agreement.

Section 10.13 City Approvals. The approvals required by the City under this Agreement may be made administratively and in writing by the City Manager or his designee; provided, however, if, in the City Manager's or his designee's sole discretion, a matter must be presented to the City Council for the City's approval, then such matter shall be presented to the City Council for such approval at a regular or special meeting called by the City Council.

Section 10.14 Performance by City. Developer acknowledges and agrees that all the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

Section 10.15 No Third-Party Beneficiaries. No rights or privileges of any 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.

TOWNHOMES AT CREEKSIDE, LLLP,
an Iowa limited liability limited partnership,

By: TOWNHOMES AT CREEKSIDE, GP, LLC,
an Iowa limited liability company, its General Partner

Dated _____, 2023. By: _____

Michael Kiernan, Managing Member

STATE OF IOWA, COUNTY OF POLK, SS.:

This instrument was acknowledged before me on _____, 2023, by Michael Kiernan, as Managing Member of Townhomes at Creekside, GP, LLC, the General Partner of Townhomes at Creekside, LLLP.

_____

NOTARY PUBLIC

Passed and approved on _____. 2023, by Resolution No. 23-_____ adopted by the City Council of the City of Ames, Iowa.

CITY OF AMES, IOWA

By: _____

John A. Haila, Mayor

Attest: _____

Renee Hall, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS.:

This instrument was acknowledged before me on _____, 2023, by John A. Haila and Renee Hall, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

_____

NOTARY PUBLIC

EXHIBIT A – CONCEPT PLAN

EXHIBIT B – OPTION AGREEMENT

UNIT SUMMARY

2 BEDROOM UNITS =	16
3 BEDROOM UNITS =	18
4 BEDROOM UNITS =	4
TOTAL UNITS =	38
TOTAL BEDROOMS =	102
AVG. BEDROOM RATIO =	2.68
TOTAL BLDG. AREA =	39,846 S.F.

TRIPP STREET

PROPOSED 15' FRONT BLDG. S/B

PROPOSED DRIVEWAY

UNIT #1 FFE = 972.5
UNIT #2
UNIT #3 FFE = 971.5
UNIT #4
UNIT #5 FFE = 971.5
UNIT #6
UNIT #7 FFE = 970.5
UNIT #8
UNIT #9 FFE = 969.5
UNIT #10

EXIST. U/E

TRASH

PARKING REQ. = 76
(CITY - 2.0 / UNIT
IFA -1.50 / UNIT)

PARKING PROV. = 76
(2.00 / UNIT)

7'

15' SAN. ESMT.

966

UNIT #11 FFE = 972.0
UNIT #12
UNIT #13 FFE = 970.5
UNIT #14
UNIT #15 FFE = 969.0
UNIT #16

38 TOTAL UNITS

AMENITY AREA

8' SIDE BLDG. S/B

UNIT #17
UNIT #18 FFE = 969.0
UNIT #19
UNIT #20 FFE = 967.5
UNIT #21
UNIT #22 FFE = 966.0

PROJECT AREA = 2.78 ACRES

EXIST. RL ZONING

PENDING R-M (PUD OVERLAY) ZONING

FFE = 970.0 UNITS #37/38 UNITS #35/36
FFE = 968.5 UNITS #33/34 UNITS #31/32
FFE = 966.5 UNITS #29/30 UNITS #27/28
FFE = 965.0 UNITS #25/26 UNITS #23/24

25' REAR BLDG. S/B

OUTLOT 'Z'
EXISTING STORM WATER DETENTION (OFF-SITE)

HDG
Hatch Development Group

NORTH
1" = 50'-0" @ 11"x17" Sheet
SAA# 23003
DRAWN BY: AVG

0' 25' 50'

Creekside Townhomes

Site Concept #5
321 State Avenue
Ames, Iowa

March 15, 2023

SIMONSON
PLANNING ■ ARCHITECTURE ■ INTERIORS
Simonson + Associates Architects LLC
1717 Ingersoll Ave, Suite 117, Des Moines, Iowa 50309
Ph. 515-440-5626 www.simonsonassoc.com