

## **AGREEMENT FOR PRIVATE DEVELOPMENT**

**by and between**

**CITY OF ANKENY, IOWA and UPTOWN ANKENY PARTNERS, L.L.C.**

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (“Agreement”), is made on or as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and among the CITY OF ANKENY, IOWA, a municipality (the “City”), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A, 404, and 364.7 of the Code of Iowa, 2017 (the “Code”), as amended, and UPTOWN ANKENY PARTNERS, L.L.C., an Iowa limited liability company having offices for the transaction of business at 2614 NE Bellagio Drive, Ankeny, Iowa 50021 (the “Developer”).

**WITNESSETH:**

WHEREAS, the City has adopted the Uptown Urban Revitalization Plan designating a portion of the City as an urban revitalization area pursuant to the City’s powers under Chapter 404 of the Code in order to encourage private development and improvements in the area, and to enhance the area and substantially improve the neighborhood and the community; and

WHEREAS, the City owns certain real property in the aforementioned urban revitalization area, more particularly described as:

The north 204 feet of the east 30 feet of Lot F, VAN SLYCK ADDITION, an official plat, located in the City of Ankeny, Polk County, Iowa.

AND

That part of the north 145 feet of Lot F, VAN SLYCK ADDITION, an official plat, located in the City of Ankeny, Polk County, Iowa, lying west of said east 30 feet of Lot F and lying east of the west 147 feet of said Lot F.

AND

Lots 18 and 19, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa.

AND

That part of Lot 20, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa, lying south of the north 7 feet of said lot 20, ANKENY VILLAGE PLAT FOUR.

AND

That part of Lot B, ANKENY VILLAGE PLAT 4, an official plat, located in the City of Ankeny, Polk County, Iowa, Lying south of a line drawn from the southeast corner of Lot 17, said ANKENY VILLAGE PLAT 4, to the southwest corner of Lot 15, said ANKENY VILLAGE PLAT 4.

The north 7 feet of Lot 20, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa.

(the “Development Property”); and

WHEREAS, the City is willing to sell the Development Property to the Developer in exchange for valuable consideration pursuant to this Agreement; and

WHEREAS, Developer shall build certain Minimum Improvements, more particularly described in Exhibit A attached hereto and made a part hereof, on the Development Property (the “Project”); and

WHEREAS, 98 Investments, LLC, a 60% majority owner of Developer, has entered into a Workforce Housing Agreement with the Iowa Economic Development Authority with respect to this Project, and Developer shall cause the Workforce Housing Agreement to be amended or an assignment thereunder to be perfected so that Developer assumes the rights and responsibilities thereunder from 98 Investments, LLC; and

WHEREAS, the City is willing to construct certain Public Improvements, more particularly described in Exhibit A, which benefit, among other things, the Development Property; and

WHEREAS, the Developer may seek tax abatement under the Uptown Urban Revitalization Plan after the Minimum Improvements have been completed; 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. REPRESENTATIONS AND WARRANTIES

Section 1.1. Developer makes the following representations and warranties:

a. Uptown Ankeny Partners, L.L.C. is 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, 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 cause the Workforce Housing Agreement between 98 Investments, LLC and the Iowa Economic Development Authority with respect to the Project to be amended or an assignment thereunder to be perfected so that Developer assumes the rights and responsibilities thereunder from 98 Investments, LLC.

g. Developer shall cause the Minimum Improvements to be constructed and operated in accordance with the terms of this Agreement; the Workforce Housing Agreement between 98 Investments, LLC (or any related party substituted therefore pursuant to any assignment or amendment consistent with the terms of said agreement) and the Iowa Economic Development Authority; and all local, State, and federal laws and regulations.

h. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

i. Developer would not undertake its obligations under this Agreement without the sale of the Development Property and the construction of the Public Improvements by the City under the terms of this Agreement, and the availability of tax abatement under the Uptown Urban Revitalization Plan.

## ARTICLE II. SALE OF DEVELOPMENT PROPERTY

Section 2.1 Transfer of Development Property. For and in consideration of the obligations being assumed by the Developer hereunder, the City agrees to sell, and the Developer agrees to purchase, the Development Property, subject to easements and appurtenant servient estates and any zoning and other ordinances. Such transfer shall occur under the terms and conditions of this Agreement and following all process required by the City pursuant to Section 364.7 of the Iowa Code.

Section 2.2 Price. The purchase price for the Development Property shall be One Hundred Thousand Dollars (\$100,000).

a. Fifty Thousand Dollars (\$50,000) of the purchase price amount is payable and due to the City at Closing.

b. The balance of the purchase price (Fifty Thousand Dollars (\$50,000)) shall be due to the City within Twenty-Four (24) Months after Closing unless the Developer has qualified for forgiveness of half the purchase price as described in Section 2.2(c). Developer shall provide security to guarantee payment under this provision in the form of an irrevocable direct pay letter of credit ("Letter of Credit") from an institution rated no less than an A rating from a nationally recognized rating agency. The Letter of Credit shall be executed on or before the date this Agreement is executed by Developer. The intent of the irrevocable Letter of Credit is that if the Developer has not made the purchase price payment as required hereunder, the issuer of the Letter of Credit shall pay to the City the required payment, upon written demand. The Letter of Credit shall be renewable annually without amendment, at Developer's sole cost. A failure by Developer during the term of this Agreement to obtain a renewed or a replacement Letter of Credit that complies with this Agreement shall be an Event of Default. If the balance of the purchase price is not forgiven before Twenty-Four (24) Months after Closing and the Developer is unable to pay the balance of the purchase price at that time, the City may obtain payment through the Letter of Credit and/or take any other actions available to it to collect the balance of the purchase price.

c. If, within Twenty-Four (24) Months after Closing, the Developer (i) acquires the property located at 709 SW Third Street, Ankeny, Iowa and (ii) demolishes the existing structures thereon, removes the debris and prepares the land for redevelopment, then the Developer will have qualified for forgiveness of Fifty Thousand Dollars (\$50,000) of the purchase price and the Letter of Credit may be cancelled by Developer.

Section 2.3. Due Diligence. For a period of thirty days following the execution of this Agreement (the "Due Diligence Period"), Developer may perform investigations and inspections necessary to complete due diligence for the Development Property and its intended use of the Development Property, limited to the following:

a. Examination of title related to marketability in accordance with Iowa law and the Iowa Land Title Standards.

- b. Existence of or feasibility of obtaining proper zoning, variances (if required) and other required approvals for Developer's anticipated use of the Development Property.
- c. Availability of all utilities in such quantity necessary for Developer's normal business activity.
- d. Governmental approvals, which is limited to the following conditions: building permits, easements, and special use permits for the construction and operation of the proposed use.

If, during the Due Diligence Period, Developer is not reasonably satisfied with the Development Property, Developer may, by notice to the City during the Due Diligence Period (i) terminate this Agreement with written notice to the City, or (ii) give notice to the City of any defects, concerns, or issues discovered as a result of Developer's due diligence, together with any copies of any and all inspection reports (the "Property Defects"). If Developer notifies the City of the existence of any Property Defects, the City shall have five (5) business days from the receipt of notice of Property Defects, within which to notify Developer whether the City intends to cure such Property Defects. Failure to notify Developer within such five (5) business day period shall be conclusively deemed to be the City's notice to Developer of the City's decision not to cure the Property Defects. If the City notifies or is deemed to notify Developer of its intention not to cure the Property Defects, Developer shall have five (5) business days thereafter to notify the City of its decision whether to accept the Property with the Property Defects, or of terminating this Agreement, and in the latter event, this Agreement will terminate. If the City gives notice of its intention to cure the Property Defects, the parties may mutually extend the Closing Date.

#### Section 2.4. Real Estate Taxes and Special Assessments.

- a. The property is currently tax-exempt while owned by the City. Developer shall be responsible for all taxes post-closing, if any.
- b. The City shall pay all installments of special assessments which are a lien on the Property and, if not paid, would become delinquent during the calendar year in which Closing occurs, and all prior installments thereof.
- c. All other special assessments shall be paid by Developer.

Section 2.5. Right of Reversion. As security for completion of the Minimum Improvements, the deed conveying the Development Property to Developer shall contain a right of reversion ("City's Reversionary Right" or "Reversionary Right"), which may be exercised by the City, in its reasonable discretion, if Developer has not commenced construction of the Minimum Improvements, shown by having footings in the ground at the Development Property sufficient to construct the Minimum Improvements, by April 1, 2018. If the Developer fails to meet this condition and the City exercises its right of reentry, any payments made by the Developer to the City as a portion of the purchase price of the Development Property shall be returned to the Developer by the City.

If any of the above conditions occur, then the City shall automatically have the City's Reversionary Right to reacquire title to the Development Property.

Developer shall allow no mortgages or liens other than those acknowledged by the City in writing (including, but not limited to, mechanic's liens) to encumber the Development Property while the City holds its Reversionary Right. To exercise the City's Reversionary Right described herein, the City must provide written notice to Developer (or its permitted successors, assigns, or transferees) within ninety (90) days of Developer's failure to perform under this Agreement, and record such notice with the County Recorder of deeds, in which case the title to the Development Property shall automatically revert to the City as of the date of the recording of the notice. Upon request from the City, Developer shall take all reasonable steps to ensure the City acquires marketable title to the Development Property through its exercise of its rights under this Section within 60 days of the City's demand, including without limitation, the execution of appropriate deeds and other documents. This provision shall survive the Closing.

If construction of the Minimum Improvements has commenced prior to April 1, 2018, then the Reversionary Right shall terminate and be of no further force and effect. The City agrees to execute any documents reasonably requested by Developer or its lender to evidence any termination of the City's Reversionary Right as set forth herein.

Section 2.6. Risk of Loss and Insurance. The City shall bear the risk of loss or damage to the Development Property prior to Closing. The City agrees to maintain existing insurance through Closing, if any, and Developer may purchase additional insurance. In the event of substantial damage or destruction prior to Closing, the City shall have the option of using insurance proceeds to rebuild the Development Property such that this Agreement shall continue and Developer shall complete the Closing regardless of the extent of damages. Developer shall bear the risk of loss or damage to the Development Property after Closing in accordance with Section 3.4.

Section 2.7. Condition of the Property; Care and Maintenance. As of Closing, Developer agrees to take the Development Property "As Is." The City makes no warranties or representations as to the condition of the Development Property. Developer will have conducted an inspection of the Development Property during the Due Diligence Period and waives all claims against the City as to the condition of the Development Property.

Section 2.8. Possession/Closing. Upon the obligations of both parties hereunder being met, including the execution of all documents required hereunder, Closing shall take place on a date no later than sixty days following the expiration of the Due Diligence Period at a time to be agreed to by the parties (the "Closing Date"). This purchase shall be considered "Closed" upon the delivery to Developer of a duly executed special warranty deed for the Development Property in the form of the deed attached as Exhibit B. All parties and individual signatories hereto further agree to make, execute and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 2.9. Fixtures. Included with the Development Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached.

Section 2.10. Abstract And Title. The City shall provide an abstract for the Development Property, continued through a date no more than forty-five (45) days prior to Closing, and deliver it to Developer for examination, which shall become the property of the Developer upon Closing. The City makes no representations or warranties concerning the marketability of title to the Development Property.

Section 2.11. Survey and Platting. Developer shall be responsible for all survey and platting of the Development Property. The City authorizes Developer and/or its agents and contractors access to the Development Property for survey and platting purposes.

Section 2.12. Environmental Matters. At Closing, the City will file with the County Recorder's office a properly executed Groundwater Hazard Statement as required by law. Developer takes the property "As Is" with regard to any environmental matters. The City makes no warranties and representations as to the environmental condition of the Development Property. Developer shall be responsible for securing and paying for all inspections, remediation efforts, or documentation required by the county board of health in order to lawfully transfer the Development Property to Developer. Developer agrees to indemnify, release, defend and hold harmless the City for all claims, damages or costs relating to the Development Property that arise after the date of Closing.

Section 2.13. Proof of Financing and Assignment of Workforce Housing Agreement. Developer warrants that it has commitments for acquisition, construction, and permanent financing for the development of the Development Property in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in Article III of this Agreement. Before Closing, Developer shall provide to the City proof of the financing and of Developer's assumption of the rights and responsibilities under the Workforce Housing Agreement pursuant to a valid amendment or assignment thereunder. If Developer has not provided such proof deemed satisfactory to the City in its sole, reasonable discretion, the City reserves the right to delay Closing or otherwise suspend its performance under this Agreement or take any other action contemplated by Section 5.2.

### ARTICLE III. CONSTRUCTION OF IMPROVEMENTS

#### Section 3.1. Construction of Minimum Improvements.

a. Developer shall construct Minimum Improvements on the Development Property as set forth in this Agreement. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than detailed and outlined in Exhibit A and in the Construction Plans submitted to the City under Section 3.1(b), and that construction of the Minimum Improvements shall require a total investment of not less than Four Million Dollars (\$4,000,000).

b. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to and approved by the City. The Construction Plans shall (i) conform to the terms and conditions of this Agreement; (ii) conform to the terms and conditions of the Workforce Housing Agreement between 98 Investments, LLC (or any related party substituted therefore pursuant to any assignment or amendment consistent with the terms of said agreement) and the Iowa Economic Development Authority; (iii) conform to all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements; and (iv) be adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements. The City's approval of the Construction Plans pursuant to this Section 3.1(b) is solely for purposes of this Agreement and shall not be deemed to constitute approval or waiver by the City for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed. 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.

Section 3.2. Unavoidable Delays. For the purposes of this Article, "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).

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be commenced by no later than April 1, 2018, and completed by no later than December 31, 2018; or by such other dates 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.

Section 3.4. Insurance. The Developer agrees during construction of the Minimum Improvements and thereafter until the Termination Date to maintain builder's risk, property damage, and liability insurance coverages with respect to the Minimum Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request.

Section 3.5. Indemnification. Developer shall indemnify, defend, and hold harmless the City and its governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), and releases and agrees that the Indemnified Parties shall not be liable for any loss, damage, liabilities, injuries, claims, demands, costs, and expenses of every kind and nature, including legal fees, arising out of or in connection with Developer's acquisition of the



Development Property or the construction, maintenance or operation of the Minimum Improvements.

a. Without limiting the general indemnity provided above, Developer acknowledges the existence of the 30 foot utility easement near the west boundary of the Development Property, and Developer shall indemnify, defend, and hold harmless the Indemnified Parties and releases and agrees that the Indemnified Parties shall not be liable for any loss, damage, liabilities, injuries, claims, demands, costs, and expenses of every kind and nature, including legal fees, arising out of or in connection with Developer's construction, maintenance or operation of the Minimum Improvements on or about the utility easement. Further, Developer agrees that the Indemnified Parties shall not be liable for any loss, damage, liabilities, injuries, claims, demands, costs, and expenses of every kind and nature, including legal fees, arising out of or in connection with the City's maintenance or operation of the utility easement, and if the City damages any improvements constructed by Developer on or near the utility easement through the City's reasonable exercise of its rights under the easement, Developer shall be solely responsible for any costs associated with repairing said improvements.

Section 3.6. Construction of Public Improvements. Contingent on the Developer's compliance with the terms of this Agreement, and contingent upon satisfaction of the Conditions Precedent set forth below in Section 3.6(a), the City intends to cause the Public Improvements described in Exhibit A to be constructed in substantially the same scope and scale as set forth in Exhibit A. The City's obligation to construct the Public Improvements as described in this Section shall be subject in all respects to Unavoidable Delays, the provisions of this Section, and to the satisfaction of all conditions and procedures required by law (in the judgment of any counsel for the City) for the planning, designing, letting, constructing, inspecting, and funding of the Public Improvements, including but not limited to the requirements of Iowa Code Chapters 26, 384, and 573, and including the holding of all required public hearings relating to the same. Subject to Unavoidable Delays, the City shall cause construction of the Public Improvements to be completed by no later than the date of completion of the Minimum Improvements, subject to Developer's cooperation with the City and provision to the City of sufficient information such that the City is able to anticipate the date of completion of the Minimum Improvements.

a. Conditions Precedent to Funding or Constructing the Public Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement with respect to the Public Improvements is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings. In addition, all obligations of City to fund or construct Public Improvements are subject to each of the following Conditions Precedent:

(i) The representations and warranties made by Developer in Section 1.1 shall be true and correct;

(ii) The Developer shall have acquired the Development Property from the City and commenced construction of the Minimum Improvements thereon;

(iii) The City shall have approved all applicable zoning, subdivision, or platting of the Development Property necessary for development and construction of the Minimum Improvements;

(iv) The Developer shall be in compliance with all the terms and provisions of this Agreement; and

(v) There has not been a substantial change for the worse in the financial resources and ability of the Developer, or a substantial decrease in the financing commitments secured by the Developer for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Developer will be unable to fulfill its covenants and obligations under this Agreement.

b. Right of Way and Easements. Developer shall convey, at no cost to the City, such property, interests, title or easements necessary for the City to construct, maintain, and operate the Public Improvements, and cooperate with the City in the construction of the Public Improvements.

c. No Legal Entitlements to Public Improvements. Developer recognizes and agrees that the Public Improvements shall be owned and maintained by the City and that nothing in this Agreement grants the Developer any special legal entitlements or other rights not held by the general public with respect to the Public Improvements.

#### ARTICLE IV. URBAN REVITALIZATION

Section 4.1. Availability of Urban Revitalization Tax Abatement. Developer anticipates applying for property tax abatement under the City's Uptown Urban Revitalization Plan pursuant to the Chapter 3.18 of the City's ordinances upon completion of the Minimum Improvements. Nothing in this Agreement shall prevent the Developer from seeking property tax abatement under the City's Uptown Urban Revitalization Plan pursuant to the Chapter 3.18 of the City's ordinances, or limit the schedule of tax abatement for which the Developer may be eligible, provided the Developer timely applies for the abatement under Chapter 3.18 and the Minimum Improvements otherwise qualify for the exemption.

#### ARTICLE V. DEFAULT AND REMEDIES

Section 5.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

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

(b) Transfer of Developer's interest in the Development Property or any interest in this Agreement or the assets of Developer in violation of the provisions of this Agreement;

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

(d) Failure by Developer to substantially observe or perform any covenant, condition, or obligation under this Agreement;

(e) 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;

(f) Developer shall:

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

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

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

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

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

Section 5.2. Developer Breach. If the Developer fails to perform any of its obligations under this Agreement, and fails to cure said breach within thirty (30) days after written notice from the City to the Developer, the City may (i) suspend its performance under this Agreement, (ii)

terminate this Agreement upon written notice to the Developer, or (iii) take any other legal or equitable action deemed appropriate to enforce the Developer's obligations under this Agreement.

Section 5.3. 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 5.4. 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 5.5. Enforcement Costs. 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 herein contained, Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

## ARTICLE VI. MISCELLANEOUS

Section 6.1. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 6.2. 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 Uptown Ankeny Partners, L.L.C., 2614 NE Bellagio Drive, Ankeny, Iowa 50021;
- b. In the case of the City, is addressed or delivered personally to the City at 410 West First Street, Ankeny, Iowa 50023;

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 6.3. 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.

Section 6.4. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 6.5. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 6.6. This Agreement shall terminate and be of no further force or effect after December 31, 2020, unless terminated earlier under the provisions of this Agreement.

Section 6.7. No assignment by a party of this Agreement or its rights and responsibilities hereunder shall be valid without the prior written consent of the other party. Furthermore, Developer agrees that it shall not assign or convey its interest in the Development Property during the term of this Agreement without the prior written consent of the City.

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 the Developer has caused this Agreement to be duly executed on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(SEAL)

**CITY OF ANKENY, IOWA**

\_\_\_\_\_  
Gary Lorenz, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF IOWA                    )  
  ) SS  
COUNTY OF POLK                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before a Notary Public in and for the State, personally appeared Gary Lorenz and \_\_\_\_\_, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Ankeny, 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 said State

*[Signature page to Agreement for Private Development - City of Ankeny]*

**UPTOWN ANKENY PARTNERS, L.L.C.**

\_\_\_\_\_  
Marcus Pitts, \_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_

STATE OF IOWA                    )  
  )SS  
COUNTY OF POLK                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for said State, personally appeared Marcus Pitts and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of Uptown Ankeny Partners, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said \_\_\_\_\_ and \_\_\_\_\_ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said County and State

*[Signature page to Agreement for Private Development – Uptown Ankeny Partners, L.L.C.]*

**EXHIBIT A**  
**MINIMUM IMPROVEMENTS and PUBLIC IMPROVEMENTS**

Minimum Improvements shall mean construction by the Developer of a three-story multiresidential building with a total building area of approximately 31,000 square feet and related site improvements on the Development Property. The building shall include 6 first-floor “live-work” housing units and an additional 20 one-bedroom housing units and 10 two-bedroom housing units. The design of the building shall be substantially similar, if not identical, to the illustration attached as Exhibit A-1 utilizing a combination of brick, glass, steel and concrete panels. In addition to the building, there shall be no less than 55 parking stalls constructed on the Development Property as depicted in the illustration attached as Exhibit A-2, and Developer shall install Type C screening, as defined in the City of Ankeny Zoning Code, along the entire south property line of the Development Property.

The construction of the Minimum Improvements shall be completed by December 31, 2018. Construction costs for the Minimum Improvements shall be no less than \$4,000,000.

Public Improvements shall mean construction by the City of improvements on City-owned property along the south side of SW Third Street, Ankeny, Iowa, in the public right of way extending from the west property line of the Development Property to the east property line of the Development Property, including construction of angle parking stalls, sidewalk, and street trees.



# EXHIBIT A-1 ILLUSTRATION OF MINIMUM IMPROVEMENTS



## EXHIBIT A-2 ILLUSTRATION OF SITE



**EXHIBIT B**

**SPECIAL WARRANTY DEED**

**Recorder's Cover Sheet**

**Preparer Information:** (name, address and phone number)

Nathan Overberg  
Ahlers & Cooney, P.C.  
100 Court Avenue, Suite 600  
Des Moines, IA 50309  
(515) 243-7611

**Taxpayer Information:**

Uptown Ankeny Partners, L.L.C.  
2614 NE Bellagio Drive  
Ankeny Iowa 50021

**Return Document To:**

Uptown Ankeny Partners, L.L.C.  
2614 NE Bellagio Drive  
Ankeny Iowa 50021

**Grantors:** City of Ankeny, Iowa

**Grantees:** Uptown Ankeny Partners, L.L.C.

**Legal Description:** See Page 2

**Document or instrument number of previously recorded documents:**

## SPECIAL WARRANTY DEED

For the consideration of One Hundred Thousand (\$100,000) Dollars and other valuable consideration, **the City of Ankeny, Iowa**, (“Grantor”) does hereby convey to **Uptown Ankeny Partners, L.L.C.**, an Iowa limited liability company (“Grantee”), the following described real estate in POLK County, Iowa:

The north 204 feet of the east 30 feet of Lot F, VAN SLYCK ADDITION, an official plat, located in the City of Ankeny, Polk County, Iowa.

AND

That part of the north 145 feet of Lot F, VAN SLYCK ADDITION, an official plat, located in the City of Ankeny, Polk County, Iowa, lying west of said east 30 feet of Lot F and lying east of the west 147 feet of said Lot F.

AND

Lots 18 and 19, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa.

AND

That part of Lot 20, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa, lying south of the north 7 feet of said lot 20, ANKENY VILLAGE PLAT FOUR.

AND

That part of Lot B, ANKENY VILLAGE PLAT 4, an official plat, located in the City of Ankeny, Polk County, Iowa, Lying south of a line drawn from the southeast corner of Lot 17, said ANKENY VILLAGE PLAT 4, to the southwest corner of Lot 15, said ANKENY VILLAGE PLAT 4.

The north 7 feet of Lot 20, ANKENY VILLAGE PLAT FOUR, an official plat, located in the City of Ankeny, Polk County, Iowa.

This Deed is subject to all the terms, provisions, covenants, conditions and restrictions contained in that certain Development Agreement, executed by the Grantor and Grantee herein, dated \_\_\_\_\_, 2017, as amended (hereinafter the “Agreement”) which is herein incorporated by reference, a copy of which is on file for public inspection at the office of the City Clerk of the Grantor. All capitalized terms contained in this Deed have the same meaning as assigned to them in the Development Agreement.

Specifically, this Deed is subject to the right of Grantor to reacquire title to the described real estate in the event that Developer has not commenced construction of the Minimum Improvements, shown by having footings in the ground at the Development Property, by April 1, 2018, in which event the Grantor shall have the right to reacquire the property and to terminate and revert in the Grantor the estate conveyed by this Deed to the Grantee, its assigns and successors in interest in accordance with the terms and conditions of the Agreement, all right, title and interest of Grantee in the above-described premises shall cease and revert immediately to Grantor, its successors and assigns. These conditions shall run with the land.

None of the provisions of the Agreement shall be deemed merged in, affected or impaired by this Deed.

*This transfer is exempt under Iowa Code Chapter 428A.2.19*

Grantor does hereby covenant with Grantee and successors in interest to warrant and defend the real estate against the lawful claims of all persons claiming by, through or under them, except as may be above stated.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: \_\_\_\_\_

CITY OF ANKENY

By \_\_\_\_\_

Mayor

By \_\_\_\_\_

City Clerk

STATE OF IOWA, COUNTY OF POLK:

On \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ankeny, the municipal corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by the authority of its City Council; and that the Mayor and City Clerk, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR SAID STATE

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