

**CITY OF MARSHALLTOWN, IOWA – HUEGERICH CONSTRUCTION, INC.**

**DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF MARSHALLTOWN, IOWA (“City”), a municipal corporation, with its general offices at 24 North Center Street, Marshalltown, Iowa 50158, and HUEGERICH CONSTRUCTION, INC. (“Developer”), an \_\_\_\_\_, with its office at \_\_\_\_\_.

**RECITALS:**

- A. The City desires to construct certain infrastructure in accordance with a comprehensive plan and all infrastructure will be constructed to City standards and/or SUDAS.
- B. Developer is under contract to purchase real property legally described as set forth in “Exhibit A” attached hereto and incorporated by this reference (“Developer’s Property”) to be known as “the South 7<sup>th</sup> Avenue Extension Project” or the “Project”.
- C. The City and Developer desire to enter into this Agreement for the purpose of detailing the responsibilities of each party to construct certain improvements associated with Developer’s Property and the Project

NOW, THEREFORE, in consideration of the above stated recitals, undertakings and conditions the City and the Developer agree as follows:

- 1. **THE PROJECT:** The Project shall consist of the Developer constructing a housing project currently designed as consisting of multi-family residential housing with 103 units constructed in phases to a density at or below that required by the City’s Zoning District Regulations.
- 2. **CONTRIBUTIONS, OBLIGATIONS AND UNDERTAKINGS OF DEVELOPER:**
  - a) Developer agrees to utilize standard construction practices, including architectural shingles, engineered wood siding (or comparable) with 50-year warranty stone veneer, and neutral earth tone colors.
  - b) Developer’s Property will be served by a city street leading to and from East Olive Street with private storm sewer lines and private sanitary sewer lines connected to City’s infrastructure. All private infrastructure required for the Project shall be installed by Developer at its sole cost and expenses, whether situated upon Developer’s Property or within the right-of-way of the street to be constructed. All maintenance, repair, and replacement of private infrastructure shall be performed by Developer.
  - c) Developer agrees to subdivide the property for the construction of multi-family housing.

- d) Developer agrees to install a public water main running from East Olive Street and parallel to the public roadway to be constructed in accordance with plans, specifications, approvals, and all other requirements of the City of Marshalltown Water Works.
- e) Developer agrees to dedicate, at zero cost to the City, all portions of a public right-of-way 60.0 feet in width and approximately \_\_\_\_\_ feet in length commencing at the current terminus of South Seventh Avenue and running to the South, then curving to the East to the East boundary of the real estate described in Exhibit “A” for purposes of connecting the City’s East Olive Street right-of-way, which is situated to the North of Developer’s Property, to the housing to be constructed. The exact location of the South Seventh Avenue extension shall be detailed in drawings to be created by Developer’s engineer as conceptualized to the City. The public improvement project to facilitate connection to the above-referenced portions of the City’s South Seventh Avenue right-of-way storm sewer and sanitary sewer shall hereinafter be referred to as the “South Seventh Avenue Extension Project.”
- f) Developer agrees to engage the services of a Professional Engineer licensed to practice Civil Engineering in the State of Iowa for the purposes of preparing construction plans and specification for the South Seventh Avenue Extension Project to City standards and/or SUDAS. Developer shall direct the engaged Professional Engineer to review all plans and specifications with the City’s Public Works Director/City Engineer (“City Engineer”). Upon the City Engineer’s approval, the engaged Professional Engineer shall provide certified stamped and signed copies of the plans and specifications for the City of Marshalltown’s use for completion of the South Seventh Avenue Extension Project.

### 3. CITY OBLIGATIONS AND UNDERTAKINGS:

The City agrees to provide Developer and to Developer’s Property the following:

- a) Property tax abatement in accordance with the current program upon Developer’s submission of the City’s required application and fee.
- b) Approval of a Site Plan for the Project conforming to the current zoning requirements of the City’s Zoning District and all applicable requirements of the City Code as determined by its respective departments.
- c) The City shall, at its sole cost and expense, procure a contractor to construct the South Seventh Avenue Connection Project per the plans and specifications provided for in Paragraph 2.f of this Agreement.

### 4. REPRESENTATIONS AND WARRANTIES OF THE CITY:

- a) The City is a municipal corporation and municipality organized under the provisions of the constitution and the laws of the State of Iowa and has power to enter into this Agreement and carry out its obligations and undertakings hereunder.

- b) The execution and delivery of this Agreement upon approval of the City Council of the City of Marshalltown, Iowa, 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 and by which it is bound, nor do they constitute a default under any of the foregoing.
- c) All covenants, stipulations, promises, agreements, and obligations of the City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity hereof.

5. REPRESENTATIONS AND WARRANTIES OF DEVELOPER:

- a) Huegerich Construction, Inc., is \_\_\_\_\_, duly organized and validly existing under the laws of the State of \_\_\_\_\_, is authorized to do business in the State of Iowa, and it has all requisite power and authority to develop, own, and operate the Project, to carry on its businesses now conducted and as presently proposed to be conducted, and to enter into to perform its obligations under this Agreement.
- b) This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by the City, is in full force and effect and is a validly legally binding instrument of Developer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or effecting creditors' rights generally.
- c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, nor do they 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, lawsuits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body for 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 raises any questions affecting the validity of this 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 that the portion of Developer's Property to be

dedicated to the City as public right-of-way pursuant to this Agreement or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has been previously notified in writing). Developer is not 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 Project, 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 environmental statute with respect thereto.

- f) Developer will have good and marketable title to the proposed Right-of Way for the South Seventh Avenue Extension Project for conveyance by Warranty Deed to the City of Marshalltown.
6. 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:
- a) Failure by the Developer to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or
  - b) The Developer:
    - (i) files 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) makes an assignment for the benefit of its creditors; or
    - (iii) admits in writing its inability to pay its debts generally as they become due; or
    - (iv) is adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the 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 the Developer or part thereof, shall be appointed in any proceedings brought against the Developer and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment; or
  - c) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the 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; or
  - d) Any representation or warranty made by the City in this Agreement shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date of the issuance.

City's Remedies on Default. Whenever any Event of Default referred to in Section 6 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (b) of said Section 6) the giving of thirty (30) days written notice by the City to the Developer of the Event of Default, but only if the Event of Default has been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

- a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement;
  - b) The City may terminate this Agreement;
  - c) The City may take any other action, including legal, equitable, or administrative action, which may appear necessary or desirable to recover damages or enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.
7. 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.
  8. DEVELOPER'S REMEDIES ON DEFAULT. Whenever any Event of Default occurs by the City, the Developer may terminate this Agreement, and the Developer may take any legal action it considers necessary to recover damages from the City or to enforce this Agreement, subject to a 120-day written notice to the City with an opportunity for the City to cure the Event of Default during the 120-day notice period.
  9. NO IMPLIED WAIVER. In the event any agreement contained in this Agreement should be breached by the Developer and thereafter waived by the City, 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.
  10. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due, or to become due, or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees and costs.
  11. THIRD PARTY COMPLIANCE. Fulfillment of this Agreement is contingent upon compliance with the obligations of third parties reference herein, and upon the failure of a

third party or parties to fulfill its obligations, this Agreement may be terminated by either the Developer, the City, or both.

12. NO THIRD-PARTY BENEFICIARIES. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.
13. MISCELLANEOUS.
- a) Notices and Demands. A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by a registered or certified mail, postage prepaid, return receipt requested or delivered personally, and
- i) in the case the Developer is addressed or delivered personally to \_\_\_\_\_, Agent for \_\_\_\_\_;
  - and
  - ii) in the case of the City it is addressed to or delivered personally to the City at 24 North Center Street, Marshalltown, Iowa 50158, ATTN: City Administrator.
- b) Counterparts. This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute the same instrument, even though all parties are not signatories to the original or the same counterpart. Furthermore, the parties may execute and deliver this Agreement by electronic means, such as PDF or a similar format. The City and the Developer agree that delivery of the Agreement by electronic means shall have the same force and effect as delivery of original signatures and that each of the parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.
- c) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.
- d) Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof and supersedes all prior agreements, negotiations, or discussions whether oral or written. This agreement may not be amended except by a subsequent writing signed by all parties hereto.
- e) Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted accessors and assigns.

14. TERMINATION. Unless otherwise terminated as provided herein this Agreement shall terminate upon fulfillment by each party of the obligations set forth herein.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in name and on its behalf by its Mayor to be duly attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and on its behalf by is authorized representatives all as of the day first above written.

CITY OF MARSHALLTOWN, IOWA

HUEGERICH CONSTRUCTION, INC.

By: \_\_\_\_\_  
Joel Greer, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Alicia Hunter, City Clerk

STATE OF IOWA  
COUNTY OF MARSHALL

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me a Notary Public in and for said State, personally appeared Joel Greer and Alicia Hunter to me personally known, who being duly sworn, did state they are the Mayor and City Clerk, respectively, of the City of Marshalltown, Iowa, a municipality created and existing under the laws of the State of Iowa, and that said instrument was signed 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 – State of Iowa

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This record was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that \_\_\_\_\_ is the \_\_\_\_\_ of the \_\_\_\_\_ executing the within and foregoing instrument, that said instrument was signed on behalf of the \_\_\_\_\_ by authority of the \_\_\_\_\_; and that \_\_\_\_\_, as \_\_\_\_\_, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the \_\_\_\_\_, by it and by \_\_\_\_\_ voluntarily executed.

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

EXHIBIT "A"