

DEVELOPMENT AGREEMENT

This amended Agreement is entered into between the City of Marshalltown, Iowa (the “City”) and Willard-Hopkins, L.L.C. (the “Company”) as of the ___ day of _____, 2023 (the “Commencement Date”). The original development agreement was entered on March 1, 2022.

WHEREAS, the Company owns certain real property (as more particularly described on Exhibit A hereto) (the “Property”) situated at 32, 34 and 36 W. Main Street in the Marshalltown Urban Renewal Area No. 4 (the “Urban Renewal Area”); and

WHEREAS, the Company has proposed to undertake the redevelopment (the “Project”) of the Willard Building and the Hopkins Building situated on the Property into a mixed-use facility including commercial and multiresidential units; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in defraying the costs of constructing and maintaining the Project; and

WHEREAS, Chapter 403 of the Code of Iowa authorizes cities to establish urban renewal areas and to undertake economic development and blight alleviation projects; and

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

NOW, THEREFORE, in consideration of the mutual obligations contained in this Agreement, the parties hereto agree as follows:

A. Company’s Covenants

1. Project Construction. The Company agrees to undertake the Project on the Property. The Company agrees that the completed Project shall minimally include eight (8) multiresidential units in the Hopkins Building, five (5) multiresidential units in the Willard Building and two (2) commercial units. The Company agrees to complete the Project in substantial conformance with the City’s zoning, land use, building and safety codes and regulations. Barring Unavoidable Delays (as that term is defined herein), the Company further agrees to use its best efforts to substantially complete the Project by December 31, 2024.

“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 the City, with respect to a City-claimed delay) (including the revocation or refusal to grant licenses, permits, certificates or approvals, where such revocation or refusal is not due to the fault of the Owners, or the expiration of time periods required by law or regulations before necessary permits can be granted).

Further, the Company agrees to maintain, preserve, and keep the Property, including but not limited to the Project, useful and 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.

2. Certificates of Occupancy The Company shall take all action necessary to lawfully obtain a Certificate of Occupancy for the Hopkins Building and the Willard Building from the City’s zoning administrator. Barring Unavoidable Delays, the Company anticipates that it will obtain such Certificates of Occupancy for the Hopkins Building and the Willard Building from the City’s zoning administrator by December 31, 2024.

3. Property Taxes. The Company agrees to ensure timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term (as hereinafter defined) and to submit receipts, cancelled checks or certification based on public records as evidence of each such payment.

4. No Abatement; No Property Tax Exemption. The Company agrees that it will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal or local law with respect to taxation of the Property throughout the Term (as hereinafter defined) including the property to be leased, sold, transferred to or otherwise used by an entity that is exempt from property taxes under the laws of the State of Iowa.

5. Default Provisions.

a. **Events of Default.** 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 (unless otherwise provided), any one or more of the following events:

- (i) Failure by the Company to complete construction of the Project pursuant to the terms and conditions of this Agreement.
- (ii) Failure by the Company to obtain Certificates of Occupancy for the Project pursuant to the terms and conditions of this Agreement.
- (iii) Failure by the Company to fully and timely remit payment of property taxes when due and owing.
- (iv) Failure by the Company to comply with any other material Sections of this Agreement.

b. **Notice and Remedies.** Whenever any Event of Default described in this Agreement occurs, the City shall provide written notice to the Company describing the cause of the default and the steps that must be taken by the Company in order to cure the default. The Company shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Company fails to cure the default or provide assurances, the City shall then have the right to:

- (i) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- (ii) Withhold the Payments provided for under Section B.1 below.

c. **Enforced Delay in Performance.** The Company shall not be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including development, or the beginning and completion of construction of the Project, in the event of an enforced delay in the performance of such obligations due to Unavoidable Delays; it being the purpose and intent of this provision that in the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations the Company shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this article shall: (i) within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay; and, (ii) exercise reasonable diligence to mitigate the event and the impact thereof.

B. City's Covenants

1. **Payments.** In recognition of the Company's obligations set out above, the City agrees to make ten (10) economic development tax increment payments (the "Payments" and, individually each, a "Payment") to the Company during the Term (as hereinafter defined), pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the first four payments shall not exceed an amount equal to \$50,800, the next five payments shall not exceed an amount equal to \$91,133, and the final payment shall not exceed an amount equal to \$91,135, and the total, aggregate amount (the "Maximum Payment Total") of the Payments made under this Agreement during the Term shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000). Certain Payments (the "Annual Appropriation Payments" and, individually each, an "Annual Appropriation Payment") under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder and shall be made in accordance with the schedule of Payments hereinafter set forth in this Section A.1.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from unencumbered Incremental Property Tax Revenues received by the City from the Marshall County Treasurer which are attributable to the Urban Renewal Area. Incremental Property Tax Revenues are determined by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the property in the Urban Renewal Area; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the property situated in the Urban Renewal Area, as shown on the property tax rolls of Marshall County; and (4) deducting any property tax credits which shall be available with respect to the Property.

Subject to the right of Annual Appropriation set forth in Section B.2, the Payments will be made on such dates and in such amounts (the “Scheduled Payment Amounts”) as follows:

| Payment Date | Amount |
|---|----------|
| Within thirty (30) days of issuance of the Certificate of Occupancy of the Hopkins Building | \$50,800 |
| Within thirty (30) days of issuance of the Certificate of Occupancy of the Willard Building | \$50,800 |
| First Annual Appropriation Payment | \$50,800 |
| Second Annual Appropriation Payment | \$50,800 |
| Third Annual Appropriation Payment | \$91,133 |
| Fourth Annual Appropriation Payment | \$91,133 |
| Fifth Annual Appropriation Payment | \$91,133 |
| Sixth Annual Appropriation Payment | \$91,133 |
| Seventh Annual Appropriation Payment | \$91,133 |
| Eighth Annual Appropriation Payment | \$91,135 |

The Annual Appropriation Payments will be made on December 1 and June 1 (each, an “Annual Appropriation Payment Date”) of each fiscal year, beginning on the first Annual Appropriation Payment Date immediately succeeding the date on which both Certificates of Occupancy have been issued for the Project as set forth in Section A.2 of this Agreement.

For example, assuming that both Certificates of Occupancy are issued for the Project by June 30, 2024, then the Annual Appropriation Payments will be made on each December 1 and June 1, beginning on December 1, 2024 and continuing through the sooner of June 1, 2028.

2. Annual Appropriation Payments. Prior to December 1 of each year during the Term (as hereinafter defined) of this Agreement, beginning in calendar year 2023, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Annual Appropriation TIF Payments potentially coming due in the following fiscal year, an amount (the “Appropriated Amount”) of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the sum of the respective Scheduled Payment Amounts coming due in such fiscal year.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Annual Appropriation Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Annual Appropriation Payments, to seek damages relative thereto, or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year’s Payments shall not render this Agreement null and void.

3. Payment Amounts. The amount of the Payment to be made in connection with the issuance of the Certificate of Occupancy of the Hopkins Building shall not exceed \$50,800. The amount of the Payment to be made in connection with the issuance of the Certificate of Occupancy of the Willard Building shall not exceed \$50,800. Further, the aggregate Annual Appropriation Payments to be made in each fiscal year shall not exceed an amount equal to the

corresponding Appropriated Amount (for example, assuming there are Annual Appropriation Payments due on December 1, 2024 and on June 1, 2025, the aggregate maximum amount of such Annual Appropriation Payments would be determined by the Appropriated Amount determined for certification by December 1, 2023).

In addition, no Annual Appropriation Payment shall exceed the amount of unencumbered Incremental Property Tax Revenues (excluding allocations of “back-fill” or “make-up” payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Marshall County Treasurer attributable to the taxable incremental valuation of the property situated in the Urban Renewal Area in the six (6) months immediately preceding such Annual Appropriation Payment Date.

4. Certification of Payment Obligation. In any given fiscal year, beginning in fiscal year 2023, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Marshall County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. Amendment and Assignment. This Agreement may not be amended or assigned by either party without the prior written consent of the other party. However, the City hereby gives its permission that the Company’s rights to receive the Payments hereunder may be assigned by the Company to a private lender, as security on a borrowing to be done in connection with the carrying out of the Project, without further action on the part of the City.

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

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

4 Term. The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on the date on which the last Annual Appropriation TIF Payment is made by the City to the Company under Section B.1 above.

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

CITY OF MARSHALLTOWN, IOWA

By _____
Mayor

Attest:

City Clerk

WILLARD-HOPKINS, L.L.C

By: _____
Its: _____

EXHIBIT A – REAL PROPERTY DESCRIPTION:

Certain real property situated in the City of Marshalltown, Marshall County, State of Iowa more particularly described as follows:

[Insert Legal Description]