

## **DEVELOPMENT AGREEMENT**

This Development Agreement is entered into between the City of Bettendorf, Iowa, an Iowa Municipal Corporation (City), and Twin Bridges Associates, LP, an Iowa limited partnership, (Developer), as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

### **RECITALS**

**WHEREAS**, Developer has an option to purchase certain property, more specifically described on Exhibit A attached hereto (Property), which is located within the Urban Renewal Area #1, and upon which the Developer intends to construct a multi-story, 135-unit, workforce housing project (Project) on the Property; and

**WHEREAS**, the existing building on this site was originally constructed in 1961 and has been operated as an extended stay motel for the last decade, and it is currently in a deteriorated condition; and

**WHEREAS**, this property has been identified as a potential redevelopment site in the City of Bettendorf's Downtown Master Plan and Streetscape Plan, and downtown redevelopment continues to be a high priority for the Bettendorf City Council; and

**WHEREAS**, the Project will not occur without financial assistance from the City of Bettendorf; and

**WHEREAS**, the Developer's obligations to redevelop the Property as provided herein furthers the objectives of the Urban Renewal Plan to provide additional urban redevelopment, employment opportunities and tax base within the Urban Renewal Project Area, and preserve and create an environment which will protect the health, safety and general welfare of City residents; and

**WHEREAS**, the economic development incentives for the development of the Improvements are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Project Area in accordance with the Urban Renewal Plan; (ii) it will encourage further private investment in the surrounding area; and, (iii) it will further the City's efforts to retain and create job opportunities within the Project Area which might otherwise be lost; and

**WHEREAS**, City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Project has been undertaken, and warrant the provision of the economic assistance set forth in this Agreement.

**NOW, THEREFORE**, the parties hereto agree as follows:

#### **Section 1.     Developer Obligations.**

Developer agrees to demolish the existing structure on the property and construct two five-story apartment buildings on the Property which will include a total of 135 housing units. The housing units will range from micro units to two-bedroom units. The Project shall be constructed in substantial

compliance with the approved Conceptual Development Plan attached hereto as Exhibit B and with such future amendments thereto as may be approved by City.

The Project design and construction shall adhere to the design standards contained within the Downtown Master Plan and Streetscape Plan. The Project must further comply with all applicable state and local laws and regulations, including but not limited to the City's Site Plan Regulations, Zoning Ordinance, and Building Code.

Developer shall cause construction of the Project to commence within 120 days of the date of this Agreement, and shall cause such construction to be diligently pursued to completion. The first apartment building shall be substantially completed by December 31, 2018, and the second building shall be completed by December 31, 2019.

**Section 2. City Obligations.**

City agrees to assist Developer in applying for Workforce Housing Tax Credits for the Project from the Iowa Economic Development Authority. City further agrees that it will vacate Gilbert Street, which runs along the rear of the Property, and transfer that property to Developer by way of Quit Claim Deed. Developer agrees to incorporate that property into this Development Project and use it for tenant parking and enhanced streetscapes, as well as to maintain it as a secondary access point to the State Street Fire Station. Developer shall pay a purchase price of \$1.00 per square foot for any vacated city property, which is consistent with Resolution No. 71-16, Procedure for Vacation of City Property. This amount can either be paid to City directly, or deducted from that year's TIF rebate payment due to Developer.

**Section 3. Economic Development Payments.**

A. Forgivable Economic Development Loan.

City shall advance to Developer a Forgivable Economic Development Loan in a principal amount equal to \$750,000. The Forgivable Loan shall be forgiven in full twenty years after the date of signing of this Agreement or upon the sale of the property as indicated in Paragraph 5 below. If Developer is determined to be in default of this Agreement for failure to timely commence construction of the Project, or for abandoning construction prior to the Project's completion, the City may elect to declare the Forgivable Loan due and payable. In such event, the principal amount of the Forgivable Loan shall be immediately due and payable.

The forgivable loan shall be advanced in two installments of \$375,000. The first installment shall be advanced upon the start of construction of the first building (containing at least 65 rental units). The second installment shall be advanced upon the start of construction of the second building. The second building must begin construction by July 1, 2018 to qualify for the second installment of the forgivable loan.

Said Loan shall be secured by the attached Subordinate Mortgage, labeled as Exhibit C, and the attached Promissory Note, labeled as Exhibit D. Both documents shall be filed with the Scott County Recorder's Office.

Until the Forgivable Loan has been repaid in full by Developer, Developer shall pay to the City the following amounts at the following times:

1. Definitions:

- a) "Ownership Entity": Twin Bridges Associates, L.P. or its successors or assigns.
  - b) "Limited Partner Capital": the amount originally invested by limited partners of the Ownership Entity, as reduced by any subsequent "Proceeds from Refinancing".
  - c) "Target Returns": for any given month, the balance of Limited Partner Capital as of the first of that month, multiplied by one percent (1.0%).
  - d) "Target Returns in Arrearage": the cumulative sum of Target Returns from the initial injection of Limited Partner Capital, less (a) the cumulative total of Limited Partner Distributions from Operations and (b) any Distributions from Refinancing paid towards Target Returns in Arrearage.
  - e) "Limited Partner Distributions from Operations": cash flow resulting from stabilized operations and distributed to Limited Partners, subject to the discretion of the General Partner, as governed by the the priority layering laid out in the Limited Partnership Agreement (the "LPA") of the Ownership Entity.
  - f) "Limited Partner Distributions from Refinancing": net proceeds from any future refinancing distributed to Limited Partners subject to General Partner discretion and as governed by the the priority layering laid out in the LPA, which shall first be applied to reduce the Target Returns in Arrearage until extinguished, and then reduce the Limited Partner Capital.
  - g) "Limited Partner Distributions from Sale": net proceeds from a future sale distributed to Limited Partners, subject to General Partner discretion and as governed by the the priority layering laid out in the LPA, which shall first be applied to reduce the Target Returns in Arrearage until extinguished, and then reduce the Limited Partner Capital.
2. An annual Audit from a certified CPA will be required (the "Audit") which will track Target Returns in Arrearage as well as all distributions to Limited Partners and other partners.
  3. With respect to from Limited Partner Distributions from Operations, in any given year, after Target Returns in arrearage have been reduced to zero, fifty percent (50.0%) of any remaining amount scheduled for distribution by the General Partner shall be paid to the City of Bettendorf to reduce the balance of the Economic Development Loan.
  4. With respect to Limited Partner Distribution from Refinancing, in any given year, after Target Returns in arrearage have been reduced to zero, and after Limited Partner Capital has been reduced to zero, fifty percent (50.0%) of any remaining amount scheduled for distribution by the General Partner shall be paid to the City of Bettendorf to reduce the balance of the Economic Development Loan.
  5. With respect to Limited Partner Distribution from Sale, after Target Returns in arrearage have been reduced to zero, and after Limited Partner Capital has been reduced to zero, one hundred percent (100.0%) of any remaining amount scheduled for distribution by the General Partner shall be paid to the City of Bettendorf to reduce the balance of the Economic Development Loan. The remaining balance of the Economic Development Loan shall be forgiven.

#### B. Tax Increment Rebate Payments.

The City agrees to make tax increment rebate payments (TIF Rebate) to Developer in support of this Project. The TIF Rebate shall be paid only from the tax incremental revenues derived from the Project for the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa. For the purposes of this Agreement, the tax incremental revenues derived from the Project shall mean only the taxes available for division by the City under the Urban Renewal Law in excess of the base year assessment for the Property and any Added Land and improvements thereto. January 1, 2017 shall be considered the base year.

Added Land is any vacated right-of-way adjoining the Property which is transferred to the Developer within 9 months of the date of this Agreement for assemblage with the Property.

The TIF Rebates shall be made on December 1<sup>st</sup> and June 1<sup>st</sup> of each fiscal year, and shall continue for a period of twenty (20) years of taxes commencing with the January 1, 2018 tax year. Each of the TIF Rebate Payments shall be in an amount equal to 100% of the Project TIF in that fiscal year, subject to the limitation further described below.

The TIF Rebate payments to the Developer are subject to the timely payment of property taxes by the Developer.

Developer agrees to execute a Minimum Assessment Agreement for the Property which sets a minimum assessment value in the amount of \$7,500,000 (Seven million five hundred thousand dollars) after completion of the first building and \$15,000,000 (Fifteen Million Dollars) after completion of the second building. Said Minimum Assessment Agreement shall be in full force and effect for the duration of the TIF Rebates on the Property and shall run with the land. Developer further agrees that the assessed value can only be contested if supported by a full appraisal done by an MAI certified appraiser that is approved by the City.

**Section 4. Term of Agreement.**

The tax increment revenues described in Section 3 above shall accumulate and be available for rebate through the life of the TIF Rebate stream. This Agreement shall terminate once all TIF Rebates have concluded.

**Section 5. Right of Non-Appropriation.**

Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay any installment of the TIF Rebate from the Pledged Tax Increment Revenues described in Section 3 hereto shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit within the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation by the City Council of the City as provided in this section. The City may exercise its right of non-appropriation as to the amount of the TIF Rebates to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by resolution affirmatively declaring the City's election to non-appropriate funds otherwise required to be paid to Developer in the next fiscal year under this Agreement.

In the event the City Council of the City elects to not appropriate sufficient funds in the budget for any future fiscal year from the Pledged TIF Rebate described in Section 3 hereto for the payment in full of the installments on the TIF Rebate due and payable in that fiscal year, then the City shall have no further obligation to the Developer for the payment of all installments due in the next fiscal year which cannot be paid with the funds then appropriated for that purpose.

The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to pay future installments on the TIF Rebates shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not

affect other provisions of this Agreement which can be given effect without the suspended provision, and to this end the provisions of this Agreement are severable.

**Section 6. Assignment.**

This Agreement may not be amended or assigned by either party without the express permission of the other party. However, the City hereby gives its permission that the Developer's right to receive the TIF Rebate hereunder may be assigned by the Developer to a private lender, as security, or to another entity which is controlled by the Developer, without further action on the part of the City.

The City agrees, further, not to unreasonably withhold its permission upon receipt of a request from the Developer for assignment of all or any portion of its rights and obligations hereunder to any other party and to either approve or deny such request within sixty (60) days after receipt of such request by the City Council.

**Section 7. Successors and Assigns.**

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

**Section 8. Governing 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 the laws of the State of Iowa.

**Section 9. Jury Trial Waiver.**

The parties hereto, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily, and intentionally waive any right they may have to a trial by jury in any litigation based on or arising out of this agreement or instrument, or any related instrument or agreement, or any of the transactions contemplated hereby or any course of conduct, dealing, statements, whether oral or written, or action of any party hereto. No party shall seek to consolidate by counterclaim or otherwise, any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. These provisions shall not be deemed to have been modified in any respect or relinquished by any party hereto except by a written instrument executed by all parties.

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

NAME OF DEVELOPER

\_\_\_\_\_  
By:  
Its:

STATE OF IOWA     )

) ss:

COUNTY OF SCOTT )

This instrument was acknowledged before me on \_\_\_\_\_, 2016, by \_\_\_\_\_, as Authorized Representative of \_\_\_\_\_, an Iowa limited liability company and the general partner of \_\_\_\_\_, an Iowa limited partnership, on behalf of whom the instrument was executed.

\_\_\_\_\_  
Notary Public in the State of Iowa

CITY OF BETTENDORF

\_\_\_\_\_  
By:  
Its: Mayor

Attested by:

\_\_\_\_\_  
By:  
Its: City Clerk

STATE OF IOWA     )

) ss:

COUNTY OF POLK    )

On this \_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared ROBERT GALLAGHER and DECKER PLOEHN, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Bettendorf, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Bettendorf, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Resolution No. 16-\_\_\_\_\_ of City Council on the \_\_\_ day of \_\_\_\_\_, 2016, and that ROBERT GALLAGHER and DECKER PLOEHN acknowledged the execution of the instrument to be the voluntary act and deed of City of Bettendorf, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa