

Preparer: Christopher S. Wendland, P.O. Box 596, Waterloo, Iowa 50704 (319) 234-5701
After recording, return to Community Planning & Development, 715 Mulberry Street, Waterloo, IA 50703.

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of _____, 2020, by and between GBS Development, LLC ("Company"), and the City of Waterloo, Iowa ("City").

RECITALS

- A. Company is willing and able to finance and construct two-unit residential buildings and related improvements on property it owns in the City of Waterloo.
- B. City considers infill residential development within the City a benefit to the community and is willing for the overall good and welfare of the community to provide financial incentives to encourage that goal. City believes that such development is in the vital and best interests of the City and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the Project (defined below) has been undertaken and is being assisted.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Improvements by Company.** Company shall construct 10-12, two-unit buildings on the real property described on Exhibit "A" attached hereto (the "Property") for a total of 24 units, completed to a finished state, including installation of driveways and sidewalks, removal of all construction debris, proper leveling or shaping of groundscape, and grassing and/or landscaping (construction and finishing as so described are referred to as the "Improvements"). The value of the Improvements upon completion is estimated to be \$ 6,000,000.00. The Improvements shall be constructed in accordance with the terms of this Agreement, all applicable City, state, and federal building codes and shall comply with all applicable City ordinances and other applicable law. Company shall submit specific building designs and site plans for City review and

approval before the commencement of construction and shall not substantially deviate from such plans, specifications or designs. Company will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed. The Property, the Improvements, and all site preparation and development-related work to be undertaken and completed by Company under this Agreement are collectively referred to as the "Project".

2. **Timeliness of Construction; Possibility of Reverter.** The parties agree that Company's commitment to cause the Project to be undertaken and to construct the Improvements in a timely manner constitutes a material inducement for the City to extend the incentives provided for in this Agreement, and that without said commitment City would not have done so. Subject to Unavoidable Delays (defined below), Company must obtain a building permit and begin construction of the Improvements within six (6) months after the date of this Agreement (the "Project Start Date"), and construction of Improvements must be Substantially Completed within thirty (30) months after commencement (the "Project Completion Date"). For purposes of this Agreement, "Substantially Completed" means the date on which the Improvements have been completed to the extent necessary for the City to issue a certificate of occupancy relating thereto.

If Company has not begun construction of the Improvements before the Project Start Date, City may terminate this Agreement as set forth in Section 10, and City shall have no further obligation hereunder with respect to such Project. If construction has not begun by the Project Start Date but the development of the Project is still imminent, the City Council may, but shall not be required to, grant an extension of the Project Completion Date. If construction has commenced within the required period or any extended period and is stopped and/or delayed as a result of an act of God, war, civil disturbance, court order, labor dispute, fire, or other cause beyond the reasonable control of Company (each of the foregoing is an "Unavoidable Delay"), then time lost as a result of Unavoidable Delays shall be added to extend the Project Completion Date by a number of days equal to the number of days lost as a result of Unavoidable Delays, and thereafter if construction is not completed within the allowed period of extension, City may terminate this Agreement as set forth in Section 10, and City shall have no further obligation hereunder with respect to such Project. As promptly as possible, Company shall notify City in writing of the occurrence of any Unavoidable Delay and shall again notify City in writing when the Unavoidable Delay has ended.

3. **Utilities.** Company will be responsible for extending water, sewer, telephone, telecommunications, electricity, gas and other utility services to any location on the Property and for payment of any associated connection fees.

4. **Incentives.** After the Improvements have been Substantially Completed, Company will be eligible for the following incentives:

A. Grants. As provided in the City's infill housing policy, City will pay Company a grant of \$5,000.00 for each unit timely completed, for a total incentive of \$120,000.00.

B. Land Contribution. City will work to vacate and convey excess right-of-way (the "City Property") along Greenhill Road abutting the Property, including the use of processes required by Iowa Code § 306.22 et seq., to enable Company to use the City Property to meet storm water detention and building setback requirements. Upon completion of all statutory processes, City will convey the City Property to Company by quit claim deed, free and clear of all encumbrances arising by or through City except: (a) easements, servitudes, conditions and restrictions of record; and (b) restrictions imposed by City zoning ordinances and other applicable law. Company may, at its own expense, prepare an updated abstract of title, or in lieu thereof Company may, at its own expense, obtain whatever form of title evidence it desires. If title is unmarketable or subject to matters not acceptable to Company, and if City does not remedy or remove such objectionable matters in timely fashion following written notice of such objections from Company, Company may terminate this Agreement. City shall provide any title documents it has in its possession, including any abstracts, to assist in title review. Conveyance of the City Property shall be made in an "AS-IS" condition, other than as expressly set forth in this Agreement.

4.1. **Recreation Trail.** After Company receives title to the City Property, it shall, at its own expense, relocate the recreational trail to a position closer to Greenhill Road within remaining right-of-way. The relocated trail shall be integrated as seamlessly as possible with those portions of the existing trail that lie outside the City Property, shall be constructed with like materials, and shall be the same width as existing trails. Before building the new trail, Company shall submit to City for review and approval the proposed trail design. Construction of the new trail shall be completed within six (6) months after removal of the existing trail on the City Property or by the Project Completion Date, whichever occurs first. For five (5) years after completion, Company shall warrant the condition of the new trail against defects, including but not limited to significant shifting, settling, or concrete breakage.

5. **Reporting.** Until Substantial Completion of the Improvements, Company shall make such reports to City, in such detail and at such times as may be reasonably requested by City, as to the actual progress of Company with respect to construction of the Improvements.

6. **Representations and Warranties of City.** City hereby represents and warrants as follows:

A. City is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

B. Each person who executes and delivers this Agreement and all documents to be delivered hereunder is and shall be authorized to do so on behalf of City.

7. Representations and Warranties of Company. Company hereby represents and warrants as follows:

A. It is duly organized, validly existing, and in good standing under the laws of the state of its organization and is duly qualified and in good standing under the laws of the State of Iowa.

B. 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 this Agreement.

C. This Agreement has been duly and validly authorized, executed and delivered by Company and, assuming due authorization, execution and delivery by the other parties hereto, is in full force and effect and is a valid and legally binding instrument of Company that is 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.

D. 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 articles of organization or operating agreement of Company or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Company is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

E. There are no actions, suits or proceedings pending or threatened against or affecting Company 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 Company or which in any manner raises any questions affecting the validity of the Agreement or Company's ability to perform its obligations under this Agreement.

8. Indemnification and Releases.

A. Company hereby releases City, its elected officials, officers, employees, and agents (collectively, the "indemnified parties") from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about the Property or resulting from any defect in the Improvements. The indemnified

parties shall not be liable for any damage or injury to the persons or property of Company or its directors, officers, employees, contractors or agents, or any other person who may be about the Property or the Improvements, due to any act of negligence or willful misconduct of any person, other than any act of negligence or willful misconduct on the part of any such indemnified party or its officers, employees or agents.

B. Except for any willful misrepresentation, any willful misconduct, or any unlawful act of the indemnified parties, Company agrees to protect and defend the indemnified parties, now or forever, and further agrees to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings or any type or nature whatsoever, by any person or entity whatsoever that arises or purportedly arises from (1) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Company against the City to enforce its rights under this Agreement), or (2) the construction, installation, ownership, and operation of the Improvements, or (3) otherwise as a result of or in connection with the Project or Company's failure to carry on or complete same.

C. The indemnification obligations under this Section shall include attorneys' fees and expenses incurred by any indemnified part. The provisions of this Section shall survive the expiration or termination of this Agreement.

9. **Default.** The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean any one or more of the following events that continues beyond any applicable cure periods:

A. Failure by Company to cause the construction of the Improvements on the Property to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement;

B. Company (1) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy law or any similar state law; (2) makes an assignment for the benefit of its creditors; (3) admits in writing its inability to pay its debts generally as they become due; (4) is adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of Company 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 Company, or part thereof, shall be appointed in any proceedings brought against Company and shall not be discharged within ninety (90) days after such appointment, or if Company shall consent to or acquiesce in such appointment; or (5) defaults under any mortgage applicable to a Project Site formerly owned by City.

C. Any representation or warranty made by Company in this Agreement, or made by Company in any written statement or certificate furnished by Company 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.

10. Remedies.

A. Default by Company. Whenever any Event of Default in respect of Company occurs and is continuing, the City may terminate this Agreement, in whole or in part. Before exercising such remedy, City shall give 30 days' written notice to Company of the Event of Default, provided that by the conclusion of such period the Event of Default shall not have been cured, or the Event of Default cannot reasonably be cured within 30 days and Company shall not have provided assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible. Upon termination, City may exercise any and all remedies available at law, equity, contract or otherwise for recovery of any sums paid by City to Company before the date of termination.

B. Default by City. Whenever any Event of Default in respect of Company occurs and is continuing, Company may take such action against City to require it to specifically perform its obligations hereunder. Before exercising such remedy, Company shall give 30 days' written notice to City of the Event of Default, provided that by the conclusion of such period the Event of Default shall not have been cured, or if the Event of Default cannot reasonably be cured within 30 days and City shall not have provided assurances reasonably satisfactory to the Company that the Event of Default will be cured as soon as reasonably possible.

C. Remedies under this Agreement shall be cumulative and in addition to any other right or remedy given under this Agreement or existing at law or in equity or by statute. Waiver as to any particular default, or delay or omission in exercising any right or power accruing upon any default, shall not be construed as a waiver of any other or any subsequent default and shall not impair any such right or power.

11. Materiality of Company's Promises, Covenants, Representations, and Warranties. Each and every promise, covenant, representation, and warranty set forth in this Agreement on the part of Company to be performed is a material term of this Agreement, and each and every such promise, covenant, representation, and warranty constitutes a material inducement for City to enter this Agreement. Company acknowledges that without such promises, covenants, representations, and warranties, City would not have entered this Agreement. Upon breach of any promise or covenant, or in the event of the incorrectness or falsity of any representation or warranty, City may, at its sole option and in addition to any other right or remedy available to it, terminate this Agreement and declare it null and void.

12. **Performance by City.** Company acknowledges and agrees that all of the obligations of City under this Agreement shall be subject to, and performed by City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with City's lawful authority. All covenants, stipulations, promises, agreements and obligations of City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any governing body member, officer, employee or agent of City in the individual capacity of such person.

13. **No Third-Party Beneficiaries.** No rights or privileges of any party hereto shall inure to the benefit of any contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, subcontractor, material supplier, or other person or entity shall be deemed to be a third-party beneficiary of any of the provisions of this Agreement.

14. **Notices.** Any notice under this Agreement shall be in writing and shall be delivered in person, by overnight air courier service, by United States registered or certified mail, postage prepaid, or by facsimile (with an additional copy delivered by one of the foregoing means), and addressed:

(a) if to City, at 715 Mulberry Street, Waterloo, Iowa 50703, fax number 319-291-4571, Attention: Mayor, with copies to the City Attorney and the Community Planning and Development Director.

(b) if to Company, at 4426 Wynnewood Drive, Cedar Falls, Iowa 50613, Attention: Managing Member.

Delivery of notice shall be deemed to occur (i) on the date of delivery when delivered in person, (ii) one (1) business day following deposit for overnight delivery to an overnight air courier service which guarantees next day delivery, (iii) three (3) business days following the date of deposit if mailed by United States registered or certified mail, postage prepaid, or (iv) when transmitted by facsimile so long as the sender obtains written electronic confirmation from the sending facsimile machine that such transmission was successful. A party may change the address for giving notice by any method set forth in this Section.

15. **No Joint Venture.** Nothing in this Agreement shall, or shall be deemed or construed to, create or constitute any joint venture, partnership, agency, employment, or any other relationship between the City and Company nor to create any liability for one party with respect to the liabilities or obligations of the other party or any other person.

16. **Amendment, Modification, and Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by the duly authorized representative of same, and specifying with particularity the extent and nature of the amendment, modification, or waiver. Any waiver by any party of any

default by another party shall not affect or impair any rights arising from any subsequent default.

17. **Severability; Reformation.** Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any portion of this Agreement shall be deemed invalid or unenforceable, whether in whole or in part, the offending provision or part thereof shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. If, for any reason, a court finds that any portion of this Agreement is invalid or unenforceable as written, but that by limiting such provision or portion thereof it would become valid and enforceable, then such provision or portion thereof shall be deemed to be written, and shall be construed and enforced, as so limited.

18. **Captions.** All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted only as a matter of convenience and/or reference, and they shall in no way be construed as limiting, extending, or describing either the scope or intent of this Agreement or of any provisions hereof.

19. **Binding Effect.** This Agreement shall be binding and shall inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

21. **Entire Agreement.** This Agreement, together with the exhibits attached hereto, if any, constitutes the entire agreement of the parties and supersedes all prior or contemporaneous negotiations, discussions, understandings, or agreements, whether oral or written, with respect to the subject matter hereof.

22. **Time of Essence.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Development Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF WATERLOO, IOWA

GBS DEVELOPMENT, LLC

By: _____
Quentin M. Hart, Mayor

By:  _____
Phillip Shirk, Managing Member

Attest: _____
Kelley Felchle, City Clerk

EXHIBIT "A"

Property Description

Lot 27, Auditor's Whitney Road Plat in Sections 16 and 21-89-13, City of Waterloo, Black Hawk County, Iowa, except the West 210 feet thereof.

AND

That part of Lot 28, Auditor's Whitney Road Plat in Sections 16 and 21-89-13, City of Waterloo, Black Hawk County, Iowa, described as follows:

Beginning at the point of intersection of the South line of Maynard Avenue and the East line of Hackett Road, said point lying 30.0 feet South of the North line of said Lot 28; thence East parallel with said North line to a point which is 495.0 feet West of the East line of said Lot 28; thence Southeasterly to a point on the South line of said Lot 28 which is 30.0 feet East of the Northeast corner of Lot 27 in said Auditor's Plat; thence West along the South line of said Lot 28 to the East line of Hackett Road; thence North to the point of beginning.

[The above-described property is to be platted as Lots 1 and 2 of Gardner Addition, City of Waterloo.]