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LISA SMITH, COUNTY RECORDER

MADISON COUNTY IOWA

CHEK

Development Agreement

Type of Document

PREPARER INFORMATION: (name, address, phone number)

City of Winterset
124 W Court Ave
Winterset IA 50273
(515)462-1422

TAXPAYER INFORMATION: (name and mailing address)

N/A

E✓ RETURN DOCUMENT TO: (name and mailing address)

City of Winterset
124 W Court Ave
Winterset IA 50273
(515)462-1422

GRANTOR: (name)

City of Winterset

GRANTEE: (name)

North Stone Apartments LLC

LEGAL DESCRIPTION: (if applicable)

See page: 6

Document or instrument of associated documents previously recorded:

(if applicable)

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Winterset, Iowa (the “City”) and North Stone Apartments, LLC, (the “Developer”) as of the 4th day of January, 2021 (the “Commencement Date”).

WHEREAS, the City has established the North Stone Urban Renewal Area #2 (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain real property which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Developer has proposed to undertake the development of an apartment complex (the “Housing Project”) on the Property and to price the apartment units at levels that will be affordable to families of low and moderate income as defined in Iowa Code Section 403.17(14) (the “Low and Moderate Income”); and

WHEREAS, the Developer has requested, and the City is willing to provide, financial assistance to be used by the Developer in paying the costs of constructing the Housing Project in the form of an economic development grant (the “Grant”) and incremental property tax payments; and

WHEREAS, the base valuation (the “Base Valuation”) of the Property for purposes of calculating Incremental Property Tax Revenues (as herein defined) under this Agreement and Section 403.19 of the Code of Iowa shall be the assessed taxable valuation of the Property as of January 1, 2020; 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;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer’s Covenants

1. **Housing Project Construction; Maintenance.** The Developer has constructed the Housing Project on the Property. The Developer agrees to maintain, preserve, and keep the Property, including but not limited to the Housing 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. **Property Taxes.** The Developer agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Housing Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment. The Developer hereby acknowledges that the funding of Payments, as hereinafter defined in Section B.2, is contingent upon the full and timely payments of such property taxes as may from time to time become due and owing with respect to the Property.

3. **Property Tax Payment Certification.** The Developer agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2021, an amount (the "Developer's Estimate") equal to the estimated Incremental Property Tax Revenues, as hereinafter defined, anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. In submitting each such Developer's estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit B. The City reserves the right to review and request revisions to each such Developer's Estimate to ensure the accuracy of the figures submitted.

For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (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, as shown on the property tax rolls of Madison County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to the Property.

Upon request, the City staff shall provide reasonable assistance to the Developer in completing the worksheet required under this Section A.3.

4. **Low and Moderate Income Housing Assistance.** The Developer hereby represents that the apartment units completed in connection with the Housing Project will be offered for occupancy at price levels affordable to families of Low and Moderate Income. The Developer further agrees that if at any time during the Term, as hereinafter defined, of this Agreement a future judicial, administrative or legislative determination is made, resulting in the City being required to satisfy the "low and moderate income assistance" requirement, as set forth in Section 403.22 of the Code of Iowa, with respect to the Housing Project, then the Developer shall be liable to the City for the provision of an amount equal to the then-required low and moderate income assistance amount (the "LMI Amount"). In satisfaction of this liability, the City shall first withhold an amount equal to LMI Amount from the Payments, as hereinafter defined, remaining to be made hereunder before seeking cash payment from the Developer.

5. **Legal and Administrative Costs.** The Developer hereby agrees to cover the legal fees and administrative costs incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the required amendment to the urban renewal plan for the Urban Renewal Area, up to an amount not in excess of \$6,000. The Developer agrees to

remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

6. 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 Developer to maintain the Housing Project pursuant to the terms and conditions of this Agreement.
- II. Failure by the Developer to timely remit payment of property taxes with respect to the Property when due and owing.
- III. Failure by the Developer to comply Sections A.3, A.4 and A.5 of this Agreement.
- IV. Failure by the Developer to observe or perform any other material covenant on its part, to be observed or performed hereunder.

B. Notice and Remedies. Whenever any Event of Default described in this Agreement occurs, the City shall provide written notice to the Developer describing the cause of the default and the steps that must be taken by the Developer in order to cure the default. The Developer 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 Developer fails to cure the default or provide assurances, 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 under Section B.2 of this Agreement, such right being additional to the right of annual appropriation as set forth in Section B.3 below.

B. City’s Obligations

1. Economic Development Grant. Within thirty (30) days of the Commencement Date of this Agreement, the City hereby agrees to advance the proceeds (the “Grant Proceeds”) of the Grant, as follows, (1) \$65,000 of the Grant Proceeds shall be advanced to the Developer; and (2) \$25,000 of the Grant Proceeds shall be advanced to the Southern Iowa Council of Governments to be used as a 25% match for a SICOG Housing Trust Loan.

2. Payments. In recognition of the Developer’s obligations set out above, the City agrees to make ten (10) annual economic development tax increment payments (the “Payments” and, individually each, a “Payment”) to the Developer during the Term, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments to be made under this Agreement during the Term, as hereinafter defined, shall not exceed \$110,000 (the “Maximum Payment Total”). All Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Madison County Treasurer attributable to the taxable valuation of the Property.

It is assumed that the new valuation from the Housing Project will go on the property tax rolls as of January 1, 2021. Accordingly, the Payments will be made June 1 of each fiscal year, beginning on June 1, 2023, and continuing through and including, June 1, 2032, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made.

3. Annual Appropriation. Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term, as hereinafter defined, of this Agreement, commencing in the City's 2021-2022 fiscal year, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payment 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 recently submitted Developer's Estimate.

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 Payment scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Payment or to seek damages relative thereto or to compel the funding of such Payment in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payment shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.3 above, provided however that no Payment shall be made after June 1, 2032.

4. Payment Amounts. Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payment due on June 1, 2023, the amount of such Payment would be determined by the Appropriated Amount determined for certification by December 1, 2021), provided, however, that no Payment shall exceed the actual amount of Incremental Property Tax Revenues received by the City from the Madison County Treasurer during the twelve (12) months immediately preceding each Payment date attributable to the taxable valuation of the Property with the Housing Project thereon.

5. Certification of Payment Obligation. In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.3 above, then the City Clerk will certify by December 1 of each such year to the Madison County Auditor an amount equal to the most recently obligated Appropriated Amount.

C. Administrative Provisions

1. Amendment and Assignment. Neither party may cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to the Housing Project, without further action on the part of the City.

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

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2032 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total.


4. **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.

The City and the Developer 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 WINTERSET, IOWA

By: 
Mayor

Attest:



City Clerk

NORTH STONE APARTMENTS, LLC

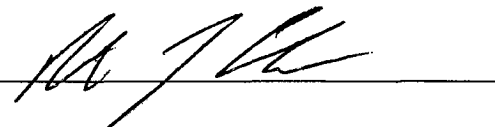
By: 

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Winterset, Madison County, Iowa, more particularly described as follows:

Lot 2 of North Stone Village, Plat 5, an addition to the City of Winterset, Madison County, Iowa.

EXHIBIT B
DEVELOPER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October _____, 20____.
- (2) Assessed Valuation of Property as of January 1, 20____:
\$ _____.
- (3) Base Taxable Valuation of Property (as of January 1, 2020):
\$ _____.
- (4) Incremental Taxable Valuation of Property (2 minus 3):
\$ _____ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$ _____ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$ _____ x \$ _____ /1000
- (7) Developer's Estimate = \$ _____