**Prepared by:** Nathan Overberg/Jenna Sabroske, Ahlers Cooney P.C., 100 Court Ave #600, Des Moines, IA 50309 515-243-7611
**Return to:** City of Council Bluffs, 209 Pearl St, Council Bluffs, IA 51503; Attn: Marianne Collins

# MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement") is dated as of February 26, 2024, by and between the City of Council Bluffs, Iowa (the "City"), an Iowa municipal corporation, and Opus Development Company LLC, a(n) Iowa Limited Liability Corporation ("Owner").

WHEREAS, consistent with the provisions of the City's River Road Urban Revitalization Plan (the "Plan"), the Owner has submitted an Application for Tax Abatement dated as of December 31, 2023 (the "Application") regarding certain commercial real estate owned by Owner and located in the River Road Urban Revitalization Area, which real estate is legally described as follows:

River Road Subdivision Replat 1 Lot 1 and Lot 2

(the "Property");

WHEREAS, the Application describes certain improvements that have been or are proposed to be constructed on the Property (the "Eligible Improvements"); and

WHEREAS, pursuant to Iowa Code Section 404.3C, the City and Owner desire to establish a Minimum Actual Value for the Eligible Improvements and Property following completion of the Eligible Improvements for the duration of the tax abatement requested by the Owner by submission of the Application, under the provisions of the Plan; and

WHEREAS, the Pottawattamie County Assessor has reviewed the preliminary plans and specifications for the Eligible Improvements that are contemplated to be constructed.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the Eligible Improvements, but in no event later than January 1, 2024, the minimum actual value fixed for assessment purposes for the Eligible Improvements and the Property (building and land value) in the aggregate shall be not less than thirty-six million one hundred eighty-three thousand four hundred eighteen dollars ($36,183,418), before rollback.

The Minimum Actual Value shall terminate and be of no further force or effect as of December 31, 2033 ("Assessment Termination Date"). Upon the Assessment Termination Date, this Minimum Assessment Agreement shall no longer control the assessment of the Property.

2. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Pottawattamie County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

3. This Minimum Assessment Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

4. Nothing herein shall be deemed to waive the rights of Owner from seeking administrative or legal remedies to reduce the actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Owner seek to reduce the actual value to an amount below the Minimum Actual Value established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

5. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

6. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate pursuant to the Assessment Termination Date set forth in Section 1 above.

*[Remainder of this page is blank. Signatures start on the next page.]*

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

By: _____
_____, Mayor

ATTEST:

By: _____
_____, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE )

On this _____ day of _____, ____, before me a Notary Public in and for said State, personally appeared _____and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed 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 in and for the State of Iowa

*[Signature page to Minimum Assessment Agreement – City]*

OPUS DEVELOPMENT COMPANY LLC

By: _____

Print Name: _____

Its: _____

STATE OF _____ )
) SS
COUNTY OF _____ )

This record was acknowledged before me on this _____ day of _____, 2024, by _____, as the _____ of Opus Development Company LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said state

*[Signature page to Minimum Assessment Agreement – Owner]*

## CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Eligible Improvements to be constructed, and being of the opinion that the minimum actual value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the above described property upon completion of the improvement to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall be not less than $_____.

_____
Assessor for the County of Pottawattamie, Iowa

_____
Date

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE)

Subscribed and sworn to before me by _____, Assessor for the County of Pottawattamie, Iowa on this _____ day of _____, 20____.

_____
Notary Public for the State of Iowa

Consistent with Iowa Code §404.3C, a copy of Iowa Code §404.3C is attached, as follows:

1.For revitalization areas established under this chapter on or after the effective date of this division of this Act and for first-year exemption applications for property located in a revitalization area in existence on the effective date of this division of this Act filed on or after the effective date of this division of this Act, commercial property shall not receive a tax exemption under this chapter unless the city or county, as applicable, and the owner of the qualified real estate enter into a written assessment agreement specifying a minimum actual value until a specified termination date for the duration of the exemption period.

2. a. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made to the property and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than$ ••••••••

b. The assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

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