# PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

By and Between

THE CITY OF COUNCIL BLUFFS, IOWA

AND

SPIN LOFTS, LLC

_____, 2022

*Execution Version*

AGREEMENT FOR
PRIVATE DEVELOPMENT

THIS PURCHASE, SALE, AND DEVELOPMENT AGREEMENT (hereinafter called "Agreement") is made on or as of the _____ day of _____, 2022 (the "Effective Date"), by and between the CITY OF COUNCIL BLUFFS, IOWA, a municipality (hereinafter called "City"), established pursuant to the Code of Iowa of the State of Iowa, and SPIN LOFTS, LLC, an Iowa limited liability company, having offices for the transaction of business at 509 Walker Street, Woodbine, Iowa 51579 ( "Developer").

WITNESSETH:

WHEREAS, City owns certain real property located within the City, legally described as:

A parcel of land being all of Lots 9, 10, 18, 19, 20, 21 and 22, a portion of Lots 7, 8, 11, 12, 13, 16, 17, 23, 24 and 25 in Block 14, a portion of Lots 16, 17, 18 and 19 in Block 19, all of the vacated alley's in said Block 14 and all of vacated 22nd Avenue right-of-way lying within the following described parcel,all in Hughes and Doniphan's Addition, City of Council Bluffs, Pottawattamie County, Iowa, more fullydescribed as follows:

Beginning at the Northwest Corner of said Block 14; thence along the North line of said Block 14, South89 Degrees 26 Minutes 40 Seconds East, 325.00 feet to a point on the West right-of-way line of South Expressway (Highway 192); thence along said West right-of-way line the following 7 courses:
1) South 44 Degrees 26 Minutes 36 Seconds East, 14.14 feet;
2) South 00 Degrees 33 Minutes 27 Seconds West, 4.00 feet;
3) South 24 Degrees 06 Minutes 55 Seconds East, 160.50 feet;
4) South 13 Degrees 28 Minutes 38 Seconds East, 12.37 feet;
5) South 15 Degrees 24 Minutes 17 Seconds East, 109.09 feet;
6) South 09 Degrees 44 Minutes 22 Seconds East, 55.91 feet;
7) South 08 Degrees 08 Minutes 37 Seconds East, 66.78 feet;
8) South 00 Degrees 22 Minutes 12 Seconds West, 113.16 feet to a point on the Northeasterly right-of-way line of Wabash Trace;
thence along said Northeasterly right-of-way line the following 2 courses:
1) North 49 Degrees 26 Minutes 05 Seconds West, 177.48 feet to a point on a non-tangent curve, concave Southwesterly, to which point a radial line bears North 41 Degrees 15 Minutes 44 SecondsEast, 5759.58 feet;
2) Northwesterly along said curve, through a central angle of 04 Decrees 04 Minutes 19 Seconds, 409.34feet to a point on the West line of said Block 14; thence along said West line, North 00 Degrees 33 Minutes 27 Seconds East, 141.10 feet to the Point of Beginning.

(which property is hereinafter referred to as the "Development Property"); and

WHEREAS, City is willing to convey the Development Property to Developer and provide certain incentives in exchange for Developer's construction of certain Minimum Improvements on the Development Property including Housing Units, as more particularly described herein; and

WHEREAS, City believes that the development of the Development Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Purchase, Sale, and Development Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit D and hereby made a part of this Agreement.

Certificate of Occupancy means a certificate allowing occupancy within the Minimum Improvements issued by the proper governmental authority with jurisdiction thereover. A Certificate of Occupancy shall mean a final Certificate of Occupancy.

City means the City of Council Bluffs, Iowa, or any successor to its functions.

City Improvements means (a) the grading and fill work necessary to raise the Development Property to the elevation of the existing recreational trail adjacent to the Development Property; and (b) the improvement of that portion of 21st Avenue east of S. 6th Street depicted on Exhibit A-1 to City standards for a paved public road.

Code means the Code of Iowa, 2021, as amended.

Construction Plans means the plans, specifications, drawings and related documents reflecting the construction work to be performed by Developer on the Development Property referred to in Article IV.

County means the County of Pottawattamie, Iowa.

Developer means Spin Lofts, LLC, an Iowa limited liability company, and its permitted successors and assigns.

Effective Date means the date of this Agreement.

Event of Default means any of the events described in Section 10.1 of this Agreement.

First Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any

improvements constructed thereon, granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements, or all such mortgages as appropriate.

Housing Unit means each dwelling unit constructed on the Development Property as part of the Minimum Improvements.

Indemnified Parties means City and the governing body members, officers, agents, servants, and employees thereof.

Interlocal HOME Agreement means the agreement in the form attached hereto as Exhibit E between Developer and City and/or the Omaha/Council Bluffs Interlocal HOME Consortium related to Developer's construction of a portion of the Housing Units to be rented to AMI families in exchange for the receipt of a forgivable mortgage of $400,000.

Interlocal HOME-ARP Agreement means the agreement in the form attached hereto as Exhibit F between Developer and City and/or the Omaha/Council Bluffs Interlocal HOME Consortium related to Developer's construction of a portion of the Housing Units to be rented to near homelessness families in exchange for the receipt of a forgivable mortgage of $700,000.

Minimum Improvements means the construction of a 50 Housing Unit multi-family residential building and related site improvements to be constructed on the Development Property, as more particularly described in Exhibits A and A-1 to this Agreement.

Net Proceeds means any proceeds paid by an insurer to Developer under a policy or policies of insurance required to be provided and maintained by Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Project shall mean the construction and operation of the Minimum Improvements, as described in this Agreement.

State means the State of Iowa.

State Agreement means the agreement between Developer and Iowa Finance Authority related to Developer's receipt of Low-Income Housing Tax Credits associated with the completion and operation of the Minimum Improvements.

Termination Date means the date of termination of this Agreement, as established in Section 11.9 of this Agreement.

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; wars, acts of terrorism, riots, or other civil or military disturbances; litigation commenced by third parties; unexpected material or labor shortages; or the acts of any federal, State, or local governmental unit (other

than City with respect to City's obligations), including any unreasonable delays by the United States Department of Housing and Urban Development and/or the Iowa Finance Authority with respect to processing any timely-filed applications by Developer for the Project.

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of City. City makes the following representations and warranties:

a. City is a municipal corporation and political subdivision organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. 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 breach of, the terms, conditions, or provisions of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing, nor do they conflict with or contravene any laws, order, rule or regulation applicable to City.

c. All covenants, stipulations, promises, agreements, and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of City only, and not of any governing body member, officer, agent, servant, or employee of City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Developer is an Iowa limited liability company duly organized and validly existing under the laws of the State of Iowa, and 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.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by City, is in full force and effect and is a valid and legally binding instrument of Developer 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.

c. 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 governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

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

e. Developer shall cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement and all applicable local, State, and federal laws and regulations.

f. Developer shall use its best efforts to obtain, or cause others to obtain, 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 Minimum Improvements may be lawfully constructed.

g. To its knowledge, Developer has not received any notice from any local, State, or federal official that the activities of Developer with respect to the Development Property and/or the Minimum Improvements may or will be in violation of any environmental law or regulation (other than those notices, if any, of which City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property and/or Minimum Improvements, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

h. Developer will exercise commercially reasonable efforts to obtain firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with this Agreement.

i. Developer expects that, barring Unavoidable Delays, construction of the Minimum Improvements shall be complete on or before December 31, 2024. For purposes of this Agreement, the Minimum Improvements shall be deemed "complete" or "completed" upon Developer's receipt of a Certificate of Occupancy for the Minimum Improvements.

j It is anticipated that the construction of the Minimum Improvements will require a total investment of at least $11,000,000.

## ARTICLE III. SALE AND PURCHASE OF DEVELOPMENT PROPERTY

Section 3.1. Conditions Precedent. City's obligation to transfer title and possession of the Development Property to Developer at Closing, and Developer's obligation to pay the Purchase Price, shall be subject to satisfaction of the following conditions precedent:

a. Developer is in material compliance with all terms of this Agreement; and

b. There has not been a substantial change for the worse in the financial resources and ability of Developer, or a substantial decrease in the financing commitments secured by Developer for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of City, that Developer will be unable to fulfill its covenants and obligations under this Agreement; and

c. Developer entering into and remaining in compliance with: (i) the State Agreement with the Iowa Finance Authority related to Developer's receipt of Low-Income Housing Tax Credits in connection with the Project: (ii) the Interlocal HOME Agreement related to Developer's receipt of a forgivable mortgage of $400,000 in connection with the Project; and (iii) the Interlocal HOME-ARP Agreement related to Developer's receipt of a forgivable mortgage of $700,000 in connection with the Project.

If any of these preconditions is not satisfied as of the Closing Date defined in Section 3.3(b), this Agreement shall automatically terminate, with neither party having any further obligations to the other.

Section 3.2. Transfer of Development Property. For the purchase price of $100,000.00 (the "Purchase Price") and other consideration, including the obligations being assumed by Developer under this Agreement, City agrees to sell, and Developer agrees to purchase, the Development Property, subject to easements and appurtenant servient estates and any zoning and other ordinances. Such transfer shall occur under the terms and conditions of this Agreement and following all process required by City pursuant to Section 364.7 of the Iowa Code.

Section 3.3. Due Diligence Period and Closing.

a. Within ninety (90) days after the Effective Date, Developer may, at its sole cost and expense, conduct due diligence to assess the legal and physical condition of the Development Property, including without limitation, conducting physical inspections and environmental studies on the Development Property, procuring a title report or commitment for the Development Property, and procuring a survey of the Development Property. If such due diligence reveals, in Developer's reasonable discretion, conditions that inhibit Developer's ability to construct the Project or carry out its obligations under this Agreement, Developer shall provide written notice to City detailing such conditions. Within fifteen (15) days after receipt of such written notice, City shall respond via written notice to Developer whether and how such conditions can be cured prior to Closing. If any such conditions cannot be cured prior to Closing, or if the actions required to cure such conditions are unduly burdensome, costly or time-intensive, in the City's reasonable discretion, either party may terminate this Agreement via written notice to the other without further rights, liabilities or obligations of City or Developer under this Agreement.

b. City's transfer of title of the Development Property to Developer, and Developer's payment of the Purchase Price to City, upon the obligations of both parties hereunder being met, including the execution of all documents required hereunder, shall occur on or before August 1, 2023 (the "Closing Date"). Possession of the Development Property ("Possession") shall be delivered to Developer on the Closing Date. Any adjustments of rent, insurance, taxes, interest, and all charges attributable to City's possession shall be made as of the date of Possession. Developer shall pay the Purchase Price to City (subject to prorations, reductions, and credits as provided below). The transfer shall be considered closed upon the delivery to Developer of a duly executed special warranty deed for the Development Property in the form attached hereto as Exhibit C ("Deed"), and the filing of all title transfer documents ("Closing"). All parties and individual signatories hereto further agree to make, execute and deliver such further and additional

documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 3.4. Real Estate Taxes and Special Assessments.

a. The Development Property is currently tax-exempt while owned by City; therefore, there will be no proration or credit of real estate taxes at Closing and Developer shall be responsible for all taxes post-Closing, if any; and

b. All special assessments, if any, assessed post-Closing shall be paid by Developer.

Section 3.5. Risk of Loss and Insurance. City shall bear the risk of loss or damage to the Development Property prior to Closing, excepting any improvements undertaken or caused by Developer on the Development Property prior to Closing. City agrees to maintain existing insurance, if any, and Developer may purchase additional insurance on the Development Property prior to Closing, in Developer's discretion. In the event of substantial damage or destruction prior to the Closing, City shall have the option of using insurance proceeds to repair the Development Property such that this Agreement shall continue, subject to Unavoidable Delays, and Developer shall complete the Closing, provided that such insurance proceeds are sufficient to reconstruct and return the Development Property to a condition substantially similar to that prior to the casualty event, excepting any improvements undertaken or caused by Developer on the Development Property prior to Closing. Developer shall bear the risk of loss or damage to: (i) any improvements undertaken or caused by Developer on the Development Property prior to Closing, and (ii) the Development Property after the Closing.

Section 3.6. Condition of Property; Care and Maintenance; Environmental Matters.

a. Developer agrees to take the Development Property "As Is," including with respect to environmental matters. Except as specifically set forth in this Agreement, City makes no warranties or representations as to the condition of the Development Property. City and Developer acknowledge and agree that City has undertaken no investigations with respect to the suitability of the Development Property for Developer's proposed uses, including but not limited to subsurface investigations regarding the soil conditions of the Development Property. Notwithstanding anything herein to the contrary, Developer hereby waives all claims against City as to the condition of the Development Property. Developer agrees to indemnify, release, defend, and hold harmless the Indemnified Parties for all claims, damages, or costs relating to the Development Property that arise after the date of Closing.

b. At Closing, City will file with the County Recorder's Office a properly executed Groundwater Hazard Statement to the extent required by law.

Section 3.7. Abstract and Title. City shall provide an abstract of title for the Development Property, continued through a date continued to and including the date of this Agreement, and deliver it to Developer for examination, which shall become the property of Developer upon Closing. Such abstract of title shall show merchantable title in City in conformity with this Agreement, the land title laws of the State of Iowa, and the Iowa Title Standards of the Iowa State Bar Association. Developer may, at its sole cost and expense, obtain title insurance on the Development Property for itself and/or its lenders.

Section 3.8. Survey and Platting. Developer may, at Developer's expense prior to Closing, have the Development Property surveyed and certified by a Registered Land Surveyor. Developer shall be responsible for all surveys and platting of the Development Property after Closing, if any.

Section 3.9. Certification. Developer and City each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

Section 3.10. Deed Restriction. Developer acknowledges and agrees that City is selling the Development Property to Developer on the condition that it be developed for the Minimum Improvements as described in this Agreement, in accordance with all terms of this Agreement. The conveyance of the Development Property to Developer is subject to use restrictions, as also described in the Deed, prohibiting the Development Property from being used or developed for any purpose other than the Minimum Improvements described herein without City's written consent, until the Termination Date of this Agreement. If Developer violates such use restrictions, then City shall be entitled to all remedies available at law or equity including but not limited to an injunction prohibiting Developer's violation of such use restrictions.

Section 3.11 Right of First Refusal. For a period of twenty years after recordation of the Deed or until a Certificate of Completion for the Minimum Improvements issued by the City pursuant to Section 4.3 is recorded, whichever is earlier (the "Restriction Period"), if at any time Developer seeks to sell the Development Property (or any portion thereof) to a third party, then Developer shall provide written notice to City of Developer's intent to sell the Development Property (or a portion thereof) and shall provide an appraisal of the fair market value of the Development Property (or the applicable portion thereof) at such time, and City shall have thirty (30) days after City's receipt of such notice to exercise this right of first refusal to purchase the applicable portion of the Development Property from Developer at the appraised amount. To exercise its right of first refusal, City shall deliver written notice to Developer of City's intent to exercise this right of first refusal, and closing of the transfer of the applicable portion of the Development Property from Developer to City under such terms shall occur sixty (60) days after City notifies Developer of City's intention to exercise this right of first refusal. Developer shall take all reasonable steps to ensure City acquires marketable title to the Development Property (or the applicable portion thereof) unencumbered by any mortgage, lien, or other encumbrance, through its exercise of its rights under this Section 3.11 within sixty (60) days of City's demand, including without limitation, the execution of appropriate deeds and other documents.

If City does not exercise this right of first refusal within thirty (30) days after City's receipt of notice from the Developer, then this right of first refusal shall terminate with respect to that portion of the Development Property so sold, but shall not terminate with respect to any portion of the Development Property not sold. If City does not exercise this right of first refusal prior to the end of the Restriction Period, the right of first refusal shall terminate at the end of the Restriction Period.

Notwithstanding anything to the contrary in this Section 3.11, the City's right of first refusal shall not apply to any collateralization of the Development Property or Minimum Improvements to Developer's lender to allow Developer to borrow funds to construct the Minimum Improvements.

Section 3.12. Survival of Closing. All terms of this Agreement shall survive the Closing described in this Article III.

## ARTICLE IV. CONSTRUCTION OF MINIMUM IMPROVEMENTS, TAXES AND PAYMENTS

Section 4.1. Construction of Minimum Improvements.

a. Developer agrees that it will cause the Minimum Improvements to be constructed in conformance with the terms of this Agreement and all applicable federal, State, and local laws, ordinances, and regulations, including any City permit and/or building requirements. All work with respect to the Minimum Improvements shall be in conformity with any plans approved and/or permits issued by the building official(s) of City, which approvals and permits shall be made according to standard City processes for such plans and permits.

b. Developer agrees that, subject to Unavoidable Delays, the Minimum Improvements shall be completed by the date set forth in Section 2.2(i). Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

c. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale as detailed and outlined in this Agreement, including but not limited to substantial conformance with the description and depictions in Exhibits A and A-1 attached hereto.

d. Developer agrees that it shall permit designated representatives of City, upon at least twenty-four (24) hours' notice to Developer (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

Section 4.2. Construction Plans. A preliminary description and depictions of the Minimum Improvements are provided in Exhibit A and Exhibit A-1 attached hereto. Upon City's approval of the Construction Plans, as provided below, such approved Construction Plans shall automatically replace and supersede the preliminary description and depictions set forth in Exhibit A and Exhibit A-1. Developer shall cause Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by City as provided in this Section 4.2. The Construction Plans shall be in conformity with this Agreement, and all applicable State and local laws and regulations. Within thirty (30) days of Developer's provision of the Construction Plans to City, City shall approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations, and City permit requirements; (iii) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (iv) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such approval of the Construction Plans pursuant

to this Section 4.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by City with respect to any building, fire, zoning or other ordinances or regulations of City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of City for the Development Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official. If City does not approve of the Construction Plans, City shall, within thirty (30) days of City's receipt of the Construction Plans, provide Developer with written notice of City's non-acceptance, and such notice shall detail all reasons for City's non-acceptance. Upon receipt of City's written notice of non-acceptance, Developer shall revise the Construction Plans in accordance with City's comments and resubmit revised Construction Plans to City, and the approval process for the Construction Plans detailed in this Section 4.2 shall begin anew.

Following the City's approval of the Construction Plans, Developer may alter the Construction Plans via submission of an amendment to the City; and such amendment shall be subject to the same approval process by the City as outlined for the Construction Plans, above. Upon approval of an amendment to the Construction Plans, such amendment shall automatically be incorporated as part of the preliminary description and depictions set forth in Exhibit A and Exhibit A-1, and to the extent such amendment conflicts with the previously approved Construction Plans, or portions thereof, shall replace and supersede the same.

Approval of the Construction Plans by City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State and local laws, ordinances and regulations, nor shall approval of the Construction Plans by City be deemed to constitute a waiver of any Event of Default.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject City to any liability for the Minimum Improvements as constructed.

Section 4.3. Certificate of Completion. Upon written request of Developer after issuance of a Certificate of Occupancy for the Minimum Improvements, City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit D attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.3, City shall, within twenty (20) days after written request by Developer provide a written statement indicating in what respects Developer has failed to complete the Minimum Improvements, in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the reasonable opinion of City, for Developer to take or perform in order to obtain such Certificate of Completion. If Developer completes City's requested

measures or acts within ninety (90) days after receiving City's notice, City shall promptly issue a Certificate of Completion to Developer.

Section 4.4. Real Property Taxes. Developer or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property owned by Developer as of the date such taxes become delinquent. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer shall be solely responsible for all assessments and taxes. Developer and its successors agree that prior to the Termination Date they will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings.

Section 4.5 Property Tax Abatement. Developer shall be eligible to apply for tax abatement for the Minimum Improvements under the City's Urban Revitalization Plan, or any amendment thereto; provided, however, that the Project will only receive the tax exemption offered under the City's Urban Revitalization Plan if the Property otherwise qualifies under the terms of the Urban Revitalization Plan and tax exemption for the Project is approved pursuant to the applicable application process.

Section 4.6. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in substantial accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

## ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of City, furnish City with proof of coverage or payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk–Completed Value Basis," in an amount equal to the full replacement cost of the Minimum Improvements, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least $1,000,000 for each occurrence.

iii. Workers' compensation insurance that, at a minimum, meets statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of City shall furnish proof of coverage or the payment of premiums on), insurance covering the Minimum Improvements owned by Developer, as is statutorily required and any additional insurance customarily carried by like enterprises engaged in like activities of comparable size and liability exposure.

c. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby.

d. Developer agrees to notify City immediately in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements owned by Developer or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer (as applicable to the specific policy), and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer will apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

## ARTICLE VI. FURTHER COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Properties. Developer will maintain, preserve, and keep the Development Property 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.

Section 6.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Developer will comply with all State, federal, and local laws, rules, and regulations relating to the Minimum Improvements.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Developer shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

Section 6.5. Available Information. Upon written request from City, Developer shall promptly provide City with copies of information requested by City that are reasonably related to this Agreement so that City can determine compliance with the Agreement.

Section 6.6. Lease of Housing Units. Following an issuance of a Certificate of Occupancy for the Minimum Improvements, until the Termination Date, Developer agrees to lease the Minimum Improvements in a manner consistent with the terms of the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, and the State Agreement.

Section 6.7. Annual Certification. To assist City in monitoring the Agreement and performance of Developer hereunder, a duly authorized officer of Developer shall annually provide to the City copies of any certifications or documentation filed by Developer with the State, City, or Omaha/Council Bluffs Interlocal HOME Consortium during that calendar year in compliance with the terms of the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, or the State Agreement.

Section 6.8. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will not dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property or interest in this Agreement to any other party other than the holder of a First Mortgage unless: (i) the transferee partnership, corporation or individual assumes in writing all of the obligations of Developer under this Agreement with respect to the portion of the Development Property being transferred; and (ii) City consents thereto in writing in advance thereof, which City shall not unreasonably withhold, delay or condition.

Section 6.9. Prohibition Against Use as Non-Taxable or Centrally-Assessed Property. During the term of this Agreement, Developer agrees that no portion of the Development Property or Minimum Improvements shall be transferred or sold by Developer to a non-profit entity or used for a purpose that would exempt said portion of the Development Property from property tax liability. Notwithstanding the prior sentence, Developer may convey portions of the Development Property to City to be used by City for public infrastructure, parks, trails or other public purposes. During the term of this Agreement, Developer agrees not to allow any portion of the Development Property or Minimum Improvements to be used as centrally-assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

## ARTICLE VII. INTERLOCAL HOME AGREEMENT, INTERLOCAL HOME-ARP AGREEMENT, AND STATE AGREEMENT

Section 7.1. Conditions to City's Obligations. City's obligations under this Agreement are expressly conditioned upon Developer entering into and remaining in compliance with (a) the State Agreement; (b) the Interlocal HOME Agreement; and (c) the Interlocal HOME-ARP Agreement. Should Developer fail to satisfy any of these conditions, City shall have no obligation thereafter to convey the Development Property to Developer or construct the City Improvements.

Section 7.2. Conditions to Developer's Obligations. City and Developer acknowledge and agree

that Developer's obligations to acquire the Development Property and construct the Minimum Improvements thereon are expressly contingent upon Developer's receipt of Low-Income Housing Tax Credits pursuant to the State Agreement; at least a $400,000 forgivable mortgage under the Interlocal HOME Agreement; and at least a $700,000 forgivable mortgage under the Interlocal HOME-ARP Agreement for the construction and operation of the Minimum Improvements.

## ARTICLE VIII. CITY IMPROVEMENTS

Section 8.1. City Improvements. Contingent on Developer's compliance with the terms of this Agreement in all respects, and contingent upon satisfaction of the Conditions Precedent set forth below in this Section 8.1, the City intends to complete the City Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Article VIII is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings. In addition, all obligations of City to complete the City Improvements are subject to each of the following Conditions Precedent:

(a) The conditions in Section 7.1 are satisfied;

(b) The representations and warranties made by Developer in Section 2.2 shall be true and correct;

(c) Developer is not in Default (as defined in Section 10.1 below) under this Agreement;

(d) There has not been a substantial change for the worse in the financial resources and ability of Developer, which change(s) make it likely, in the reasonable judgment of the City, that Developer will be unable to fulfill its covenants and obligations under this Agreement; and

(e) The City has existing bond revenues on hand that are available and eligible for use on the construction of the City Improvements or immediate access to grant funds from the federal government that are available and eligible for use on the construction of the City Improvements, either of which individually or in combination are sufficient to pay for the costs of the City Improvements.

Section 8.2 Completion Date for Public Use Improvements. The City agrees, subject to Section 8.1, its obligations under Chapter 26 of the Code of Iowa, and Unavoidable Delays, to endeavor to cause the City Improvements to be completed by May 1, 2023, or by such other date as the parties shall mutually agree upon in writing.

Section 8.3 Authority to Design, Engineer and Construct. The City shall design, engineer and construct the City Improvements in accordance with current City standards and design guidelines, the terms of this Agreement, and in accordance with the provisions of the Iowa Code, including required public notice(s) and hearing(s) on the proposed City Improvements.

Section 8.4 Non-responsibility of Developer. The City acknowledges and agrees that Developer has no obligation or responsibility or liability whatsoever with respect to the obligation to construct, or design, or the quality of construction of, the City Improvements.

Section 8.5 No Special Legal Entitlements. Developer recognizes and agrees that 21st Avenue shall continue to be owned and maintained by the City for the benefit of the general public; that all use thereof by Developer and its employees, customers and suppliers shall be on the same basis as the general public; and that Developer shall have no special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance or use of 21st Avenue.

## ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer releases 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, or resulting from any defect in, the Development Property or the Minimum Improvements. Provided, however, such release shall not be deemed to include loss or damage that arises directly out of the gross negligence or intentional misconduct of the Indemnified Parties.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer 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 whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against City to enforce its rights under this Agreement), (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements, or (iii) any hazardous substance or environmental contamination located in or on the Development Property occurring or arising subsequent to Closing.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants, or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants, or employees.

d. The provisions of this Article IX shall survive the termination of this Agreement.

Section 9.2. Indemnification for Related Agreements and Costs. Developer agrees to indemnify, defend, and hold harmless the Indemnified Parties from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the Interlocal HOME Agreement, Interlocal HOME-ARP Agreement, or State Agreement due all or in part to Developer's failure to perform under the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, or State Agreement. Furthermore, Developer agrees to indemnify City for any repayment of funds that City is required to make due, all or in part, to Developer's failure to perform under this Agreement, the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, and/or State Agreement, including but not limited to any repayment of grant funds which City expends in connection with the Project.

## ARTICLE X. DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. 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, any one or more of the following events:

a. Failure by Developer to cause the construction of the Minimum Improvements, as applicable, to be commenced and completed pursuant to the terms, conditions, and limitations of this Agreement;

b. Failure by Developer to substantially observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement, the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, or the State Agreement;

c. Transfer of Developer's interest in the Development Property or this Agreement in violation of the provisions of this Agreement;

d. Failure by Developer to pay ad valorem taxes on the Development Property or Minimum Improvements owned by Developer as of the date such taxes become delinquent;

e. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, owned by Developer, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;

f. Developer shall:

i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. make an assignment for the benefit of its creditors; or

iii. admit in writing its inability to pay its debts generally as they become due; or

iv. be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or either entity's 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 Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment; or

g. Any representation or warranty made by Developer in this Agreement, or made by Developer in any written statement or certification furnished by Developer 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.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by City to Developer and to the holder of the First Mortgage (but only to the extent City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to City that the Event of Default will be cured as soon as reasonably possible:

a. City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by City, that Developer will cure its default and continue its performance under this Agreement;

b. City may terminate this Agreement; and

c. City may take any action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer, as the case may be, under this Agreement.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer herein contained, Developer agrees that it shall, on demand therefor, pay to City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by City in connection therewith.

Section 10.6. Default by City. In the event of the failure by City to substantially observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement, Developer may, after the giving of thirty (30) days' written notice by Developer to City of the breach, but only if the breach has not been cured within said thirty (30) days, or if the breach cannot reasonably be cured within thirty (30) days and City does not provide assurances reasonably satisfactory to Developer that the breach will be cured as soon as reasonably possible, take any action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of City, as the case may be, under this Agreement.

## ARTICLE XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of City, or its designees or agents, nor any consultant or member of the governing body of City, and no other public official of City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of Developer, is addressed or delivered personally to Spin Lofts, LLC at 509 Walker Street, Woodbine, IA 51579; Attn: Darin Smith, Manager; and

b. In the case of City, is addressed to or delivered personally to the City of Council Bluffs at City Hall, 209 Pearl Street, Council Bluffs, IA 51503, Attn: Courtney Harter, Director Community Development Department;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 11.3. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement, in substantially the form attached as Exhibit B, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by City by virtue hereof. City shall pay for the costs of recording.

Section 11.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.6. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.7. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written, with the express exception of the Interlocal HOME Agreement, the Interlocal HOME-ARP Agreement, and the State Agreement, all of which survive the execution of this Agreement and are incorporated by reference herein. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11.9. Termination Date. This Agreement shall terminate and be of no further force or effect on and after the latest of: (a) the termination of the right of first refusal contained in Section 3.11; (b) the termination date contained in the State Agreement; (c) the termination date contained in the Interlocal HOME Agreement; or (d) the termination date contained in the Interlocal HOME-ARP Agreement, unless the Agreement is terminated earlier by the other terms of this Agreement.

Section 11.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such landowner, contractor, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its name and behalf all on or as of the day first above written.

*[Remainder of this page intentionally left blank. Signature pages to follow.]*

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

By: _____
Matt Walsh, Mayor

ATTEST:

By: _____
Jodi Quakenbush, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE )

On this _____ day of _____, 2022, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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 Purchase, Sale, and Development Agreement – City of Council Bluffs, Iowa]*

SPIN LOFTS, LLC, an Iowa limited liability company

By: Spin Lofts Managing Member LLC,
an Iowa limited liability company

By: AI Investment, LLC a Nebraska
limited liability company, its Manager

By: _____
Darin Smith, Manager

STATE OF Iowa )
) SS
COUNTY OF Harrison )

On this 9th day of May, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Darin Smith to me personally known, who, being by me duly sworn, did say that he is the Manager of AI Investment, LLC, the manager of Spin Lofts Managing Member, LLC, the manager of Spin Lofts, LLC and that said instrument was signed on behalf of said company; and that the said officers as such, acknowledged the execution of said instrument to be the voluntary act and deed of said company, by them voluntarily executed.

NOTARIAL SEAL IOWA
Elizabeth Grady Heistand
Commission Number 805894
My Commission Expires
August 14, 2023

_____
Notary Public in and for said state

*[Signature page to Purchase, Sale, and Development Agreement – Spin Lofts, LLC]*

EXHIBIT A
MINIMUM IMPROVEMENTS

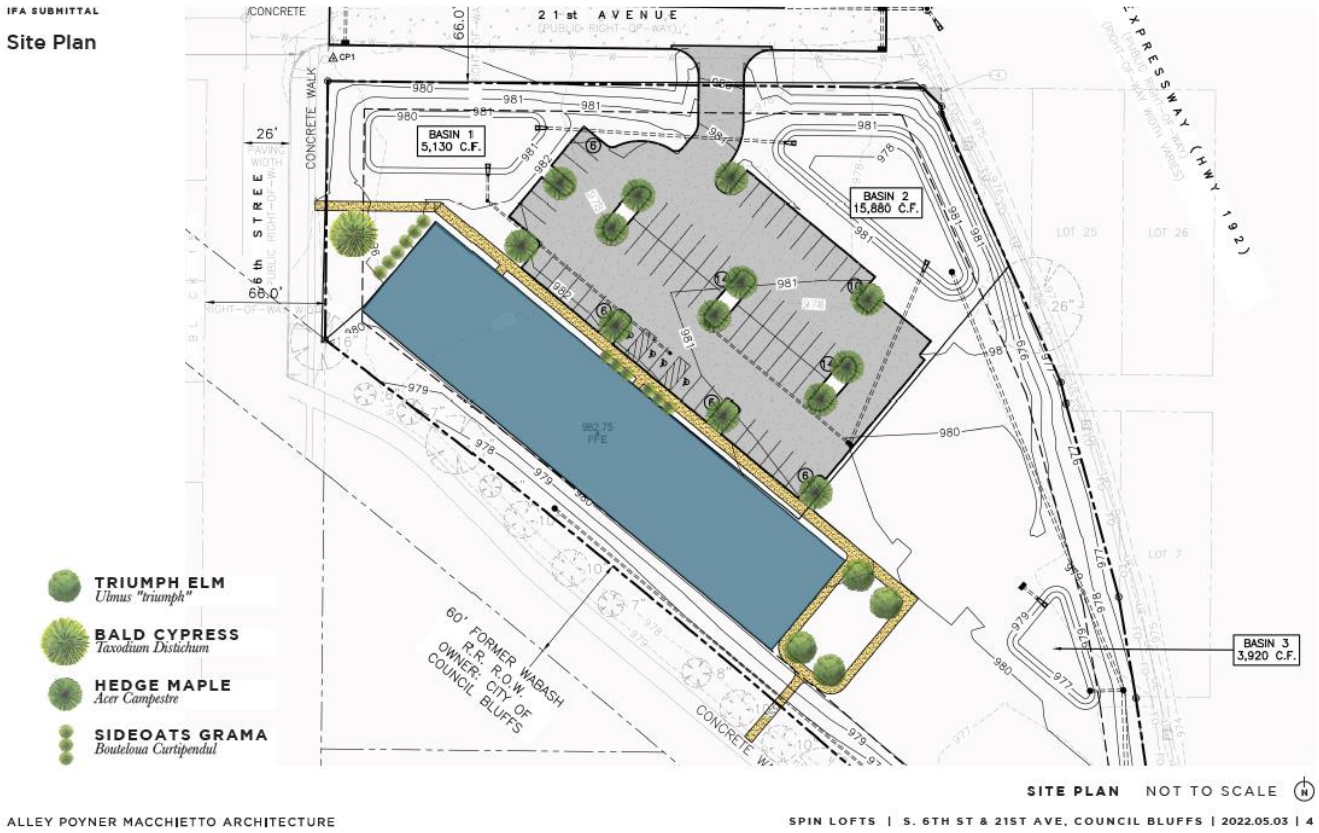
The Minimum Improvements shall consist of a 50 Housing Unit, multi-family apartment building, and related site improvements, to be constructed by Developer on the Development Property, consistent with approved plats and plans and the terms of the Agreement, including this Exhibit A and the diagrams in Exhibit A-1. The Housing Units shall include a combination of durable materials and transparency with an urban appearance with a mix of one-, two-, and four-bedrooms for low to moderate income families.

See Exhibit A-1 for site plans and renderings of the Housing Units. The renderings and plans set forth in Exhibit A-1 are preliminary in nature and subject to change pursuant to the terms of the Agreement.

EXHIBIT A-1

SITE PLANS AND RENDERINGS OF MINIMUM IMPROVEMENTS

(3 pages)



IFA SUBMITTAL

## Floor Plans




## Ground Floor

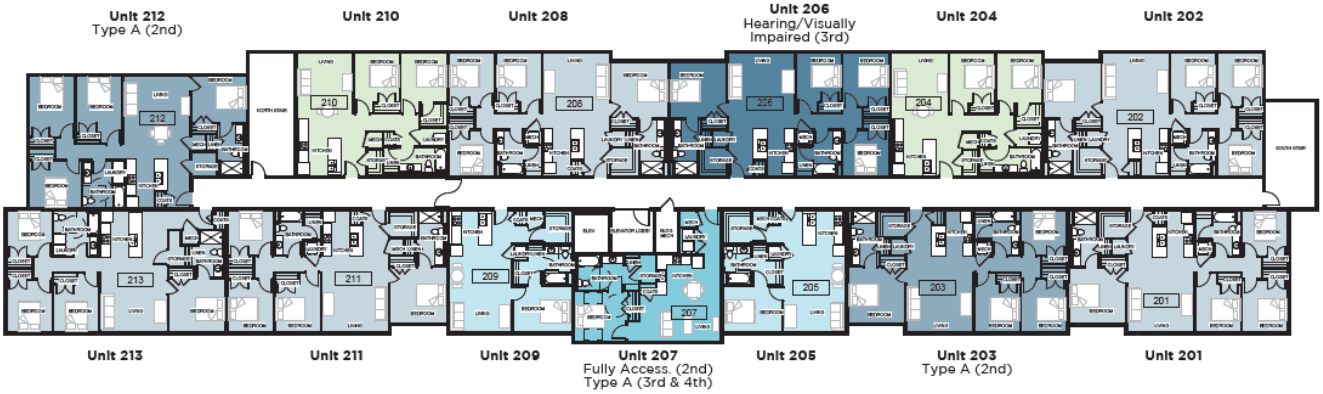
**Unit Mix:**

| | | | |
|---|---|---|---|
| 101 | 4-Bed | 1187 SF | |
| 102 | 4-Bed | 1187 SF | |
| 103 | 4-Bed | 1187 SF | Fully Accessible |
| 104 | 2-Bed | 831 SF | |
| 106 | 2-Bed | 915 SF | Type A |
| 108 | 2-Bed | 915 SF | Fully Accessible |
| 109 | 1-Bed | 688 SF | |
| 110 | 2-Bed | 831 SF | |
| 111 | 4-Bed | 1187 SF | |
| 112 | 4-Bed | 1251 SF | Type A |
| 113 | 4-Bed | 1209 SF | |
| **Total** | | **11,388 SF** | |



IFA SUBMITTAL

## Floor Plans




## 2nd-4th Floors

**Unit Mix:**

| | | | |
|---|---|---|---|
| 201 | 4-Bed | 1187 SF | |
| 202 | 4-Bed | 1187 SF | |
| 203 | 4-Bed | 1187 SF | Type A on Second Floor |
| 204 | 2-Bed | 831 SF | |
| 205 | 1-Bed | 688 SF | |
| 206 | 4-Bed | 1180 SF | Hearing & Visually Impaired on Third Floor |
| 207 | 1-Bed | 665 SF | Fully Accessible on Second Floor \| Type A on Third & Fourth Floors |
| 208 | 4-Bed | 1180 SF | |
| 209 | 1-Bed | 688 SF | |
| 210 | 2-Bed | 831 SF | |
| 211 | 4-Bed | 1187 SF | |
| 212 | 4-Bed | 1251 SF | Type A on Second Floor |
| 213 | 4-Bed | 1209 SF | |
| **Total** | | **13,271 SF** | |

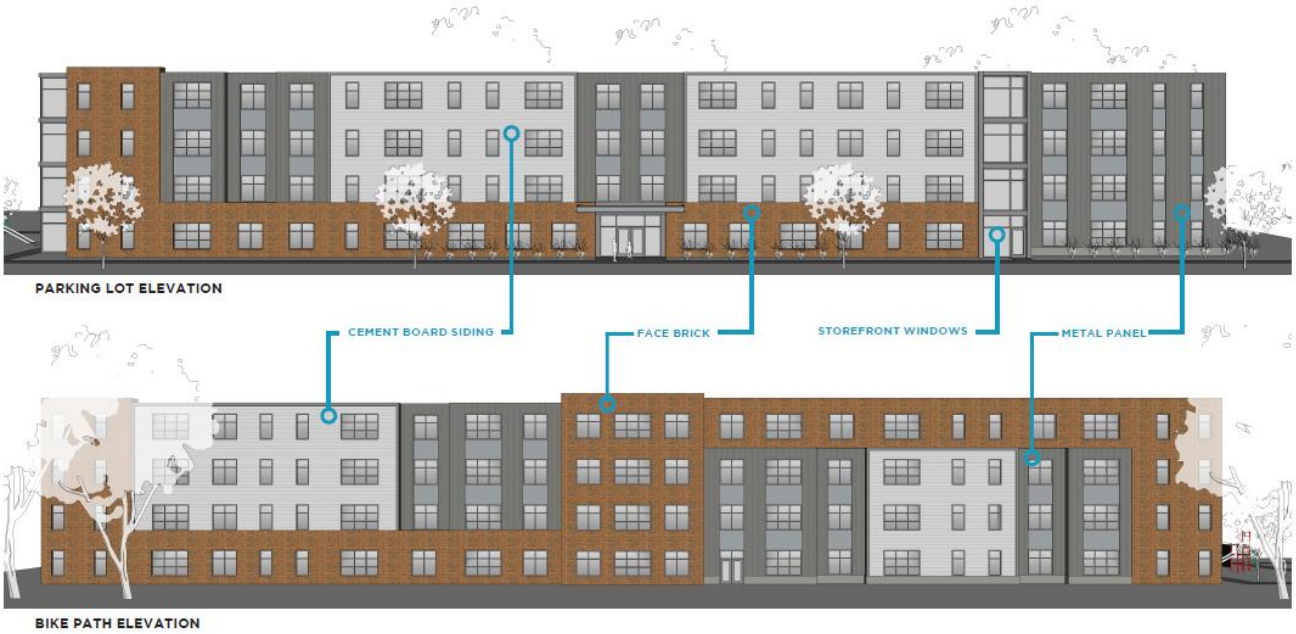


Exhibit A-3

*Execution Version*

IFA SUBMITTAL

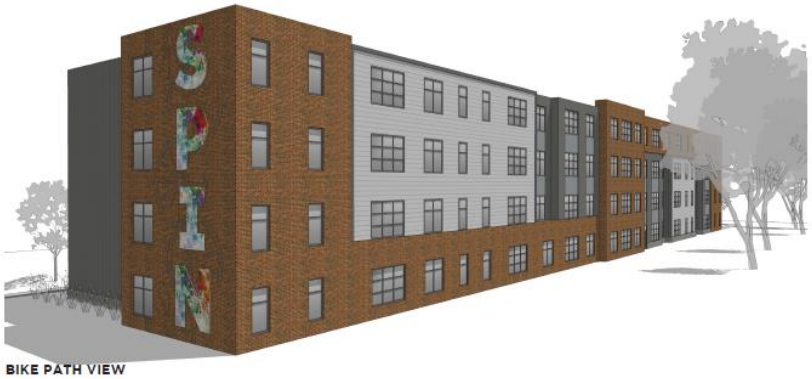
## Exterior Elevations






IFA SUBMITTAL

## Exterior Views


BIKE PATH VIEW


COURTYARD ELEVATION


PARKING LOT VIEW


STREET ELEVATION



Exhibit A-4

*Execution Version*

Prepared by: Nathan J. Overberg, Ahlers & Cooney, 100 Court Ave. #600, Des Moines, IA 50309, 515-243-7611
Return to: City of Council Bluffs, Iowa, City Hall, 209 Pearl Street, Council Bluffs, IA 51503, Attn: City Clerk

EXHIBIT B
MEMORANDUM OF PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

WHEREAS, the City of Council Bluffs, Iowa ("City") and Spin Lofts, LLC, an Iowa limited liability company ("Developer"), did on or about the _____ day of _____, 2022, make, execute, and deliver a Purchase, Sale, and Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

A parcel of land being all of Lots 9, 10, 18, 19, 20, 21 and 22, a portion of Lots 7, 8, 11, 12, 13, 16, 17, 23, 24 and 25 in Block 14, a portion of Lots 16, 17, 18 and 19 in Block 19, all of the vacated alley's in said Block 14 and all of vacated 22nd Avenue right-of-way lying within the following described parcel,all in Hughes and Doniphan's Addition, City of Council Bluffs, Pottawattamie County, Iowa, more fullydescribed as follows:

Beginning at the Northwest Corner of said Block 14; thence along the North line of said Block 14, South89 Degrees 26 Minutes 40 Seconds East, 325.00 feet to a point on the West right-of-way line of South Expressway (Highway 192); thence along said West right-of-way line the following 7 courses:
9) South 44 Degrees 26 Minutes 36 Seconds East, 14.14 feet;
10) South 00 Degrees 33 Minutes 27 Seconds West, 4.00 feet;
11) South 24 Degrees 06 Minutes 55 Seconds East, 160.50 feet;
12) South 13 Degrees 28 Minutes 38 Seconds East, 12.37 feet;
13) South 15 Degrees 24 Minutes 17 Seconds East, 109.09 feet;
14) South 09 Degrees 44 Minutes 22 Seconds East, 55.91 feet;
15) South 08 Degrees 08 Minutes 37 Seconds East, 66.78 feet;
16) South 00 Degrees 22 Minutes 12 Seconds West, 113.16 feet to a point on the

Northeasterly right-of-way line of Wabash Trace;
thence along said Northeasterly right-of-way line the following 2 courses:
3) North 49 Degrees 26 Minutes 05 Seconds West, 177.48 feet to a point on a non-tangent curve, concave Southwesterly, to which point a radial line bears North 41 Degrees 15 Minutes 44 SecondsEast, 5759.58 feet;
4) Northwesterly along said curve, through a central angle of 04 Decrees 04 Minutes 19 Seconds, 409.34feet to a point on the West line of said Block 14; thence along said West line, North 00 Degrees 33 Minutes 27 Seconds East, 141.10 feet to the Point of Beginning.

(the "Development Property"); and

WHEREAS, the term of the Agreement shall commence on the ____ day of _____, 2022 and terminate on the Termination Date, as set forth in the Agreement; and

WHEREAS, City and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Purchase, Sale, and Development Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Purchase, Sale, and Development Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, City Hall, Council Bluffs, Iowa.

IN WITNESS WHEREOF, City and Developer have executed this Memorandum of Purchase, Sale, and Development Agreement as of the ____ day of _____, 2022.

*[Remainder of page intentionally left blank; signature pages to follow]*

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

By: _____
Matt Walsh, Mayor

ATTEST:

By: _____
Jodi Quakenbush, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE )

On this _____ day of _____, 2022, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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 Memorandum of Purchase, Sale, and Development Agreement – City of Council Bluffs, Iowa]*

SPIN LOFTS, LLC, an Iowa limited liability company

By: Spin Lofts Managing Member LLC,
an Iowa limited liability company

By: AI Investment, LLC a Nebraska
limited liability company, its Manager

By: _____
Darin Smith, Manager

STATE OF Iowa )
) SS
COUNTY OF Harrison )

On this 9th day of May, 2022, before me the undersigned, a Notary Public in and for said State, personally appeared Darin Smith to me personally known, who, being by me duly sworn, did say that he is the Manager of AI Investment, LLC, the manager of Spin Lofts Managing Member, LLC, the manager of Spin Lofts, LLC and that said instrument was signed on behalf of said company; and that the said officers as such, acknowledged the execution of said instrument to be the voluntary act and deed of said company, by them voluntarily executed.

NOTARIAL SEAL IOWA
Elizabeth Grady Heistand
Commission Number 805894
My Commission Expires
August 14, 2023

_____
Notary Public in and for said state

*[Signature page to Memorandum of Purchase, Sale, and Development Agreement – Spin Lofts, LLC]*

**DRAFT – DO NOT SIGN UNTIL CLOSING**

**Prepared by:** Nathan J. Overberg, Ahlers Cooney P.C., 100 Court Ave #600, Des Moines, IA 50309 515-243-7611
**Return to:** City of Council Bluffs, Iowa, City Hall, 209 Pearl Street, Council Bluffs, IA 51503, Attn: City Clerk

## EXHIBIT C
## SPECIAL WARRANTY DEED

For the consideration of $100,000.00 and other valuable consideration, the **City of Council Bluffs, Iowa,** ("Grantor") does hereby convey to **Spin Lofts, LLC**, an Iowa limited liability company ("Grantee"), the following described real estate in Pottawattamie County, Iowa:

A parcel of land being all of Lots 9, 10, 18, 19, 20, 21 and 22, a portion of Lots 7, 8, 11, 12, 13, 16, 17, 23, 24 and 25 in Block 14, a portion of Lots 16, 17, 18 and 19 in Block 19, all of the vacated alley's in said Block 14 and all of vacated 22nd Avenue right-of-way lying within the following described parcel,all in Hughes and Doniphan's Addition, City of Council Bluffs, Pottawattamie County, Iowa, more fullydescribed as follows:

Beginning at the Northwest Corner of said Block 14; thence along the North line of said Block 14, South89 Degrees 26 Minutes 40 Seconds East, 325.00 feet to a point on the West right-of-way line of South Expressway (Highway 192); thence along said West right-of-way line the following 7 courses:
17) South 44 Degrees 26 Minutes 36 Seconds East, 14.14 feet;
18) South 00 Degrees 33 Minutes 27 Seconds West, 4.00 feet;
19) South 24 Degrees 06 Minutes 55 Seconds East, 160.50 feet;
20) South 13 Degrees 28 Minutes 38 Seconds East, 12.37 feet;
21) South 15 Degrees 24 Minutes 17 Seconds East, 109.09 feet;
22) South 09 Degrees 44 Minutes 22 Seconds East, 55.91 feet;
23) South 08 Degrees 08 Minutes 37 Seconds East, 66.78 feet;
24) South 00 Degrees 22 Minutes 12 Seconds West, 113.16 feet to a point on the Northeasterly right-of-way line of Wabash Trace;
thence along said Northeasterly right-of-way line the following 2 courses:
5) North 49 Degrees 26 Minutes 05 Seconds West, 177.48 feet to a point on a non-tangent curve, concave Southwesterly, to which point a radial line bears North 41 Degrees 15 Minutes 44 SecondsEast, 5759.58 feet;
6) Northwesterly along said curve, through a central angle of 04 Decrees 04 Minutes 19 Seconds, 409.34feet to a point on the West line of said Block 14; thence along said West line, North 00 Degrees 33 Minutes 27 Seconds East, 141.10 feet to the Point of Beginning.

This Deed is subject to all the terms, provisions, covenants, conditions, and restrictions contained in the Purchase, Sale, and Development Agreement by and between Grantor and Grantee dated _____, 2022 ("Agreement"), including use restrictions and a right of first refusal held by Grantor more particularly described in the Agreement and below. The Agreement is incorporated herein by reference and is on file for public inspection at the office of the City Clerk of the Grantor.

USE RESTRICTION. This conveyance is subject to and conditioned upon the Property being used or developed only for the purposes of the multi-residential Minimum Improvements described in the Agreement, until the Termination Date of the Agreement, unless the governing body of Grantor consents to a different use, development, or purpose.

RIGHT-OF-FIRST REFUSAL. For a period of twenty years after recordation of this Deed or until the recordation of a Certificate of Completion for the Minimum Improvements issued by the Grantor pursuant to the Agreement, whichever is earlier ("Restriction Period"), if at any time Grantee seeks to sell the Property (or any portion thereof) to a third party, Grantee shall provide written notice to Grantor of Grantee's intent to sell the Property (or a portion thereof), along with an appraisal of the fair market value of the Development Property (or the applicable portion thereof) at such time, and Grantor shall have thirty (30) days after Grantor's receipt of such notice to exercise a right of first refusal to purchase the applicable portion of the Property from Grantee at the appraised amount. If Grantor does not exercise this right of first refusal with respect to a portion of the Property within the thirty (30) days following Grantor's receipt of such notice, then this right of first refusal shall terminate with respect to that portion of the Property so sold, but shall not terminate with respect to any portion of the Property not sold. If Grantor does not exercise this right of first refusal prior to the end of the Restriction Period, the right of first refusal shall terminate at the end of the Restriction Period. Notwithstanding the foregoing, the Grantor's right of first refusal shall not apply to any collateralization of the Property or the improvements thereon to Grantee's lender for purposes of securing funds to construct the Minimum Improvements.

None of the provisions of the Agreement shall be deemed merged in, affected by, or impaired by this Deed. All capitalized terms contained in this Deed have the same meaning as assigned to them in the Agreement.

*This transfer is exempt under Iowa Code Chapter 428A.2(19).*

Grantor does hereby covenant with Grantee and successors in interest to warrant and defend the real estate against the lawful claims of all persons claiming by, through or under them, except as may be above stated. Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the real estate.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Dated: _____

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

**DRAFT – DO NOT SIGN UNTIL CLOSING**

By: _____
Matt Walsh, Mayor

ATTEST:

**DRAFT – DO NOT SIGN UNTIL CLOSING**

By: _____
Jodi Quakenbush, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE )

On this _____ day of _____, 20___, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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 Special Warranty Deed]*

EXHIBIT D
CERTIFICATE OF COMPLETION

WHEREAS, the City of Council Bluffs, Iowa ("City") and Spin Lofts, LLC, an Iowa limited liability company ("Developer"), did on or about the _____ day of _____, 2022, make, execute, and deliver a Purchase, Sale, and Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within City and as more particularly described as follows:

A parcel of land being all of Lots 9, 10, 18, 19, 20, 21 and 22, a portion of Lots 7, 8, 11, 12, 13, 16, 17, 23, 24 and 25 in Block 14, a portion of Lots 16, 17, 18 and 19 in Block 19, all of the vacated alley's in said Block 14 and all of vacated 22nd Avenue right-of-way lying within the following described parcel,all in Hughes and Doniphan's Addition, City of Council Bluffs, Pottawattamie County, Iowa, more fullydescribed as follows:

Beginning at the Northwest Corner of said Block 14; thence along the North line of said Block 14, South89 Degrees 26 Minutes 40 Seconds East, 325.00 feet to a point on the West right-of-way line of South Expressway (Highway 192); thence along said West right-of-way line the following 7 courses:
25) South 44 Degrees 26 Minutes 36 Seconds East, 14.14 feet;
26) South 00 Degrees 33 Minutes 27 Seconds West, 4.00 feet;
27) South 24 Degrees 06 Minutes 55 Seconds East, 160.50 feet;
28) South 13 Degrees 28 Minutes 38 Seconds East, 12.37 feet;
29) South 15 Degrees 24 Minutes 17 Seconds East, 109.09 feet;
30) South 09 Degrees 44 Minutes 22 Seconds East, 55.91 feet;
31) South 08 Degrees 08 Minutes 37 Seconds East, 66.78 feet;
32) South 00 Degrees 22 Minutes 12 Seconds West, 113.16 feet to a point on the Northeasterly right-of-way line of Wabash Trace;
thence along said Northeasterly right-of-way line the following 2 courses:
7) North 49 Degrees 26 Minutes 05 Seconds West, 177.48 feet to a point on a non-tangent curve, concave Southwesterly, to which point a radial line bears North 41 Degrees 15 Minutes 44 SecondsEast, 5759.58 feet;
8) Northwesterly along said curve, through a central angle of 04 Decrees 04 Minutes 19 Seconds, 409.34feet to a point on the West line of said Block 14; thence along said West line, North 00 Degrees 33 Minutes 27 Seconds East, 141.10 feet to the Point of Beginning.

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Minimum

Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Pottawattamie County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

*[Signature page follows]*

(SEAL) CITY OF COUNCIL BLUFFS, IOWA

**DRAFT – DO NOT SIGN UNTIL IMPROVEMENTS COMPLETE**
By: _____
Matt Walsh, Mayor

ATTEST:

**DRAFT – DO NOT SIGN UNTIL IMPROVEMENTS COMPLETE**
By: _____
Jodi Quakenbush, City Clerk

STATE OF IOWA )
) SS
COUNTY OF POTTAWATTAMIE )

On this _____ day of _____, 20___, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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 Certification of Completion]*

EXHIBIT E

INTERLOCAL HOME AGREEMENT

EXHIBIT F

INTERLOCAL HOME-ARP AGREEMENT

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