

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Peosta, Iowa (the “City”) and Peosta Square, LLC (the “Company”) as of the \_\_\_ day of \_\_\_\_\_, 2021 (the “Commencement Date”).

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

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

WHEREAS, the Company has proposed to undertake the construction of building that will be used for Commercial purposes on the main level with housing on the 2<sup>nd</sup> and 3<sup>rd</sup> levels to benefit, accommodate, and otherwise provide for the commercial uses on this site and to provide workforce housing to support other Commercial and Industrial uses in the community (the “Project”); and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in paying the costs of constructing and maintaining the Project; and

WHEREAS, the taxable base valuation of the Property for purposes of calculations under this Agreement and Section 403.19 of the Code of Iowa shall be \$97,480.50, same having been calculated based upon the following terms and provisions:

1. The pre-development valuation of the real estate on which the project is being built is \$194,961.
2. The Project includes 1<sup>st</sup> floor commercial improvements that are eligible for tax incentives considered herein while the improvements to the two upper floors are not deemed to be improvements eligible for incentives offered and agreed to herein.
3. A portion of the base value should be attributed to the eligible Commercial improvements on the 1<sup>st</sup> floor, with the remaining portion of the base value being attributed to the ineligible residential improvements on the 2<sup>nd</sup> and 3<sup>rd</sup> floors.
4. The parties agree that the pre-development value of the property should be applied 50% to the 1<sup>st</sup> floor Commercial improvements and 50% to the 2<sup>nd</sup> and 3<sup>rd</sup> floor residential improvements.

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

**A. Company’s Covenants**

**1. Project Construction; Operational Requirement.** The Company agrees to construct the Project on the Property. The Company has submitted plans related to the proposed development and the City acknowledges the receipt and review of same. The Company agrees to construct the Project in substantial compliance with the aforementioned plans and to have construction of improvements substantially complete by no later than December 31, 2021. Further, the Company agrees to maintain compliance with local zoning, land use, building and safety codes and regulations.

Furthermore, the Company agrees to maintain and use the completed Project for Commercial Purposes on the first floor with residential housing on the 2<sup>nd</sup> and 3<sup>rd</sup> floors to serve the primary commercial first floor use and other commercial and industrial employee housing needs in the community (the “Operational Requirement”) as part of its business operations throughout the Term (as hereinafter defined).

**2. Company’s Operational Certifications.** The Company agrees to certify (the “Operational Certification”) to the City by no later than October 15 of each year during the Term (as hereinafter defined) commencing October 15, 2021, that the Company is in compliance with the Operational Requirement. Each Operational Certification shall be accompanied by documentation demonstrating, to the satisfaction of the City, that the Company is in compliance with the Operational Requirement.

**3. Property Taxes.** The Company agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment.

**4. Property Tax Payment Certification.** Furthermore, the Company agrees to certify to the City by no later than October 15 of each year during the Term (as hereinafter defined) commencing October 15, 2021, an amount (the “Company’s Estimate”) equal to eighty-five percent (85%) (the “Annual Percentage”) of the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to that portion of the taxable valuation of the Property tied to all commercial improvements, including site improvements associated therewith and excluding any consideration of the Incremental Property Tax Revenues tied to the 2<sup>nd</sup> and 3<sup>rd</sup> floor residential improvements and site improvements associated therewith.

In submitting each such Company’s Estimate, the Company will complete and submit the worksheet attached hereto as Exhibit B. The City reserves the right to review and request revisions to the Developer’s Estimate to ensure the accuracy of the figures submitted. Any disagreement with regard to the calculations used to arrive at the Developer’s Estimate, and/or the final estimate itself, that cannot be resolved by the Parties, shall be decided by and in the sole discretion of the City. The City will provide reasonable assistance to the Developer in the completion of this worksheet upon request.

For purposes of this Agreement, Incremental Property Tax Revenues are calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property (tied to commercial improvements as noted above), as shown on the property tax rolls of Dubuque County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

## **5. Default Provisions.**

Events of Default. The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

- a) Failure by the Company to complete construction of the Project pursuant to the terms and conditions of this Agreement.
- b) Failure by the Company to maintain compliance with the Operational Requirement set forth in Section A.1 of this Agreement.
- c) Failure by the Company to fully and timely remit payment of property taxes when due and owing pursuant to Section A.3.
- d) Failure by the Company to comply with Sections A.2 and A.4 of this Agreement.
- e) Failure by the Company to observe or perform any other material covenant on its part, to be observed or performed hereunder.

Notice and Remedies. Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Company describing the cause of the default and the steps that must be taken by the Company in order to cure the default. The Company shall have thirty (30) days from the mailing of the notice or from the personal delivery of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Company fails to cure the default or provide assurances, the City shall then have the right to:

- a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- b) Withhold the Payments provided for under Section B.3 below.

**6. Legal and Administrative Costs.** The Company hereby acknowledges that the City will cover the initial payment of legal fees and administrative costs (the “Actual Admin Costs”) incurred by the City in connection with the drafting, negotiation and authorization of this Agreement, including the necessary amendment to the Urban Renewal Area. Furthermore, the Company agrees that the City shall withhold an amount (the “Admin Withholding Amount”) equal

to the lesser of (1) \$8,000 or (2) the Actual Admin Costs from the initial Payments, as hereinafter set forth, in order to recover some or all of the Actual Admin Costs.

**B. City's Obligations**

1. **Payments.** In recognition of the Developer's obligations set out above, the City agrees to make 40 semi-annual economic development tax increment payments (the "Rebate Payments" and each, individually, a "Payment") to the Developer during the term (as hereinafter defined) pursuant to Chapters 15A and 403 of the Code of Iowa, provided, however, that the aggregate total amount of the Payments shall not exceed \$1,500,000 (The "Maximum Payment Total"), and all payments under this Agreement shall be subject to annual appropriation by the City Council, as further described herein.

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

2. Prior to funding any Payments under this Agreement, the City will first withhold from the Incremental Property Tax Revenues an amount equal to the Admin Withholding Amount. Once an amount equal to the Admin Withholding Amount has been withheld by the City, the Payments shall be made as set forth herein.

Each Payment shall not exceed an amount which represents the Annual Percentage of the Incremental Property Tax Revenues available to the City with respect to the Property during the six (6) months immediately preceding each Payment date.

This Agreement assumes that full taxable valuation attributable to the commercial improvement portions of the Project will go on the property tax rolls as of January 1, 2022. Accordingly, the Rebate Payments will be made on or about the 1<sup>st</sup> of December and the 1<sup>st</sup> of June each fiscal year, beginning on December 1, 2023, and continuing to and including June 1, 2044, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made. The rebate schedule will commence and proceed as set out above even if the full value of the commercial improvements is not on the tax rolls as of January 1, 2022.

4. **Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term (as hereinafter defined) of this Agreement, commencing in calendar year 2022, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payment due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payment scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments, to seek damages relative thereto or to compel the funding of such Payment in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payment shall not render this Agreement null and void, and the

Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2044.

It is the intention and desire of the City Council, at the passage of this Developer's Agreement, that funds will be annually appropriated as contemplated herein absent a finding by the City Council of severe hardship to the City.

**5. Payment Amounts.** The aggregate Payments to be made in any fiscal year shall not exceed an amount that is equal to the corresponding Appropriated Amount. (For example, for the Payments due on December 1, 2022, and on June 1, 2023, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2021.) Furthermore, the amount of each such Payment shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of "back-fill" or "make-up" (payments from the State of Iowa for property tax credits or roll-back) actually received by the City from the Dubuque County Treasurer attributable to the taxable incremental valuation of the Property in the six (6) months immediately preceding the extant Payment due date.

**6. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.4 above, then the City Clerk will certify by December 1 of each such year to the Dubuque County Auditor an amount equal to the most recently obligated Appropriated Amount.

**C. Administrative Provisions**

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

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

**3. Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2044, or on such earlier date upon which the aggregate sum of Payments made to the Company equals the Maximum Payment Total.

**4. Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

**5. Force Majeure:** Neither Party is responsible for any failure to perform its obligations of satisfy a condition under this agreement upon the occurrence of a Force Majeure Event. When the nonperforming party is able to resume performance or satisfy the conditions, it will promptly give the other party written notice to that effect and shall resume performance under this agreement. For the purposes of this agreement, a "Force Majeure Event" is an act or event that (i) prevents the nonperforming party from performing its obligations under this agreement or

satisfying any conditions to the performing party under this agreement; (ii) is beyond the reasonable control of and not the fault of the nonperforming party; and (iii) is beyond the nonperforming party's ability to avoid or overcome by the exercise of commercially reasonable due diligence. A Force Majeure Event includes the following, without limitation: an act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism, or civil disorder; extraordinary shortages in labor or materials; a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not); exceptional weather conditions; and discontinuation of electricity supply or other necessary utilities to the Property.

The City and the Company have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF PEOSTA, IOWA

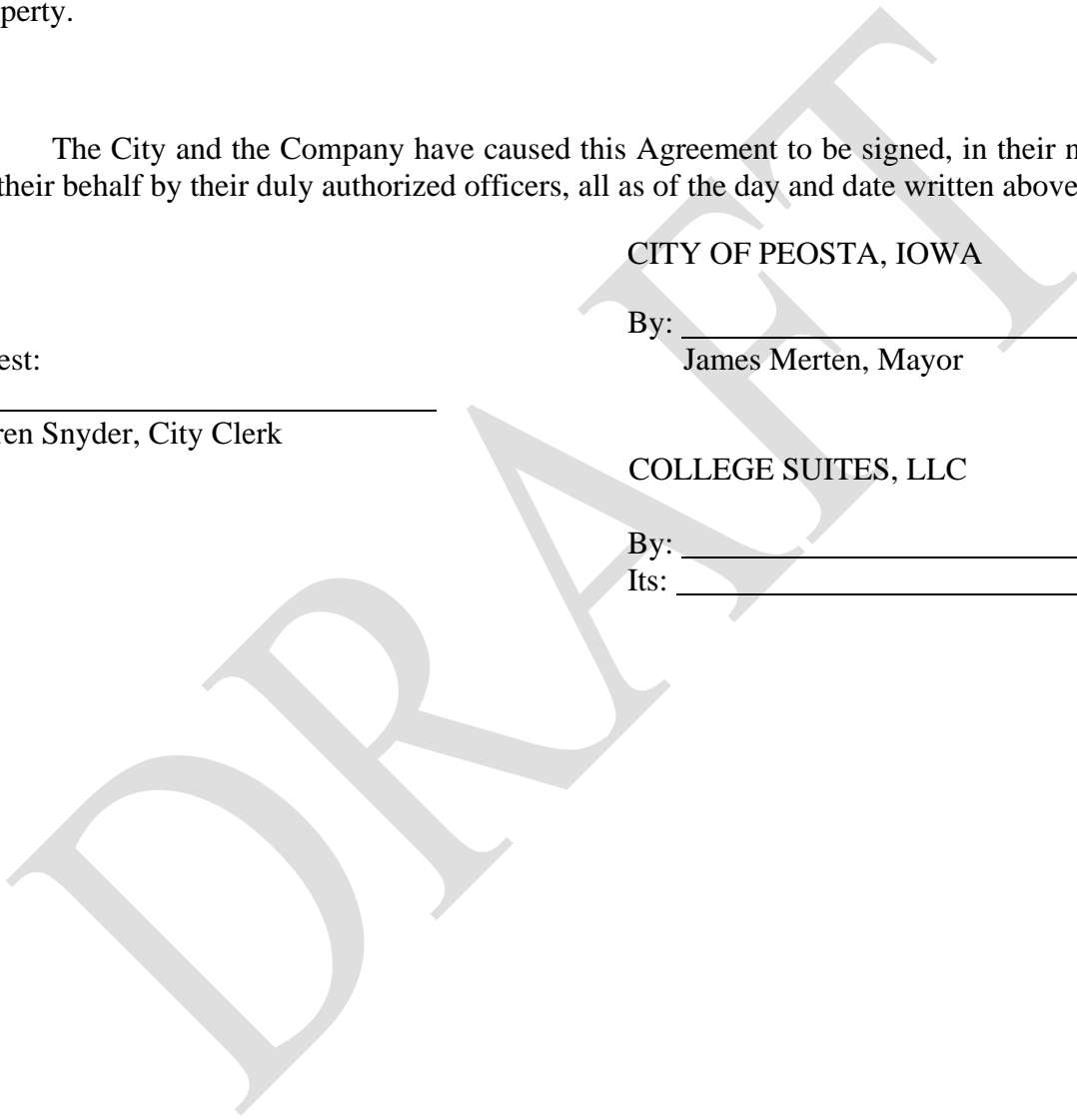
By: \_\_\_\_\_  
James Merten, Mayor

Attest:

\_\_\_\_\_  
Karen Snyder, City Clerk

COLLEGE SUITES, LLC

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



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Lot 2 Peosta Commercial Park No. 2

DRAFT

**EXHIBIT B**  
**COMPANY'S ESTIMATE WORKSHEET**

- (1) Date of Preparation: October \_\_\_\_\_, 20\_\_\_\_.
- (2) Assessed Valuation of Commercial Improvements as of January 1, 20\_\_\_\_:  
\$\_\_\_\_\_.
- (3) Base Taxable Valuation of Property:  
\$97,480.50
- (4) Incremental Taxable Valuation of Property (2 minus 3):  
\$\_\_\_\_\_ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):  
\$\_\_\_\_\_ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).  
\$\_\_\_\_\_ x \$\_\_\_\_\_/1000 = \$\_\_\_\_\_ (the "TIF Estimate")
- (7) Factor the Available TIF Estimate (7) by the Annual Percentage =  
Company's Estimate = \$\_\_\_\_\_ x .85 = \_\_\_\_\_