DEVELOPMENT AGREEMENT

By and Between

THE CITY OF CEDAR RAPIDS, IOWA
("CITY")

And

HEAVISIDE LLC
("COMPANY")

February 27, 2024

DEVELOPMENT AGREEMENT
TABLE OF CONTENTS

ARTICLE IX ASSIGNMENT OR TRANSFER

ARTICLE X REMEDIES

ARTICLE XI MISCELLANEOUS

EXHIBITS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made effective as of the 27th day of February, 2024 ("**Effective Date**") by and between the **CITY OF CEDAR RAPIDS, IOWA**, a municipality having an office for the transaction of business at 101 First Street SE, Cedar Rapids, Iowa 52401 (the "**City**") established pursuant to the Code of the State of Iowa and acting under the authorization of Chapters 15 and 15A, and 403, as amended, of the Code of Iowa, 2023, and **HEAVISIDE LLC**, a Delaware limited liability company (the "**Company**"; each of the City and the Company a "**Party**" and together, the "**Parties**").

WITNESSETH:

WHEREAS, the Company intends to acquire certain real property, which real property will be located within one or more urban renewal areas to be established by the City pursuant to Iowa Code Chapter 403 (the "Urban Renewal Act") and which property is described in Exhibit 1.1 (hereinafter referred to as the "**Development Property**"); and

WHEREAS, the Company is considering construction of one or more Data Centers and other support buildings on the Development Property in accordance with this Agreement ("Project"), which Project will result in a substantial capital investment and the creation of new jobs in the City; and

WHEREAS, the Company, through an Affiliate (as defined below in Article I), has applied for and expects to receive approval from the State of Iowa under the High Quality Jobs Program ("**HQJP**"), pursuant to Iowa Code Chapter 15, Subchapter II, Part 13, and Company, through an Affiliate, will enter into an Agreement with the State of Iowa thereunder so as to authorize the City under the HQJP to provide the Company with an exemption of taxable value generated as a result of Company's construction of the Improvements (hereinafter defined) in the Project on the Development Property; and

WHEREAS, the City desires to offer to the Company certain benefits for the Project which include (i) exemption of certain value and associated real estate taxes to the extent permitted under the HQJP and the HQJ Contract, (ii) acknowledgement of water and wastewater capacity needs for the Project, (iii) the reimbursement of a portion of electric franchise fees paid by the Company for the Project, and (iv) a credit for qualifying Gray Wastewater Discharge (hereinafter defined) for the Project, which benefits serve as inducement for the Company to perform its obligations described herein; and

WHEREAS, the City believes that the planned development as described herein pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing development is being undertaken and assisted, and has determined to enter into this Agreement as to induce the construction of the Project, all to the advantage of the City as a whole.

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:

(a) Affiliate means an entity that directly or indirectly controls the Company, is controlled by the Company, or is under common control with the Company.

(b) Agreement means this Agreement and all exhibits hereto, as the same may be from time to time modified, amended or supplemented.

(c) Annual Certification means the certification provided by the Company to the City under *Section 5.3* which documents the Company's compliance with the reporting requirements outlined in this Agreement.

(d) City means the City of Cedar Rapids, Iowa, or any successor to its functions.

(e) Code means the Code of Iowa, 2023, as amended.

(f) Company means Heaviside LLC, a Delaware limited liability company, and its successors and assigns.

(g) Confidential Information means all strategic, functional, technical, financial, and other information (including all related know-how, implementation, operational methods and procedures) related to the business of a Party, which is disclosed by one Party to the other Party, to the extent that such information is (a) clearly and conspicuously marked as "confidential" or with a similar designation, (b) identified by the disclosing Party as confidential and/or proprietary before, during, or promptly after presentation or communication, or (c) disclosed in a manner in which the disclosing Party reasonably communicated, that the disclosure should be treated as confidential under the Iowa Open Records Law, whether or not the specific designation "confidential" or any similar designation is used, but excluding information that (a) is independently developed by the receiving Party, (b) is lawfully received by the receiving Party free of any obligation to keep it confidential, or (c) becomes generally available to the public other than by breach of this Agreement. Disclosure of Confidential Information is subject to the Iowa Open Records Law and Section 11.17.

(h) County means the County of Linn, Iowa.

(i) Data Center means each separate industrial structure constructed by the Company on the Development Property which meets the definition under Iowa Code § 423.3(95)(e)(1) and is constructed during the Project Completion Period set forth in the HQJ Contract, as may be amended from time to time.

(j) Development Property means the properties legally described in Exhibit 1.1 attached hereto.

(k) Economic Development Exemption means the exemption of taxable property value of Improvements constructed on the Development Property as part of the Project, subject to the conditions and limitations as described in *Section 6.1* herein.

(l) Effective Date means the date this Agreement is executed by and on behalf of the City and the Company.

(m) Event of Default means any of the events described in *Section 10.1* of this Agreement.

(n) Full Time Equivalent Employees means the same as defined in the HQJ Contract for the Project.

(o) HQJ Contract means the agreement by and among the City, the Company's Affiliate, and IEDA under the HQJP for the Project, as may be amended from time to time.

(p) IEDA means the Iowa Economic Development Authority.

(q) Improvements means improvements as defined in Iowa Code §15.332(2) made to the Development Property as part of the Project.

(r) Minimum Investment shall mean no less than Five Hundred Seventy Six Million U.S. Dollars ($576,000,000) including acquisition of real property, construction of buildings and other structures, equipment, and related site improvements, which Minimum Investment must be satisfied with respect to the Project before the Company shall receive the Economic Development Exemption described below in Article VI.

(s) Mortgage means any mortgage or security agreement in which the Company or any of the Company's Affiliates, successors or assigns has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

(t) Plans means the plans, specifications, drawings and related documents reflecting the engineered site improvements and construction of a Data Center and related buildings by the Company on the Development Property, described in *Section 3.2* hereof.

(u) Project means the project as described in the HQJ Contract, as may be amended from time to time, which project must involve the construction of at least one (1) Data Center along with additional related site utilities, improvements, accessory buildings, warehouses, parking, and landscaping on the Development

Property with a Minimum Investment and creation of new jobs which meet the requirements of the HQJP, all as further described in this Agreement and the HQJ Contract, during the Project Completion Period, as described in the HQJ Contract.

(v) Qualifying Wage Threshold means the threshold laborshed wage rate in Cedar Rapids under the HQJP and the applicable HQJ Contract which the Full Time Equivalent Employees shall be paid.

(w) State means the State of Iowa.

(x) Termination Date shall have the meaning ascribed to such term in *Section 11.10*.

(y) Unavoidable Delays means delays caused by 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, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, pandemics, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City).

(z) Urban Renewal Law means Chapter 403 of the Code.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City.

The City makes the following representations and warranties:

(a) The 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 the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

(c) The City shall reasonably cooperate with the Company in the application of its Affiliate to IEDA in connection with the HQJP, the HQJ Contract and any amendment thereto.

Section 2.2. Representations and Warranties of the Company.

The Company makes the following representations and warranties:

(a) The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of Iowa and has all requisite power and authority to own and operate the Project, to carry on business as now conducted and as presently proposed to be conducted, and to enter into and perform the obligations under the Agreement.

(b) This Agreement has been duly and validly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the Company 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 certificate of organization or operating agreement of the Company or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Company is now a party or by which it or the Development 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 Company in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of the Company or which in any manner raises any questions affecting the validity of the Agreement or the Company's ability to perform respective obligations under this Agreement.

(e) The Company has not received any notice from any local, State or federal official that the activities of the Company with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). The Company 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 the Company 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.

(f) The Company has, or will have prior to construction, firm financing or capital commitment sufficient to complete the Project in accordance with this Agreement.

(g) The Company will cooperate fully with the City in the prompt resolution of any traffic, parking, trash removal, public safety and workplace safety, state or federal safety or labor matters, or any other problems that may arise in connection with the construction and operation of the Project. The Company will obtain from the City any temporary construction easements and parking agreements, if necessary.

(h) But for the consideration being made by the City to the Company pursuant to this Agreement, including the Economic Development Exemption, Economic Development Grants, and administration of Development Property Capacity to facilitate the Project, the Company would not undertake the Project under this Agreement.

(i) The Company reasonably expects that the construction of the Project on the Development Property will result in the creation and retention of jobs, both during the construction phase and thereafter until the Termination Date.

(j) The Company reasonably expects that the construction of the Project will result in the total capital investment of not less than Five Hundred Seventy Six Million U.S. Dollars ($576,000,000).

ARTICLE III
CONSTRUCTION OF PROJECT

Section 3.1. Construction of Project.

The Project will consist of at least one (1) Data Center and other ancillary supportive buildings on the Development Property as described in the HQJ Contract. The Project shall require a Minimum Investment and be in substantial conformance with the HQJ Contract and this Agreement, including the description in Exhibit 3.1.

Section 3.2. Plans.

(a) The Company shall have engineered site plans and construction plans (the "**Plans**") for the Project submitted to the City before construction of the Project has commenced, consistent with the normal process for obtaining a building permit in the City. The City may review the Plans to determine that such Plans are consistent with this Agreement. If the City objects to any of the Plans, it must notify the Company within fifteen (15) business days of the City's receipt of such Plans of City's objections, specifying in detail the reasons for City's objections. If the City does not notify the Company during this period, then it is deemed that the City has accepted the Plans.

(b) The Plans must:

(i) conform to the terms and conditions of this Agreement; and

(ii) conform to the HQJ Contract; and

(iii) conform to all applicable federal, State and local laws, ordinances, rules and regulations and City permit requirements.

(c) Any such approval of the Plans pursuant to this *Section 3.2* shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit. The site development plans submitted for the Development Property on behalf of the Company to the Development Services Department of the City shall be adequate to serve as Plans, if such site plans are approved by the Development Services Department in accordance with all applicable codes and regulations.

(d) Approval of the Plans by the City shall not relieve the Company of 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 Plans by the City be deemed to constitute a waiver of any Event of Default.

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

Section 3.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Company shall cause the construction of the Project, as described in Exhibit 3.1, to be commenced no later than three (3) years from the Effective Date ("Commencement Date") and be completed no later than the completion date set forth in the HQJ Contract, as may be amended from time to time. Notwithstanding anything to the contrary in this subparagraph (a), however, the Company in its sole discretion may elect not to commence construction of the Project in which event the Company shall not be entitled to receive any of the financial incentives set forth herein and this Agreement shall automatically terminate as of the Commencement Date with neither party having any liability to the other hereunder except for the obligations of confidentiality set forth in Section 11.17 and indemnification set forth in Article VIII.

(b) For purposes of this *Section 3.3*, construction shall be deemed to be commenced when vertical construction pursuant to a building permit has begun on the Project and completion shall be evidenced by the Company's receipt from the City of an occupancy permit for the Data Center building(s) and any support buildings identified in the Plans for the Project.

(c) Time lost as a result of Unavoidable Delays shall be added to extend the anticipated commencement date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Project shall be in conformity with the Plans approved by the City or any amendments thereto as may be approved by the City.

Section 3.4. Certificate of Completion.

(a) Upon written request of the Company, submitted in its sole discretion, after issuance by the City of a certificate of occupancy for all of the Data Center building(s) and any support buildings in the Project, the City shall provide the Company with a Certificate of Completion for the Project, the form of which is attached hereto as Exhibit 3.4, in recordable form. Such Certificate of Completion shall be a conclusive determination of satisfactory completion and termination of the covenants and conditions of this Agreement with respect to all of the obligations of the Company under this Agreement to construct the Project. The Certificate of Completion shall be recorded in the office of the Linn County, Iowa Recorder.

(b) If the City shall refuse or fail to provide a written statement in accordance with the provisions of this *Section 3.4*, the City shall, within ten (10) days after written request for the Certificate of Completion by the Company, furnish the Company with a written statement that shall set forth in adequate detail those measures or acts that will be necessary for the Company to take or perform in order to obtain the requested Certificate of Completion.

Section 3.5. Platting of the Development Property.

To aid and assist the City in administration of urban renewal powers and efficiently use tax increment financing under the Urban Renewal Law, the Company shall, and the City shall cooperate with the Company to, create separate real estate tax parcels or lots within the Development Property for each separate Data Center (each such parcel referred to herein as the "**Data Center Tax Parcel**"). Such separate parcels or lots may be created by plat of survey as permitted by State and local law at the time each Data Center is initiated.

Section 3.6. Notice of Delays.

Until construction of the Project has been completed as evidenced by a Certificate of Completion, the Company shall give prompt notice in writing to the City of any adverse development which would materially affect or delay the commencement or completion of the Project.

Section 3.7. Construction of Additional Data Centers.

Sections 3.2 and *3.4* shall apply equally to all Improvements constructed on the Development Property. The Company agrees that it will cause the construction of any Improvements in a manner consistent with all City, State, and federal laws, ordinances, rules and regulations, including, but not limited to, all State and federal workplace safety and labor laws. The Company further agrees that it will ensure that all contractors or subcontractors involved in the Project comply with all laws, ordinances, rules and regulations, and upon confirmation of a violation by an agency or entity with jurisdiction over such matter, Company shall immediately ensure the violation is abated, which may include termination of the subcontractor from the Project. Failure to abate any violation shall be considered a material breach of this Agreement.

ARTICLE IV

RESERVED

ARTICLE V
COVENANTS OF THE COMPANY

Section 5.1. Covenants of the Company.

Following the completion of the first Data Center and until the Termination Date set forth in *Section 11.10* hereof, the Company agrees with the City as follows:

(a) Maintenance of Property. The Company will maintain, preserve and keep the Project (whether owned in fee or a leasehold interest) 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 in its sole and absolute discretion.

(b) Books and Records. The Company 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 the Company at the Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and the Company will provide reasonable protection against loss or damage of such books of record and account.

(c) Compliance with Laws. In the construction, use, and occupancy of the Project, the Company will comply with all laws, rules and regulations relating to its business.

(d) Non-Discrimination. In its construction, use, and occupancy of the Project, the Company shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, sexual orientation, gender identity or disability. The Company shall ensure that applicants for employment are considered, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, age or disability.

(e) Real Estate Taxes. The Company 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. The Company agrees that, while this Agreement remains in force and effect, it will not seek and shall not be eligible for any tax deferral, reimbursement, or exemption, either presently or prospectively authorized under Iowa Code Chapter 403, 404, or 427B, except as expressly provided for herein or in any amendment hereto.

(f) Unemployment Insurance. Except as otherwise provided by law, the Company shall only utilize workers on the Project that have unemployment insurance coverage provided by the contractor or subcontractor by which the worker is employed. The Company is required, upon request from the City, to provide proof of the State statutory required unemployment insurance coverage for all workers on the Project from all contractors and subcontractors.

(g) Workers' Compensation Insurance. Except as otherwise provided by law, the Company shall only utilize workers on the Project that have workers' compensation coverage provided by the contractor or subcontractor by which the worker is employed. The Company is required, upon request from the City, to provide proof of the State statutory required workers' compensation insurance for all workers on a Project from all contractors and subcontractors.

(h) Subcontractors. The Company is required, upon request from the City, to provide a list of all subcontractors performing work on the Project.

(i) Completion Guarantee. By signing this Agreement, the Company hereby agrees to comply with all the terms and provision of this Agreement pertaining to the obligations with respect to the construction of the Project. Without limiting the generality of the foregoing, the Company agrees that: (a) construction of the Project shall commence and be completed within the time limits set forth herein; (b) the Project shall be constructed and completed in accordance with any approved site plans or Construction Plans; (c) the Project shall be constructed and completed free and clear of any mechanic's liens, materialman's liens, and equitable liens; (d) the Project shall be constructed in accordance with all applicable City, State, and federal laws and regulations pertaining to workplace safety and applicable labor standards; and (e) all costs of constructing the Project shall be paid when due. Notwithstanding anything to the contrary above, however, the Company in its sole discretion may elect not to commence construction of the Project in which event the Company shall not be entitled to receive any of the financial incentives set forth herein and this Agreement shall automatically terminate as of the earlier of the date the City receives written notice from the Company of its election not to commence construction of the Project or the Commencement Date described in Section 3.3(a). In the event of such termination, neither Party shall have any liability to the other hereunder except for the obligations of confidentiality set forth in Section 11.17 and indemnification set forth in Article VIII which shall survive termination.

Section 5.2. Employment.

(a) The Company through its Affiliate shall timely submit all applications and necessary documentation to qualify the Project for participation in the HQJP so as to allow for the Economic Development Exemption contemplated by this Agreement. The Company and its Affiliate shall submit all ongoing certifications and reports and comply with all of the maintenance obligations as required by the HQJP and the HQJ Contract, and provide copies to the City contemporaneous with any submission to the IEDA.

(b) The Company through its Affiliate agrees that it will employ no less than the number of Full Time Equivalent Employees required under the HQJ Contract on or before the date required under the HQJ Contract for the Project (the "**Employment Date**"), which Full Time Equivalent Employees must meet the Qualifying Wage Threshold and be employed at the Project until the "**Employment Termination Date**". Employees shall be considered to be at the Project if they perform services in or on the Improvements for the Project. The Employment Termination Date for the Project shall be the Maintenance Period Completion Date under the HQJ Contract.

(c) Failure by the Company to comply fully with the provisions of this Section 5.2 shall be governed exclusively by Sections 6.3 and 6.6 hereof and shall not constitute an Event of Default under Section 10.1.

Section 5.3. Annual Certification.

(a) To assist the City in monitoring the performance of the Company hereunder, a duly authorized officer of the Company shall annually certify to the City:

(i) The total number of Full Time Equivalent Employees at the Project as of the anniversary of the initial certification as specified in this *Article V* and for the preceding twelve (12) month period, and

(ii) Such officers have re-examined the terms and provisions of this Agreement and that to their knowledge, at the date of such certificate, and during the preceding twelve (12) months, the Company is not or was not, in material default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

(b) Such certificate shall be provided on or as of the Employment Date and continue through the Employment Termination Date.

(c) The certification required in this *Section 5.3* shall not disclose names of employees, tenants or other personally identifiable information.

Section 5.4. Annual Meeting.

While this Agreement remains in force and effect, the City and Company shall meet on an annual basis to mutually provide development updates. The updates may include, but are not limited to, development and infrastructure planning, market barriers and trends, and other updates as necessary for the Parties to remain abreast of issues pertaining to local economic conditions and development of the Development Property. Outside of the annual meeting, the City and Company may meet on an ad-hoc basis to discuss the timing and development of any forthcoming additional Improvement, or infrastructure projects being undertaken by the City which may impact the Development Property or the Project. The first annual meeting shall occur in August 2024 and shall thereafter continue annually on or about the anniversary of the first meeting.

Section 5.5. Urban Renewal.

Prior to commencing construction of the Project and as a condition to receiving any permits from the City therefor, the Company shall cooperate in and consent to the City's establishment of one or more urban renewal areas which incorporate the Development Property, and to the City's exercise of all powers under the Urban Renewal Law, as evidenced by the Company executing a "Consent of Property Owner for Inclusion of Property in an Urban Renewal Area" in substantially the same form as attached hereto as Exhibit 5.5. In the event the Company has not yet closed on the purchase of any part of the Development Property when the urban renewal process is commenced, the Company shall cause the existing title holder(s) to sign a consent to establish one or more urban renewal areas that incorporate the Development Property.

Section 5.6. RISE Grant and Other Programs.

The Company and the City shall mutually cooperate in applying for, and remaining qualified for, other supplementary state programs used to finance public improvements to support the development of the Development Property, including the Revitalize Iowa's Sound Economy ("**RISE**") Fund pursuant to Iowa Code Chapter 315, which RISE or other State funding may require the Company to report information on created and/or retained jobs in connection with the Project, provided that the Company will not be required to provide any additional information that is not otherwise required by the HQJP or this Agreement for the Project.

ARTICLE VI
FINANCIAL INCENTIVES

Section 6.1. Economic Development Exemption.

(a) For and in consideration of the obligations being assumed by the Company as set forth herein, and subject to the Company being and remaining in compliance with the terms of this Agreement and the Company's Affiliate being and remaining in compliance with the terms of the HQJ Contract, the City shall provide for the Company a value-added property tax exemption pursuant to Iowa Code Section 15.332 ("**Economic Development Exemption**") for the Project, subject to the terms of this *Article VI*.

(b) Subject to the Conditions Precedent to Exemption as provided for in *Section 6.2*, the Economic Development Exemption shall be 70% of the actual value added by the Improvements of the Project ("**Exemption Percentage**") and shall extend for a period of 20-years beginning January 1 of the year following the completion (as evidenced by the issuance of the certificate of occupancy) of the first Data Center, unless eligibility for the exemption terminates sooner under the terms of this Agreement ("**Exemption Term**"). The Economic Development Exemption shall apply only to the value of Improvements. The entire Project shall be entitled to one twenty-year Exemption Term beginning as of January 1 of the year following the completion of the first Data Center and satisfaction of the conditions set forth in Section 6.2.

As of the Effective Date, the percentage of rollback for industrial and commercial real property pursuant to Iowa Code §441.21(5)(b) of the Code is equivalent to the residential rollback percentage for the first $150,000 of actual assessed value and 10% for the actual assessed value above $150,000. In the event that the percentage of rollback is increased, or decreased, by the State during the term of this Agreement without the provision of backfill to the City for the shortfall in taxes resulting from the additional rollback, the Exemption Percentage shall be adjusted accordingly. It is the intent of the Parties that the ad valorem taxes derived from the Improvements shall not decrease (or increase) as a result of a change in the rollback formula.

The City and Company shall work cooperatively to communicate with the City Assessor's Office on the appropriate exemption percentage under this Agreement and the applicable commencement date for such exemption.

(c) If the IEDA does not approve the Project for the Economic Development Exemption, the City shall work in good faith to provide, in lieu of the Economic Development Exemption, a comparable tax increment financing rebate for the proposed Project, subject to all of the applicable legislative processes, the Parties agreeing to specific terms in a written agreement or amendment to this Agreement, and the availability of such incentive under controlling law. The tax increment financing rebate incentive shall be deemed comparable if: (A) the annual rebate is equivalent to 70% (subject to adjustment as set forth in Section 6.1(b)) of the tax increment created by the completed Project (Improvement value only) during a fiscal year and provided to the City pursuant to the Urban Renewal Law then in effect; and (B) the incentive includes annual rebates through the Exemption Term.

(d) If, within twenty (20) years of the Effective Date, the IEDA does not agree to amend the HQJ Contract to allow a Data Center proposed for the Development Property to qualify for the Economic Development Exemption as contemplated in Section 6.1(a), or the HQJP is discontinued or altered in such a way so that the Economic Development Exemption is not available to the Company related to the proposed Data Center, the City shall work in good faith to provide, in lieu of the Economic Development Exemption, a comparable tax increment financing rebate for the proposed Data Center, subject to all of the applicable legislative processes, the Parties agreeing to specific terms in a written agreement or amendment to this Agreement, and the availability of such incentive under controlling law. The tax increment financing rebate incentive shall be deemed comparable if: (A) the annual rebate is equivalent to 70% (subject to adjustment as set forth in Section 6.1(b)) of the tax increment created by the completed Data Center (Improvement value only) during a fiscal year and provided to the City pursuant to the Urban Renewal Law then in effect; and (B) the incentive includes annual rebates through the Exemption Term.

Section 6.2. Conditions Precedent to Economic Development Exemption.

The Project's eligibility for the Economic Development Exemption as provided for in the *Article V*I is conditioned on the satisfaction of the following (the "**Conditions Precedent to Exemption**"):

(a) Timely completion of the first Data Center in the Project and satisfaction of the Minimum Investment.

(b) The structures in the Project must (i) include at least one (1) Data Center; (ii) meet the definition of Improvements in accordance with the terms of this Agreement and applicable State Code, (iii) be constructed and operating consistent with the terms, conditions and limitations as set forth in this Agreement, and (iv) be assessed for tax purposes as commercial or industrial property.

(c) The Company must be in material compliance with the terms of this Agreement, including the obligations set forth in *Article V*, with respect to the Project.

(d) The Economic Development Exemption must be and remain available pursuant to State law.

(e) The Project must: (i) qualify for and be awarded incentives from the State under the HQJP; (ii) be subject to and in compliance with the HQJ Contract for the Project, as may be amended from time to time; and (iii) be eligible for the designated level of exemption as provided for in the HQJP. If the HQJP is discontinued or altered in a way that the Economic Development Exemption is not available to the Company, then the Company does not need to meet this obligation.

(f) The Company shall be current on its annual payments into the Community Betterment Fund as provided for in *Section 6.7*.

Section 6.3. Termination of Economic Development Exemption.

(a) The Economic Development Exemption may be subject to termination in accordance with the terms contained in this Agreement. In the event that the Project satisfies the Conditions Precedent to Exemption and receives the scheduled Economic Development Exemption, but a condition contained in the Conditions Precedent to Exemption ceases to be satisfied prior to the expiration of the 20 year Exemption Term, subject to the notice and cure period as set forth in *Section 10.2*, the Economic Development Exemption shall cease with respect to the Project as of the January 1 following the expiration of the notice and cure period.

(b) If, at any time while this Agreement remains in force and effect, there is a decision of a court of competent jurisdiction that is affirmed on appeal by an appellate court that the Economic Development Exemption incentive to the Company is not authorized under the applicable provision of State law, as then constituted, either Party may terminate this Agreement by giving written notice of the other Party. Both Parties may join any judicial or administrative action where another party is challenging the authorization of the specific Economic Development Exemption provided under this Agreement or any action that may negatively impact an Economic Development Exemption authorization. Each Party shall be responsible for its own attorney's fees, expenses and costs associated therewith.

Section 6.4. Economic Development Rebates.

(a) For and in consideration of the obligations being assumed by the Company as set forth herein, and subject to the Company being and remaining in compliance with the terms of this Agreement, the City agrees to make twenty (20) annual payments to the Company ("**Economic Development Rebates**") for each Data Center, each rebate consisting of 75% of the electric franchise fee collected pursuant to Iowa Code §364.2(4)(f) during the prior twelve (12) months from the operation of the respective Data Center ("**Data Center Franchise Fees**"). The City and the Company shall mutually cooperate with the electric utility company to identify the amount of the Data Center Franchise Fees paid by the Company for each Data Center.

(b) The City shall create a sub-account in which to deposit 75% of the Data Center Franchise Fees received from the electrical provider for each Data Center.

(c) Each Economic Development Rebate payment by the City to the Company for each Data Center shall be an amount equal to 75% of the Data Center Franchise Fees collected by the City through the electrical provider (without regard to any interest that may accrue in the sub-account) during the prior twelve (12) month period, and shall be disbursed annually to the Company commencing on or about one (1) full year after the completion of the Data Center, as evidenced by the issuance of a certificate of occupancy for the Data Center, and continuing thereafter annually until twenty (20) payments are made, unless terminated as provided for herein.

(d) The obligation of the City to make any Economic Development Rebate hereunder for any Data Center in any year shall be subject to and conditioned upon:

(i) The timely payment by the Company of all electric franchise fees due and payable for all completed Data Center.

(ii) The Company must be in material compliance with the terms of this Agreement, including the obligations set forth in *Article V,* with respect to the Project.

(iii) The City must have the authority under applicable provisions of State Code, including Iowa Code Chapter §384.3A(3)(i), which authorizes the City to rebate electric franchise fees for economic development purposes.

(iv) The Company shall have made its annual payments into the Community Betterment Fund for the Data Center as required by *Section 6.7*.

Section 6.5. Non-Appropriation/Limited Source of Funding.

(a) The Economic Development Rebates shall be paid only from Data Center Franchise Fees, and shall not be payable from any other franchise fees, funds or taxes. Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay any installment of the Economic Development Rebate from the Data Center Franchise Fees shall be an obligation limited to currently budgeted funds, and is not a general obligation or other indebtedness of the City or a pledge of its full faith and credit within the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation by the City Council of the City as provided in this *Section 6.5*. City may exercise its right of non-appropriation as to the amount of the installments to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall be exercised only by resolution affirmatively declaring the City's election to non-appropriate funds otherwise required to be paid in the fiscal year under this Agreement.

(b) If the City Council of the City elects to not appropriate sufficient funds in the budget for any future fiscal year from the Data Center Franchise Fees for the payment in full of the Economic Development Rebate due and payable in that fiscal year, then the City shall have no further obligation to the Company for the payment of any portion of the Economic Development Rebate due in that fiscal year which cannot be paid with the funds then appropriated for that purpose. Upon such non-appropriation, the City shall promptly forward a notice of the same to the Company.

(c) The right of non-appropriation reserved to the City in this *Section 6.5* is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Rebates shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provisions shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the forgoing intent of the parties, and no event of default of the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

(d) Although non-appropriation of the Economic Development Rebate shall under no circumstances constitute an Event of Default hereunder, if in any year the Economic Development Rebates are not paid to the Company due to the City's non-appropriation, or due to the invalidation of the Economic Development Rebate obligation by a court decision, the Company shall have the right to terminate this Agreement or to withhold the Community Betterment Fund payment up to the amount of the Economic Development Rebate not paid by the City.

Section 6.6. <u>Nonpayment of Economic Development Rebate Payments</u>.

(a) If the Company or its Affiliate is not in compliance with the employment requirement set forth in section 5.2 with respect to the Project during any year, as evidenced by an Annual Certification or otherwise, the City shall have no obligation to make the next Economic Development Rebate for any Data Center.

(b) Each Annual Certification filed by the Company shall be considered separately in determining whether the City shall be entitled to eliminate any of the Economic Development Rebate payments. Under no circumstances shall the failure by the Company to qualify for an Economic Development Rebate in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Rebates may be awarded to the Company, it being the intent of parties hereto to provide the Company with an opportunity to receive up to twenty (20) Economic Development Rebates for each Data Center provided the Company fully complies with the provisions hereof and becomes entitled thereto.

Section 6.7. <u>Community Betterment Fund</u>.

The City and Company acknowledge that the Project being undertaken by the Company and being assisted by the City, is anticipated to increase the economic development activities in the City. The Company agrees to assist the City in supporting the growth of amenities and infrastructure which benefit the community, including the Company and its current and prospective employees, and therefore shall make annual payments ("**<u>Community Betterment Payments</u>**") to the City for deposit in a Community Betterment Payment Fund (the "**<u>Fund</u>**") under the following terms:

(a) The annual amount of Community Betterment Payments shall be Four Hundred Thousand Dollars ($400,000) per Data Center building constructed on the Development Property, which payments shall commence on January 1 following the completion of each Data Center building in the Project, as evidenced by the Company's receipt from the City of an occupancy permit for the Data Center building, and continue thereafter annually for each Data Center until the maximum aggregate payment totals have been reached or for (15) fifteen years, whichever occurs first for each Data Center.

(b) The maximum, aggregate Community Betterment Payments accruing per Data Center building shall be Six Million Dollars ($6,000,000).

(c) The total, cumulative, maximum Community Betterment Payments for all Data Centers shall be Thirty-Six Million Dollars ($36,000,000).

(d) At the City's sole and absolute discretion, the Fund may be kept segregated from the City's general funds in an interest bearing account and used by the City for the planning, acquisition, construction, and development of public improvements, infrastructure, recreation trails, parks and open space, sports and recreation facilities, public buildings or other means of benefiting the public, provided however, that the City will provide the Company with an opportunity to provide input regarding the use of the Fund.

Section 6.8. <u>Clean Wastewater Discharge Credit</u>.

Based upon anticipated wastewater discharge for the Project, the Company will be subject to the Group II comprehensive sewer discharge rate included in Chapter 13 of the City Code. However, it is anticipated that a portion of the Company's wastewater will be of such a nature so as to allow the City to market the wastewater as gray water to other industries in the directly serviceable vicinity of the Project. To incent the Company to provide re-marketable gray water consistent herewith, for each month that a Data Center satisfies all of the following conditions prior to the Termination Date, the City shall provide the Company a credit equivalent to $1.30 per ccf of Gray Wastewater Discharge produced by the Data Center that month (the per unit credit shall escalate at 2.5% annually provided that the credit shall never exceed 57% of the applicable per unit sewer discharge rate), said credit to be shown on that month's statement from the City for the Data Center (the "**Gray Wastewater Discharge Credit**"):

(a) As part of the Data Center, the Company shall construct separate discharge piping for sanitary waste water and cooling discharge ("**Gray Wastewater Discharge**"), which Gray Wastewater Discharge shall be routed to an offsite location, which location and route shall be agreed to by the City and Company, provided however, that if the Company does not construct separate discharge piping for sanitary waste water and cooling water discharge, the only remedy available to the City is that the Company shall not be eligible for the Gray Water Discharge Credit for that Data Center.

(b) The Company shall implement a method of separately metering the Gray Wastewater Discharge and the sanitary wastewater discharge for the Data Center, which metering method shall be as mutually agreed to by the City and the Company. The Company shall report the respective discharge amounts to the City on a monthly basis in a mutually agreed upon form for purposes of both calculating the comprehensive wastewater usage for billing purposes and calculating any Gray Water Discharge Credit. If the Company does not separately pipe and meter the Gray Wastewater Discharge and sanitary wastewater discharge, then comprehensive wastewater volumetric flow shall be determined and billed based on incoming metered water usage and the Company shall not be eligible for the Gray Water Discharge Credit for the Data Center.

(c) The Data Center shall produce at least the quantity of Gray Wastewater Discharge each month as set forth in Exhibit 6.8, which Exhibit 6.8 is subject to revision from time to time by mutual consent of the Parties; provided, however, that if such production level is not reached the only remedy available to the City is that the Company shall not be eligible for the Gray Wastewater Discharge Credit for the Data Center that month.

(d) The constituency for the Gray Wastewater Discharge, including but not limited to flow, total suspended solids, total kjeldahl nitrogen (TKN), and carbonaceous biochemical oxygen demand (CBOD), shall be below constituency limits for "Group II" users as defined Chapter 13.08(d) of the City Code, and shall have flow at greater than 0.1 MGD and less than 1.5 MGD, with 40 mg/l or less of TSS, 5 mg/l or less of TKN, and 5 mg/l or less of CBOD. As Gray Wastewater Discharge flows approach 1.5 MGD, the Company and City will review reclassification options for the Data Center as a possible Group III user. For the sake of clarity, with the exception of the flow standards which are applicable to the Group user determination, the constituency of the Gray Wastewater Discharge under this paragraph applies only if the Company elects to receive the Gray Water Discharge Credit. If the Company does not elect to receive the Gray Wastewater Discharge Credit, the constituency of the Gray Wastewater Discharge under this paragraph, with the exception of the flow standards, will not apply.

ARTICLE VII
WATER/WASTEWATER CAPACITY AND SERVICE

Section 7.1. Existing Water and Sewer Capacities.

As of the Effective Date, the water and wastewater capacities set forth in Exhibit 7.1 are available to the Development Property (the "**Existing Capacity**").

Section 7.2. Planned Water Capacity.

Subject to the legislative discretion of City Council and receiving the necessary approvals, licenses, and permits as required by State law, the City intends to construct certain public improvements, at the City's cost and expense, that are expected to increase the total water capacity available to the Development Property to the amount and delivery timeline set forth on Exhibit 7.2 (the "**Planned Capacity**"):

Section 7.3. Water and Sewer Capacity for Project.

The Company estimates the water and wastewater capacities set forth on Exhibit 7.3 are required relative to the Project (the "**Development Property Capacity**"). The City commits to provide utility service to the Development Property up to the Development Property Capacity amounts, subject to the schedule set forth in Exhibit 7.3, to incent Company's construction and operation of the Project, administered in accordance with Section 7.4 hereof. Notwithstanding the previous sentence, if the City has additional water or wastewater capacity available that is not otherwise committed to other customers of the City, the Company may have access to such additional water or wastewater capacity above the Development Property Capacity to the same extent as any other current or potential industrial user.

Section 7.4. Development Property Capacity Terms.

The following terms shall apply to the parties' allocation and administration of the Development Property Capacity:

(a) Current growth models for the planned use of the City's water and wastewater utilities will not infringe upon Company's use of the Development Property Capacity through the time period of two (2) years after the completion of the first Data Center (as evidenced by the issuance of a certificate of occupancy for the Data Center and support buildings in the Plans for the Project). However, during the annual meetings under Section 5.4 hereof, the parties shall discuss anticipated utility utilization for the Project. If the City determines that additional third-party development in the area may necessitate the expansion of the Existing or Planned Capacities so as to accommodate the additional third-party development while providing the Development Property Capacity to the Company, the City will notify the Company of such potential need and the Company agrees to discuss in good faith with the City whether the Company's planned engineering of the Project could support reducing the Development Property Capacity set forth herein so as to satisfy the needs of the Project, and accommodate the third-party development. If the Company cannot reduce the Development Property Capacity, the City shall be responsible for expanding the Existing or Planned Capacity to meet the needs of the third-party development.

(b) Upon the three (3) year anniversary of completion of the first Data Center (the **"Utilization Lookback"**), the City and Company shall meet to evaluate the actual annual water and wastewater usage of the Project, and plan for the utility needs of future Data Centers. For purposes of this section, the completion of the first Data Center shall occur when the Company has received a certificate of occupancy from the City for the first Data Center building and other support buildings for that Data Center identified in the Plans for the Project. Based on discussions at the Utilization Lookback, if actual annual usage for the Project is less than contemplated in calculating the Development Property Capacity amounts set forth in Exhibit 7.3, the Development Property Capacity set forth therein shall be reduced to amounts reflective of the actual annual usage of the Project. If the prospect of additional Data Centers is abandoned in the future, Development Property Capacity will be reduced accordingly.

(c) The Utilization Lookback and corresponding adjustments shall occur for each additional Data Center proposed through the term of the Agreement.

Section 7.5. Additional Water and Sewer Capacity.

(a) If any additional Data Center constructed after completion of the first Data Center requires additional water and/or waste water capacity which exceeds the Development Property Capacity or other capacity then available to the City as determined by the City in its reasonable discretion, the City shall develop plans for water and/or wastewater expansion, as the case may be, to serve the additional Data Center. The City will engage in direct and timely conversations with the Company as to the timing, design, and increased capacity that will result from the additional Data Center.

(b) The Company shall pay its Pro Rata Share, as defined below, of the total costs incurred by the City to expand the water and/or waste water infrastructure based on the increased demand projected to be incurred by the construction of additional Data Center based on the following formula:

$$\text{Pro Rata Share} = (\text{total infrastructure expansion cost}) \times \frac{(\text{capacity required by additional Data Center})}{(\text{capacity generated by the expansion})}$$

Section 7.6. Dedication of Right-of-Way.

(a) The Company shall provide all necessary permanent and/or construction easements and/or dedicate any right-of-way necessary for the City, at no cost to the City, at mutually agreed upon locations, for any public improvements deemed by the City to be reasonably necessary to serve the Development Property, including but not limited to road improvements along the Development Property.

(b) The Company shall also provide permanent and construction easements, at mutually agreed upon locations, at no cost to the City, for an extension of water and wastewater service to land west of the Development Property within the Big Cedar Industrial Park as generally depicted in Exhibit 7.6. It is the intent of the Parties that such water and wastewater lines be located, to the extent reasonably practicable, in the right-of-way designated pursuant to section 7.6(a) as agreed upon by the Parties. Except for any willful misrepresentation or any willful or wanton, misconduct, negligence, or any unlawful act of the Company or its agents, servants and employees, to the extent allowed by law the City agrees to protect and defend the Company, now or forever, and further agrees to hold the Company harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the City's construction of the extension of water and wastewater infrastructure described in this Section 7.6(b).

(c) The location of such easements or right-of-way shall be as agreed upon by the City and Company.

Section 7.7. Water & Wastewater Metering and Billing

(a) The City shall bill for or issue credits for water, wastewater and Gray Wastewater Discharge services based on actual use as set forth in this section.

(i) The City shall bill for water services based on actual use, as metered by a City approved and furnished water meter. The Company shall reimburse the City for the cost of the water meter.

(ii) The City shall bill for wastewater services based on actual use, as metered by a City approved wastewater meter or metering device such as a weir. The v notch weir with ultrasonic level sensor is an example of a City approved wastewater meter. Any such device must have an accuracy of at least -/+ 0.5%.

(iii) The City shall credit the Company for Gray Wastewater Discharge, if applicable, based on actual use, as metered by a City approved Gray Wastewater Discharge meter or metering device such as a weir. The v notch weir with ultrasonic level sensor is an example of a City approved Gray Wastewater Discharge meter. Any such device must have an accuracy of at least -/+ 0.5%.

ARTICLE VIII
INDEMNIFICATION

Section 8.1. Release and Indemnification Covenants.

(a) The Company releases the City and the governing body members, officers, agents, servants and employees thereof (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 Project.

(b) Except for any willful misrepresentation or any willful or wanton, misconduct, negligence, or any unlawful act of the Indemnified Parties, the Company agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings 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 the Company against the 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 Project, or

(iii) any hazardous substance or environmental contamination located in or on the Development Property.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Company or its officers, agents, servants or employees or any other person who may be about the Project 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) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

(e) The provisions of this *Article VIII* shall survive the termination of this Agreement.

ARTICLE IX
ASSIGNMENT OR TRANSFER

Section 9.1. Status of the Company; No Transfer or Assignment.

As security for the obligations of the Company under this Agreement, the Company agrees, prior to the Termination Date, to maintain its existence as a limited liability company, and that it will not wind up or otherwise dispose of its interest in all or substantially all of the Development Property, or assign, participate, or otherwise act in a manner as to convey to any third party any interest in this Agreement to any other party unless:

(a) The transferee, partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Company under this Agreement arising after the transfer of this Agreement; and

(b) The City consents thereto in writing in advance, not to be unreasonably withheld, conditioned, delayed or denied if the Company establishes that the successor has comparable qualifications, financing and operating capabilities and would not exempt the Development Property from property tax liability. Notwithstanding the foregoing, however, or any other provisions of this Agreement, the City agrees that the Company without having to obtain the consent of the City:

(i) May lease any portion of the Project to third party tenants,

(ii) May pledge and/or assign any and/or all of their assets and real estate for any financing of the Project, or

(iii) Assign any or all portions of the Project to an Affiliate with comparable qualifications, financing and operating capabilities.

Section 9.2. Attorney’s Fees for Transfer or Assignment.

In the event that an assignment or transfer of the Agreement occurs under *Section 9.1*, the Company agrees, on demand therefor, to pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection with the assignment or transfer.

Section 9.3. Prohibition Against Use as Non-Taxable or Centrally Assessed Property.

During the term of this Agreement, the Company, or its successors, or assigns agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or any Project from property tax liability. Nor can the Development Property or any portion of the Project 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); Chapters 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)). This provision shall not apply to property interests conveyed to the City, governmental agency or State regulated utility provider for purposes of constructing or operating infrastructure or improvements related to the Project.

ARTICLE X
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 the Company to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

(b) Failure by the Company to cause the construction of the Project to be commenced and completed pursuant to the terms, conditions and limitation of this Agreement;

(c) Transfer of any interest in the Agreement or Project by the Company, without the City's consent in writing or other violations of the provisions of *Article IX* of this Agreement;

(d) The holder of any Mortgage that is given by Company, or any successor or assign, on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents.

(e) The Company 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 a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Company as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Company or of the Project, or part thereof, shall be appointed in any proceedings brought against the Company, and shall not be discharged within ninety (90) days after such appointment, or if the Company shall consent to or acquiesce in such appointment.

(f) Any representation or warranty made by the Company in this Agreement, or made by the Company in any written statement or certificate furnished by the Company pursuant to this Agreement, shall prove to have been knowingly 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, the City may take any one or more of the following actions after (except in the case of an Event of Default under subsections (e) or (f) of said *Section 10.1 which shall not require an opportunity to cure*) the giving of sixty (60) days' written notice by the City to the Company of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or if the Event of Default cannot reasonably be cured within sixty (60) days and the Company, as applicable, does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Company, deemed adequate by the City, that the Company will cure the default and continue its performance under this Agreement;

(b) The City may terminate the provisions of *Section 6.1* and *Section 6.4* consistent with the terms of Article VI; or

(c) The City may terminate the provisions of Article VII hereof; or

(d) The City may terminate this Agreement; or

(e) The City may withhold the Certificate of Completion; or

(f) The City may withhold the occupancy permit; or

(g) The 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 the Company under this Agreement.

Section 10.3. <u>No Remedy Exclusive</u>.

No remedy herein conferred upon or reserved to the 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. <u>No Implied Waiver</u>.

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. <u>Agreement to Pay Attorneys' Fees and Expenses</u>.

Whenever any Event of Default by the Company occurs, the Company agrees, on demand therefor, to pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

Section 10.6. <u>Option to Terminate</u>.

This Agreement may be terminated by the Company if:

(a) the Company is in compliance with all material terms of this Agreement and no Event of Default has occurred which has not been cured in accordance with the provisions of *Section 10.2* hereof, or

(b) the City fails to comply with any material term of this Agreement, and, after written notice by the Company of such failure, the City has failed to cure such noncompliance within sixty (60) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within sixty (60) days of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Company that such noncompliance will be cured as soon as reasonably possible.

Section 10.7. Effect of Termination.

If this Agreement is terminated pursuant to *Section 10.6,* this Agreement shall be from such date forward null and void and of no further effect; provided, however, that the City's rights to indemnification under *Article VIII* hereof as well as its obligations regarding confidentiality under Section 11.17 hereof shall in all events survive, and provided further that the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination, except that no damages shall be deemed to accrue by reason of the City's determination not to fund an Economic Development Rebate to the Company so long as such action is permitted as provided in this Agreement. In any such action, the prevailing party shall be entitled to recover its reasonable attorney's fees and related expenses incurred in connection therewith (but only, in the case of the City, to the extent permitted by applicable law). Upon termination of this Agreement pursuant to *Section 10.6*, the Company shall be free to proceed with the construction and operation of the Project at its own expense and without regard to the provisions of this Agreement.

ARTICLE XI
MISCELLANEOUS

Section 11.1. Conflict of Interest.

The Company represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to any Project being undertaken by the Company pursuant to this Agreement 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 any 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 any Project, or in any activity, or benefit therefrom, which is part of any 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 either 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 the Company, is addressed or delivered personally to the Company at:

Lillis O'Malley Olson Manning Pose Templeman LLP
Attn: Joel Templeman
505 5th Ave #1005
Des Moines, Iowa 50309

(b) In the case of the City, is addressed to or delivered personally to the City at:

City of Cedar Rapids, Iowa
Attn: City Manager
101 First Street SE,
Cedar Rapids, Iowa 52401

or to such other designated individual or officer or to such other address as either 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 11.3, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay all 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. 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, including any and all covenants and conditions contained in this Agreement.

Section 11.9. Survival.

Each provision of this Agreement shall survive the occurrence of the other provisions of this Agreement to the extent necessary to ensure the full performance of said surviving provision.

Section 11.10. Termination Date.

Unless terminated under the provisions of this Agreement, the provisions of this Agreement shall terminate and be of no further force or effect as of the later of the following (i) the date the last Economic Development Rebate is paid by the City to the Company, or (ii) the Economic Development Exemption is no longer being provided.

Section 11.11. Authority.

Each of the undersigned represents that he/she is authorized to execute this Agreement on behalf of the Parties hereto and further authorized to bind each of the Parties to this Agreement and to the rights and obligations contained herein.

Section 11.12. Amendment; Waiver.

This Agreement may not be amended, waived or modified in any respect unless the same shall be in writing and signed by all Parties. No waiver by a Party of any default by another Party shall constitute a waiver of any other breach or default by another Party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give another Party any contractual right by custom, estoppel, or otherwise.

Section 11.13. Performance by City.

Company acknowledges and agrees that all of the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

Section 11.14. No Third Party Beneficiaries.

No rights or privileges of any Party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, 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.

Section 11.15. Severability.

If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the Parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provisions.

Section 11.16 Consequential Damages.

Neither Party nor any of its Affiliates will be liable to the other Party for special, punitive, incidental, indirect, exemplary, or consequential damages of any nature whatsoever, including loss of profits arising out of or in connection with this Agreement. The Parties intend that this liability limitation will apply even in an Event of Default, negligence (including gross negligence) (in whole or in part), strict liability, or breach of contract of the beneficiary thereof and whether asserted in contract, in warranty, in tort, by statute or otherwise.

Section 11.17 Confidentiality.

(a) Neither Party will disclose the other Party’s Confidential Information, except to (a) any entity such Party directly or indirectly controls, is controlled by, or under common control with such Party; and (b) employees, agents or professional advisors of such Party but only to the extent needed to exercise its rights and fulfill its obligations under this Agreement. Upon termination of the Agreement for any reason or upon request of a Party, each Party will return all Confidential Information, together with any copies of the same, to the other Party, or certify as to its destruction; provided, however, that each Party may keep one (1) copy of any Confidential Information of the other Party to the extent reasonably required (as determined by the retaining Party) for such Party to perform its obligations or exercise its rights under this Agreement.

(b) To the extent there is a third-party request for Confidential Information, the Party receiving the request may disclose Confidential Information when required by applicable law, including without limitation for purposes of this Section 11.17 the Iowa Code Chapter 22 (“Iowa Open Records Law”), after giving the notice set forth in this Section 11.17 to the other Party, if such notice is permitted by applicable law. If any Party is required by applicable law or similar process to disclose any Confidential Information, it will provide the other Party with prompt prior written notice of such request or requirement so that such Party may seek an appropriate protective order and/or waive compliance with this Section 11.17. The Party whose consent to disclose Confidential Information is requested will respond to such request in writing within five (5) days of the request by either authorizing the disclosure or advising of its election to seek a judicial or administrative protective order. If such Party fails to respond within the prescribed period, the disclosure will be deemed approved. If a Party chooses to seek an appropriate protective order or similar judicial relief, the other Party will (a) refrain from disclosing such Confidential Information (unless legally compelled to do so) until the request for a protective order or similar judicial relief is resolved; (b) make all reasonable efforts to cooperate with the Party seeking the protective order or similar judicial relief before the applicable judicial or administrative body; and (c) comply with any validly-issued protective order or similar judicial relief. Without limiting the foregoing, in the event that the Company seeks judicial relief under Section 22.8 of the

Open Records Law, it will be responsible for its own costs of obtaining such relief and will reimburse the City for the actual, reasonable, and documented costs incurred by the City as a result of the City's reasonable efforts to cooperate with the Company during the pendency of a proceeding to determine if the relief sought will be granted.

Section 11.18 Good Faith Obligation.

Each Party agrees to act in good faith toward the other Party in connection with the implementation of its rights and obligations under this Agreement.

[end of document text, signature pages follow]

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

CITY OF CEDAR RAPIDS, IOWA (SEAL)

By: ______________________
Jeffrey A. Pomeranz
City Manager

ATTEST:

By: Alissa Van Sloten
Alissa Van Sloten
City Clerk

STATE OF IOWA)
) ss
COUNTY OF LINN)

On this 29th day of February, 2024, before me a Notary Public in and for said County, personally appeared Jeffrey A. Pomeranz and Alissa Van Sloten to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, 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 Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

NOTARIAL SEAL IOWA
BRIDGET N McMENOMY
Commission Number 784552
My Commission Expires
06.11.2026

Bridget N McMenomy
Notary Public in and for State of Iowa
My Commission Expires: 6/11/26

COMPANY

Heaviside LLC

By: Eugene E. Olson
Name:
Title: Authorized Signatory

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this 13th day of February, 2024, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared Eugene E. Olson, to me personally known, who, being by me duly sworn, did say that he is an Authorized Signatory of Heaviside LLC and that said instrument was signed on behalf of said Company; and acknowledged said instrument to be the free act and deed of said Company by it voluntarily executed.

NOTARIAL SEAL IOWA
JOEL B. TEMPLEMAN
Commission Number 757343
My Commission Expires
March 9, 2027

Notary Public in and for State of Iowa
My Commission Expires: March 9, 2027

EXHIBIT 1.1
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

THOSE PARTS OF THE EAST HALF OF SECTION 13, THE NORTHWEST QUARTER OF SECTION 13, THE SOUTHEAST QUARTER OF SECTION 12, AND THE SOUTHWEST QUARTER OF SECTION 12, ALL BEING IN TOWNSHIP 82 NORTH, RANGE 8 WEST OF THE 5TH P.M., CITY OF CEDAR RAPIDS, LINN COUNTY, IOWA, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE ON AN ASSUMED BEARING OF S89°36'34"W, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2664.01 FEET TO THE SOUTH 1/4 CORNER OF SAID SECTION 13; THENCE N00°46'43"W, ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2649.42 FEET TO THE CENTER OF SAID SECTION 13; THENCE CONTINUING N00°46'43"W, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 387.60 FEET; THENCE N47°12'39"W, 528.93 FEET; THENCEN27°46'43"W, 791.08 FEET; THENCE N21°08'23"W, 829.35 FEET TO THE SOUTHERLY LINE OF PARCEL "B" AS SHOWN IN THE PLAT OF SURVEY NO. 677, RECORDED IN BOOK 3896, PAGE 395 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'22"E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "B", 746.84 FEET TO THE EASTERLY MOST CORNER OF SAID PARCEL "B", ALSO BEING THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 13, AND THE SOUTHEAST CORNER OF PARCEL "A" AS SHOWN IN PLAT OF SURVEY NO. 676, RECORDED IN BOOK 4143, PAGE 560 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'31'E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 1455.44 FEET; THENCE NORTHEASTERLY 580.58 FEET ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 6176.46 FEET, AND A CHORD BEARING N51°53'15"E FOR A DISTANCE OF 580.36 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL "A"; THENCE N49°15'17"E, CONTINUING ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 199.98 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°37'55"E, ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1198.76 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN ON THE ACQUISITION PLAT, RECORDED IN BOOK 6888, PAGE 25 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°41'01"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 1322.89 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°40'14"E, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 17.51 FEET TO THE NORTHWEST CORNER OF AN ACQUISITION PLAT AS RECORDED IN BOOK 6886, PAGE 358 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°48'22"E , ALONG THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN IN THE AFOREMENTIONED ACQUISITION PLAT, 389.84 FEET; THENCE S02°06'22"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 308.72 FEET; THENCE S00°48'23"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 177.49 FEET; THENCE N89°11'37"E, 42.99 FEET TO THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13; THENCE S00°48'23"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1775.30 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 13; THENCE S00°51'31"E ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.76 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13; THENCE S00°50'53"E, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 419.69 ACRES, MORE OR LESS, OF WHICH 5.35 ACRES IS SUBJECT TO RIGHT-OF-WAY EASEMENTS FOR EDGEWOOD ROAD SOUTHWEST AND 76TH AVENUE SOUTHWEST.

EXHIBIT 3.1
DESCRIPTION OF PROJECT

The Project consists of the construction of at least one (1) Data Center building and related improvements, parking, and landscaping as described in the initial HQJ Contract. The Project requires a total investment of not less than $576,000,000 including acquisition of real property, construction of buildings and other structures, equipment, and related site improvements. All improvements shall be in accordance with City standards, the site plan, and Plans.

EXHIBIT 3.4
FORM OF CERTIFICATE OF COMPLETION

FORM OF CERTIFICATE OF COMPLETION

WHEREAS, the City of Cedar Rapids, Iowa (the “City”) and Heaviside LLC (the “Company”), did on or about the _____ day of _________, 20__, make, execute and deliver, each to the other, a Development Agreement (the “Agreement”), wherein and whereby the Company agreed, in accordance with the terms of the Agreement to cause the development of certain real property described as follows:

> THOSE PARTS OF THE EAST HALF OF SECTION 13, THE NORTHWEST QUARTER OF SECTION 13, THE SOUTHEAST QUARTER OF SECTION 12, AND THE SOUTHWEST QUARTER OF SECTION 12, ALL BEING IN TOWNSHIP 82 NORTH, RANGE 8 WEST OF THE 5TH P.M., CITY OF CEDAR RAPIDS, LINN COUNTY, IOWA, DESCRIBED AS FOLLOWS:
> BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE ON AN ASSUMED BEARING OF S89°36'34"W, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2664.01 FEET TO THE SOUTH 1/4 CORNER OF SAID SECTION 13; THENCE N00°46'43"W, ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2649.42 FEET TO THE CENTER OF SAID SECTION 13; THENCE CONTINUING N00°46'43"W, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 387.60 FEET; THENCE N47°12'39"W, 528.93 FEET; THENCEN27°46'43"W, 791.08 FEET; THENCE N21°08'23"W, 829.35 FEET TO THE SOUTHERLY LINE OF PARCEL "B" AS SHOWN IN THE PLAT OF SURVEY NO. 677, RECORDED IN BOOK 3896, PAGE 395 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'22"E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "B", 746.84 FEET TO THE EASTERLY MOST CORNER OF SAID PARCEL "B", ALSO BEING THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 13, AND THE SOUTHEAST CORNER OF PARCEL "A" AS SHOWN IN PLAT OF SURVEY NO. 676, RECORDED IN BOOK 4143, PAGE 560 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'31'E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 1455.44 FEET; THENCE NORTHEASTERLY 580.58 FEET ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 6176.46 FEET, AND A CHORD BEARING N51°53'15"E FOR A DISTANCE OF 580.36 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL "A"; THENCE N49°15'17"E, CONTINUING ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 199.98 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°37'55"E, ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1198.76 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN ON THE ACQUISITION PLAT, RECORDED IN BOOK 6888, PAGE 25 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°41'01"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 1322.89 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°40'14"E, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 17.51 FEET TO THE NORTHWEST CORNER OF AN ACQUISITION PLAT AS RECORDED IN BOOK 6886, PAGE 358 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°48'22"E , ALONG THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN IN THE AFOREMENTIONED ACQUISITION PLAT, 389.84 FEET; THENCE S02°06'22"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 308.72 FEET; THENCE S00°48'23"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 177.49 FEET; THENCE N89°11'37"E, 42.99 FEET

TO THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13; THENCE S00°48'23"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1775.30 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 13; THENCE S00°51'31"E ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.76 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13; THENCE S00°50'53"E, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 419.69 ACRES, MORE OR LESS, OF WHICH 5.35 ACRES IS SUBJECT TO RIGHT-OF-WAY EASEMENTS FOR EDGEWOOD ROAD SOUTHWEST AND 76TH AVENUE SOUTHWEST.

(the "Development Property").

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Company to cause the construction of a certain Project (as defined therein) in accordance with the Agreement; and

WHEREAS, the Company has to the date set forth below performed said covenants and conditions insofar as they relate to the construction of said Project in a manner deemed by the City to be in conformance with the approved building plans to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to *Section 3.4* of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of the Company, and its successors and assigns, to cause the construction of the Project on the Development Property have been completed and performed by the Company and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Linn 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 Project on the Development Property.

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

CITY OF CEDAR RAPIDS

By: ________________________________
_________________, City Manager

ATTEST:

By: __________________________
______________, City Clerk

STATE OF IOWA)
) ss
COUNTY OF LINN)

On this ______ day of _______________, 20__, before me a Notary Public in and for said County, _____________________ personally appeared and ________________________to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, 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 Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

____
Notary Public in and for State of Iowa
My Commission Expires: _____________________

EXHIBIT 5.5
FORM OF URA CONSENT

CONSENT OF PROPERTY OWNER FOR INCLUSION
OF PROPERTY IN AN URBAN RENEWAL AREA

THIS CONSENT OF PROPERTY OWNER FOR INCLUSION OF PROPERTY IN AN URBAN RENEWAL AREA (the **"Consent"**) is made on or as of this _____ day of _______, 202__, by _____________ (the **"Property Owner"**) an _________ having an office for the transaction of business at _____________.

RECITALS:

WHEREAS, the City of Cedar Rapids, Iowa (the **"City"**) intends to establish an urban renewal area for economic development purposes and carry out urban renewal project activities within the urban renewal area all in accordance with Chapter 403 of the Code of Iowa, 20__ (the **"Urban Renewal Act"**), and

WHEREAS, the City has initiated procedures in accordance with the Urban Renewal Act to establish the Big Cedar Industrial Park Urban Renewal Area (the **"Big Cedar Industrial Park URA"**), as depicted in Exhibit A attached hereto and by this reference incorporated herein as an "economic development area" as defined in the Urban Renewal Act, and

WHEREAS, the Property Owner is the owner of certain real estate which is classified as agricultural land as defined under the Urban Renewal Act and located within the proposed Big Cedar Industrial Park URA and legally described in Exhibit B attached hereto (the **"Property"**); and

WHEREAS, the Urban Renewal Act provides that an urban renewal area being established as an "economic development area" shall not include agricultural land, including land which is part of a century farm, unless the owner of the agricultural land agrees to include the agricultural land or century farm in the urban renewal area, and

WHEREAS, the City is desirous of obtaining the consent and approval of the Property Owner for inclusion of the Property in the proposed Big Cedar Industrial Park URA and the Property Owner desires to provide its approval of the same.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Property Owner hereby agrees and states as follows:

1. Property Owner is the owner of the Property described herein above and is authorized to provide this consent and agreement.

2. Property Owner hereby consents and agrees to include the Property, as herein described, in the proposed Big Cedar Industrial Park URA.

3. Property Owner consents to the City's free use of any and all tax increments collected in respect of any properties within the proposed Big Cedar Industrial Park URA, including the Property, for any purpose for which the tax increments may be lawfully used pursuant to the provisions of the Urban Renewal Act, and the City shall have no obligations to the Property Owner with respect to the use thereof.

IN WITNESS WHEREOF, the Property Owner has caused this Consent to be duly executed as of the date set forth above.

PROPERTY OWNER

ENTITY

____

____

TITLE and Authorized Representative

STATE OF IOWA)

) SS:

COUNTY OF LINN)

On this ____ day of ___________, 202__, before me the undersigned, a Notary Public in and for said State, personally appeared __________, to me personally known, who, being by me duly sworn, did say that he/she is the _____________ of _____________, and that said instrument was signed on behalf of the limited partnership; and that said __________________ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said limited partnership, by it voluntarily executed.

____

Notary Public in and for State of ____________

My Commission Expires: __________________

Exhibit A To URA Consent
Map of Big Cedar Industrial Park Urban Renewal Area

Exhibit B To URA Consent
Legal Description of the Property

THOSE PARTS OF THE EAST HALF OF SECTION 13, THE NORTHWEST QUARTER OF SECTION 13, THE SOUTHEAST QUARTER OF SECTION 12, AND THE SOUTHWEST QUARTER OF SECTION 12, ALL BEING IN TOWNSHIP 82 NORTH, RANGE 8 WEST OF THE 5TH P.M., CITY OF CEDAR RAPIDS, LINN COUNTY, IOWA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE ON AN ASSUMED BEARING OF S89°36'34"W, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2664.01 FEET TO THE SOUTH 1/4 CORNER OF SAID SECTION 13; THENCE N00°46'43"W, ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2649.42 FEET TO THE CENTER OF SAID SECTION 13; THENCE CONTINUING N00°46'43"W, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 387.60 FEET; THENCE N47°12'39"W, 528.93 FEET; THENCEN27°46'43"W, 791.08 FEET; THENCE N21°08'23"W, 829.35 FEET TO THE SOUTHERLY LINE OF PARCEL "B" AS SHOWN IN THE PLAT OF SURVEY NO. 677, RECORDED IN BOOK 3896, PAGE 395 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'22"E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "B", 746.84 FEET TO THE EASTERLY MOST CORNER OF SAID PARCEL "B", ALSO BEING THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 13, AND THE SOUTHEAST CORNER OF PARCEL "A" AS SHOWN IN PLAT OF SURVEY NO. 676, RECORDED IN BOOK 4143, PAGE 560 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'31'E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 1455.44 FEET; THENCE NORTHEASTERLY 580.58 FEET ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 6176.46 FEET, AND A CHORD BEARING N51°53'15"E FOR A DISTANCE OF 580.36 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL "A"; THENCE N49°15'17"E, CONTINUING ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 199.98 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°37'55"E, ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1198.76 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN ON THE ACQUISITION PLAT, RECORDED IN BOOK 6888, PAGE 25 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°41'01"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 1322.89 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°40'14"E, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 17.51 FEET TO THE NORTHWEST CORNER OF AN ACQUISITION PLAT AS RECORDED IN BOOK 6886, PAGE 358 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°48'22"E , ALONG THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN IN THE AFOREMENTIONED ACQUISITION PLAT, 389.84 FEET; THENCE S02°06'22"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 308.72 FEET; THENCE S00°48'23"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 177.49 FEET; THENCE N89°11'37"E, 42.99 FEET TO THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13; THENCE S00°48'23"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1775.30 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 13; THENCE S00°51'31"E ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.76 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13; THENCE S00°50'53"E, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 419.69 ACRES, MORE OR LESS, OF WHICH 5.35 ACRES IS SUBJECT TO RIGHT-OF-WAY EASEMENTS FOR EDGEWOOD ROAD SOUTHWEST AND 76TH AVENUE SOUTHWEST.

EXHIBIT 11.3
FORM OF MEMORANDUM OF AGREEMENT

MEMORANDUM OF DEVELOPMENT AGREEMENT

WHEREAS, the CITY OF CEDAR RAPIDS, IOWA (the **"City"**) and HEAVISIDE LLC (the **"Company"**) did on or about the ____ day of _________, 20__, make, execute and deliver a Development Agreement (the **"Agreement"**), wherein and whereby the Company agreed, in accordance with the terms of the Agreement, to develop certain real property located within the City and as more particularly described as follows:

THOSE PARTS OF THE EAST HALF OF SECTION 13, THE NORTHWEST QUARTER OF SECTION 13, THE SOUTHEAST QUARTER OF SECTION 12, AND THE SOUTHWEST QUARTER OF SECTION 12, ALL BEING IN TOWNSHIP 82 NORTH, RANGE 8 WEST OF THE 5TH P.M., CITY OF CEDAR RAPIDS, LINN COUNTY, IOWA, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE ON AN ASSUMED BEARING OF S89°36'34"W, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2664.01 FEET TO THE SOUTH 1/4 CORNER OF SAID SECTION 13; THENCE N00°46'43"W, ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 2649.42 FEET TO THE CENTER OF SAID SECTION 13; THENCE CONTINUING N00°46'43"W, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 387.60 FEET; THENCE N47°12'39"W, 528.93 FEET; THENCEN27°46'43"W, 791.08 FEET; THENCE N21°08'23"W, 829.35 FEET TO THE SOUTHERLY LINE OF PARCEL "B" AS SHOWN IN THE PLAT OF SURVEY NO. 677, RECORDED IN BOOK 3896, PAGE 395 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'22"E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "B", 746.84 FEET TO THE EASTERLY MOST CORNER OF SAID PARCEL "B", ALSO BEING THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 13, AND THE SOUTHEAST CORNER OF PARCEL "A" AS SHOWN IN PLAT OF SURVEY NO. 676, RECORDED IN BOOK 4143, PAGE 560 IN THE OFFICE OF THE RECORDER, LINN COUNTY, IOWA; THENCE N54°33'31'E, ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 1455.44 FEET; THENCE NORTHEASTERLY 580.58 FEET ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 6176.46 FEET, AND A CHORD BEARING N51°53'15"E FOR A DISTANCE OF 580.36 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL "A"; THENCE N49°15'17"E, CONTINUING ALONG THE SOUTHERLY LINE OF SAID PARCEL "A", 199.98 FEET TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°37'55"E, ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1198.76 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN ON THE ACQUISITION PLAT, RECORDED IN BOOK 6888, PAGE 25 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°41'01"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 1322.89 FEET TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12; THENCE N89°40'14"E, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 17.51 FEET TO THE NORTHWEST CORNER OF AN ACQUISITION PLAT AS RECORDED IN BOOK 6886, PAGE 358 IN THE OFFICE OF THE RECORDER, LINN COUNTY IOWA; THENCE S00°48'22"E , ALONG THE WESTERLY RIGHT-OF-WAY LINE OF EDGEWOOD ROAD SOUTHWEST AS SHOWN IN THE AFOREMENTIONED ACQUISITION PLAT, 389.84 FEET; THENCE S02°06'22"E, ALONG

SAID WESTERLY RIGHT-OF-WAY LINE, 308.72 FEET; THENCE S00°48'23"E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 177.49 FEET; THENCE N89°11'37"E, 42.99 FEET TO THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13; THENCE S00°48'23"E, ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1775.30 FEET TO THE EAST 1/4 CORNER OF SAID SECTION 13; THENCE S00°51'31"E ALONG THE EAST LINE OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.76 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13; THENCE S00°50'53"E, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 13, A DISTANCE OF 1326.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 419.69 ACRES, MORE OR LESS, OF WHICH 5.35 ACRES IS SUBJECT TO RIGHT-OF-WAY EASEMENTS FOR EDGEWOOD ROAD SOUTHWEST AND 76TH AVENUE SOUTHWEST.

the **"Development Property"**); and

WHEREAS, the term of this Agreement shall commence on the _____ day of February, 2024, and terminate as set forth in the Agreement; and

WHEREAS, the City and Company have agreed 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 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 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, Cedar Rapids, Iowa.

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

[signature pages to follow]

CITY OF CEDAR RAPIDS, IOWA

By: ______________________________
Jeffrey A. Pomeranz
City Manager

ATTEST:

By: _____________________________
Alissa Van Sloten
City Clerk

STATE OF IOWA)
) ss
COUNTY OF LINN)

On this ______ day of ________________, 2024 before me a Notary Public in and for said County, Jeffrey A. Pomeranz personally appeared and Alissa Van Sloten to me personally known, who being duly sworn, did say that they are the City Manager and City Clerk, respectively of the City of Cedar Rapids, Iowa, a Municipal Corporation, 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 Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said City Manager and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

____
Notary Public in and for State of Iowa
My Commission Expires: ______________________

COMPANY

Heaviside LLC

By: ____
Name:
Title: Authorized Signatory

STATE OF _____________)
) ss
COUNTY OF ___________)

On this ____ day of ________________, 2024_, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared ______________________, to me personally known, who, being by me duly sworn, did say that he is the authorized representative of Heaviside LLC and that said instrument was signed on behalf of said Company; and acknowledged said instrument to be the free act and deed of said Company by it voluntarily executed.

____
Notary Public in and for State of ______
My Commission Expires: ______________________