AGENDA ITEM TITLE:
Resolution approving development agreement with Seven Hills East, LLC.

ACTION REQUESTED/RECOMMENDED:
Approval of Resolution

BUDGET INFORMATION:
Was this expenditure budgeted?  N/A  Budget Status:  N/A

Amount:  
GL Account:  
CIP #  
*If multiple accounts, list below in summary

If the matter was not budgeted, explain why funding is requested?
N/A

SUMMARY/EXPLANATION:
Seven Hills LLC is relocating two historic brick homes in Uptown Marion to a new location at 9th Street/4th Avenue. They will then be incorporated with new construction to create a multifamily complex. Marion will be reimbursing for direct costs of relocation of the homes up to a maximum of $100,000 in the form of an economic development grant. Cost for the grant will be recovered from the increased taxable value of the new property and Central Corridor TIF district.

BACKGROUND/PREVIOUS COUNCIL ACTION:
Approval of Memorandum of Understanding with Seven Hills LLC 4/2019
Approval of Amendment to MOU 10/19

CONTRACT INFORMATION:

Original Contract:  
Total Change Order(s):  
Total Contract:  
Amount Expended to Date:  
Percent Expended to Date:  

STAFF CONTACT:
Lon Pluckhahn
319-743-6302
lpluckhahn@cityofmarion.org
DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Marion, Iowa (the “City”) and Seven Hills East, LLC (the “Developer”) as of the ___ day of ___________________, 2020 (the “Commencement Date”).

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

WHEREAS, the City has undertaken the redevelopment of certain property situated at 525 11th Street and 520 12th Street (the “City Redevelopment Property”) in the Urban Renewal Area to serve as the site of future economic development therein; and

WHEREAS, the Developer owns certain real property situated along 4th Avenue (the “Multifamily Housing Development Property”) in the Urban Renewal Area and more particularly described on Exhibit A hereto; and

WHEREAS, the Developer has proposed to undertake the acquisition and relocation (the “Relocation Project”) of two historic homes (the “Historic Homes”) situated on the City Redevelopment Property from the City Redevelopment Property to the Multifamily Housing Development Property; and

WHEREAS, the Developer has further proposed to construct and develop a multifamily housing complex (the “Multifamily Housing Project”) on the Multifamily Housing Development Property; and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of an economic development grant (the “Grant”) to be used by the Developer in paying a portion of the costs of the Relocation Project; and

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

NOW THEREFORE, the parties hereto agree as follows:

A. Developer’s Covenants

1. Relocation Project. The Developer agrees to undertake the Relocation Project in accordance with the plans for such Relocation Project that have been submitted to the City and are attached hereto as Exhibit B. The Developer agrees to maintain compliance with all applicable land use, building and safety codes and regulations of the City in the undertaking of the Relocation Project. Further, the Developer agrees to cause the completion of the Relocation Project by June 30, 2020.
2. **Grant Disbursement Request.** Upon completion of the Relocation Project, the Developer agrees to submit a grant disbursement request (the “Grant Disbursement Request”) to the City in the form attached hereto as Exhibit C. The Grant Disbursement Request shall be accompanied by documentation (the “Relocation Project Costs Documentation”) detailing the costs (the “Relocation Project Costs”) incurred in the completion thereof, including invoices from the moving company hired by the Developer to relocate the Historic Houses and such other documentation as is reasonably requested by the City, confirming that such Relocation Project Costs detailed in such Relocation Project Costs Documentation were in fact incurred in the construction of the Relocation Project and that such Relocation Project Costs are of an amount reasonably to have been expected with respect to such construction.

3. **Multifamily Housing Project Construction.** The Developer agrees to construct the Multifamily Housing Project on the Multifamily Housing Development Property. The Developer agrees that the Multifamily Housing Project will minimally include the preservation of the Historic Houses and the construction of a multifamily housing complex on the Multifamily Housing Development Property. The Developer expects to invest approximately $700,000 into capital improvements for the Multifamily Housing Project, including the costs associated with the Relocation Project, construction work, equipment, furnishings and other capital improvements.

The Developer has submitted a detailed site plan (the “Site Plan”) for the Multifamily Housing Project to the City which was approved by the City Council on April 4, 2019. The Site Plan is attached hereto as Exhibit D. The Developer agrees to construct the Multifamily Housing Project in accordance with the Site Plan and to substantially complete such construction by no later than June 30, 2022. Further, the Developer agrees to maintain compliance with local zoning, land use, building and safety codes and regulations in the completion of the Multifamily Housing Project.

4. **Minimum Assessment Agreement.** The Developer agrees to enter into an assessment agreement (the “Assessment Agreement”), pursuant to Section 403.6 of the Code of Iowa fixing the minimum assessed valuation of the Multifamily Housing Development Property, in contemplation of the improvements to be constructed thereon, at not less than Four Hundred Thousand Dollars ($400,000) (the “Minimum Assessed Valuation”) as of January 1, 2023 (the “First Valuation Date”). It is intended by the Developer that the Minimum Assessed Valuation shall be established on the Linn County property tax rolls as of the First Valuation Date regardless of the then-current degree of completion or incompletion of the Multifamily Housing Project. The Assessment Agreement shall be in substantially the form attached hereto as Exhibit E and shall remain in effect throughout the Term (as hereinafter defined) of this Agreement.

5. **Property Taxes.** The Developer agrees to make or ensure timely payment of all property taxes as they come due with respect to the Multifamily Housing Development Property with the completed Multifamily Housing Project thereon throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment.
6. **Default Provisions.**

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

1) Failure by the Developer to complete the Relocation Project pursuant to the terms and conditions of this Agreement.
2) Failure by the Developer to complete the Multifamily Housing Project pursuant to the terms and conditions of this Agreement.
3) Failure by the Developer to enter into the Assessment Agreement as required by Section A.4 of this Agreement.
4) Failure by the Developer to fully and timely remit payment of property taxes when due and owing.
5) Failure by the Developer to observe or perform any other material covenant on its part, to be observed or performed hereunder.

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

1) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
2) Withhold the disbursement of the Grant provided for under Section B.2 below.
3) Recover from the Developer an amount equal to the full amount of the Grant previously made to the Developer under Section B.2 below.

B. **City’s Obligations**

1. **Review of Grant Disbursement Request and Relocation Project Costs Documentation.** The City staff will review the Grant Disbursement Request upon receipt from the Developer. If the City staff determines that the Grant Disbursement Request satisfies the requirements of Section A.2 above, the City shall record a summary of the date, amount and nature of such costs (the “Accepted Relocation Project Costs”) on the Summary of Accepted Relocation Projects Costs attached hereto as Exhibit F, and such summary shall be the official record of the Accepted Relocation Project Costs for purposes of tallying the maximum amount of the Grant allowed to the Developer under this Agreement.

In the event that the City determines that a Grant Disbursement Request received from the Developer does not meet the requirements of Section A.2 above, the City shall notify the
Developer within fifteen (15) days of such determination in order to allow an opportunity for the Developer to cure the noted deficiencies.

2. **Economic Development Grant.** In recognition of the Developer’s obligations set out above, within thirty (30) days of receipt of a satisfactory Grant Disbursement Request from the Developer, the City hereby agrees to fund the Grant to the Developer in an amount equal to the lesser of (i) fifty percent (50%) of the Accepted Relocation Project Costs or (ii) $100,000.

C. **Administrative Provisions**

1. **Amendment and Assignment.** Neither party may cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior written consent of the other party.

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

3. **Term.** The term (the “Term”) of this Agreement shall commence on the Commencement Date and end on _________________, 20__. 

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

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

CITY OF MARION, IOWA

By: _______________________________

Nicolas AbouAssaly, Mayor

Attest:

Rachel Bolender, City Clerk

SEVEN HILLS EAST, LLC

By: _______________________________
EXHIBIT A
DESCRIPTION OF MULTIFAMILY HOUSING DEVELOPMENT PROPERTY

[Insert Legal Description]
EXHIBIT C
FORM OF GRANT DISBURSEMENT REQUEST

Date submitted: ___________________________
Submitted by: _____________________________
Contact information: _______________________
Amount Requested $___________________
Index of Invoices/Statements Attached to substantive request:
________________________________________________________________________
________________________________________________________________________
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I, the undersigned hereby certify that the costs shown on the documents referred in the index above are legitimate costs reasonably incurred in the undertaking of the Relocation Project.

SEVEN HILLS EAST, LLC
By: _______________________________
Its: _______________________________

Reviewed and accepted by the City of Marion, Iowa this _____ day of ____________, 20__. 

By: _______________________________
City Manager

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4821-8049-6059/2
MINIMUM ASSESSMENT AGREEMENT

THIS AGREEMENT, dated as of the ___ day of ________________, 2020, by and among the City of Marion, Iowa (the “City”), Seven Hills East, LLC (the “Property Owner”), and the County Assessor of Linn County (the “Assessor”).

WITNESSETH

WHEREAS, the Property Owner owns the real property, the legal description of which is contained in Exhibit A attached hereto (the “Property”), which is located in the Central Corridor Urban Renewal Area in the City; and

WHEREAS, the Property Owner has undertaken the construction of a multifamily housing complex (the “Project”) on the Property; and

WHEREAS, a development agreement (the “Development Agreement”), dated ________________, 2020, has been executed between the City and the Property Owner; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, the City and the Property Owner desire to establish a minimum taxable value for the Property and the improvements to be constructed thereon, which shall be effective as of January 1, 2023, and from then until this Agreement is terminated pursuant to the terms herein which is intended to reflect the minimum market value of the land and improvements;

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

1. Effective January 1, 2023, the minimum actual value which shall be assessed for the Property, taking into account the improvements to be constructed thereon, shall be Four Hundred Thousand Dollars ($400,000) until termination of this Agreement.

2. The Property Owner hereby agrees that the assessed valuation (hereinafter referred to as the “Minimum Actual Value”) set forth in Section 1 above shall become and remain effective
as of January 1, 2023, and throughout the term of this Agreement, regardless of the actual degree of completion or incompletion of the Project, even if construction of the Project is not commenced by such date. Furthermore, the Property Owner acknowledges that the City has changed its position in reliance on the timeliness of such increase in valuation as set forth in the Development Agreement.

3. The Property Owner agrees to pay when due, all taxes and assessments, general or special, and all other charges whatsoever levied upon or assessed or placed against the Property, subject to any limitations set forth in the Development Agreement. The Property Owner further agrees that until this Agreement is terminated it will not seek administrative or judicial review of the applicability, enforceability, or constitutionality of this Agreement or the obligation to be taxed based upon the Minimum Actual Value or to raise any such argument by way of defense in any proceedings, including delinquent tax proceedings.

4. This Agreement, and the minimum assessed valuation established herein, shall be effective until December 31, 2034.

5. Nothing herein shall be deemed to waive the Property Owner’s rights under Section 403.6(19) Code of Iowa, (2019) or otherwise, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value.

6. This Agreement shall be promptly recorded with the Linn County Recorder, along with a copy of Iowa Code Section 403.6.

7. Neither the preamble nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of any other contract between the City and the Property Owner, including the Development Agreement.
This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

CITY OF MARION, IOWA

By: __________________________
    Mayor

Attest:

______________________________
City Clerk

SEVEN HILLS EAST, LLC

By: __________________________
STATE OF IOWA  
COUNTY OF LINN  

The foregoing instrument was acknowledged before me this ___ day of _____________, 2020, by Nicolas AbouAssaly and Rachel Bolender, the Mayor and City Clerk, respectively, of Marion, Iowa, a municipal corporation of the State of Iowa, on behalf of the City.

___________________________
Notary Public
STATE OF IOWA  )
  ) SS:
COUNTY OF POLK  )

The foregoing instrument was acknowledged before me this ___ day of _____________,
2020 by _______________________________ the ___________________ of Seven Hills East,
LLC, an Iowa corporation.

______________________________
Notary Public
CERTIFICATION BY ASSESSOR

The undersigned Assessor, being legally responsible for the assessment of the above described property upon completion of improvements to be made on it, hereby certifies that the actual value assigned to such land and improvements upon completion, shall be not less than Four Hundred Thousand Dollars ($400,000) until termination of the Agreement.

County Assessor for Linn County,
State of Iowa

Subscribed and sworn to before me this _____ day of _______________, 2020.

______________________________
Notary Public
LIENHOLDER'S CONSENT, IF ANY

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Assessment Agreement entered into between the parties, and agrees to be bound by its terms. This provision shall be binding on the parties and their respective successors and assigns.

(NAME OF LIENHOLDER)

By: _______________________________________
    Signature

Date: ______________________________________

STATE OF IOWA  )
    ) SS:
COUNTY OF LINN )

    The foregoing instrument was acknowledged before me this _____ day of ______________________, 2020 by _____________________________ the ______________ of ________________________________.

-----------------------------------------------
Notary Public

[Add additional pages for each Lienholder]

[If no Lienholders exist, this consent will not be completed]
## EXHIBIT F
SUMMARY OF ACCEPTED RELOCATION PROJECT COSTS

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<th>Amount of Cost</th>
<th>Nature of Cost</th>
<th>Date Accepted by City</th>
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AGENDA ITEM TITLE:
Public hearing regarding amended development agreement with PDS Investments LLC.

ACTION REQUESTED/RECOMMENDED:
N/A

BUDGET INFORMATION:
Was this expenditure budgeted? N/A
Amount: 
GL Account: 
CIP # 
*If multiple accounts, list below in summary
Budget Status: N/A

If the matter was not budgeted, explain why funding is requested?
N/A

SUMMARY/EXPLANATION:
The City is adding a year to an existing development agreement with PDS Investments to assist with the relocation of MEDCO from City Hall to a new space. MEDCO has grown from 1 employee to 4 in the last 13 years, and is current co-located with the Chamber of Commerce and Main Street. The three organizations have all expanded and/or been created in the same time frame and space is at a premium. MEDCO has looked at many different potential solutions and the board has approved moving to an upper floor in the PDS Investments building on 7th Avenue. Compared to the cost of building new office space out in City Hall for future staff, this is a small investment that will in the interim address MEDCO and the Chamber’s space needs, but cue up their existing office suite area to eventually be used by the City. Overall expected office build-out budget is $150,000; the City’s assistance through the extra year of rebate to PDS is approximately $35,000.
MEDCO also requested the addition of temporary parking to city-owned property in the area to facilitate the move. Engineering, planning, and public services have look at options and determined it will be less than $20,000 to construct. Cost will be recovered from the Central Corridor TIF district.

BACKGROUND/PREVIOUS COUNCIL ACTION:
Resolution 22696 Approving Development Agreement with PDS Investments (Sept. 6, 2012)
Motion Directing Staff to Extend Development Agreement with PDS Investments by an additional year (Jan. 23, 2020)
Motion Directing Staff to Develop Public Parking Solution and Cost Estimates (Jan. 23, 2020)
Resolution No. 28400 setting date for hearing to approve amended development agreement.

CONTRACT INFORMATION:
Original Contract: 
Total Change Order(s): 
Total Contract: 
Amount Expended to Date: 
Percent Expended to Date: 

STAFF CONTACT:
Lon Pluckhahn
319-743-6302
lpluckhahn@cityofmarion.org