



**Roll Call Number**

20-0757

**Agenda Item Number**

29

**Date** May 4, 2020

**RESOLUTION APPROVING FINAL TERMS FOR AN URBAN RENEWAL DEVELOPMENT AGREEMENT WITH NELSON DEVELOPMENT FOR THE CONSTRUCTION OF A MIXED USE BUILDING LOCATED ON THE SOUTHWEST CORNER OF 26TH STREET AND UNIVERSITY AVENUE, ACROSS FROM DRAKE UNIVERSITY**

WHEREAS, on February 24, 2020, in Roll Call number 20-0345, the City Council approved a resolution authorizing the City Manager to negotiate an agreement with Drake Multifamily LLC (Alexander Grgurich, Nelson Development, 218 6th Avenue, Suite 200, Des Moines, IA 50309) to construct an approximately 83,000-square-foot, 4-story mixed use building on property located at the southeast corner of 26<sup>th</sup> Street and University Avenue, across from Drake University; and,

WHEREAS, the City Manager has negotiated an Urban Renewal Development Agreement (the "Agreement") with Drake Multifamily LLC (the "Developer") whereby the Developer has agreed to construct the building; and,

WHEREAS, the proposed Agreement and Conceptual Development Plan are on file and available for inspection in the office of the City Clerk; and,

WHEREAS, the Developer has provided the Office of Economic Development with a financial analysis of the project and seeks a financial assistance package to be provided from project generated tax increment as more specifically described in the accompanying Council Communication; and,

WHEREAS, the Developer seeks reimbursement for the commercial area of the building (exclusive of land) to receive 100% of the project-generated tax increment for 15 years; and 70% for years 16 and 17 and for Low-Moderate Income portion of the multi-family project, 40% of the multi-family project-generated TIF in year 9, 60% of the project-generated TIF in year 10, 100% of the project-generated TIF in years 11 through 15; and 70% of project-generated TIF in years 16 and 17.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The City Council hereby makes the following findings in support of the proposed Agreement with the Developer:
  - a) The Developer's obligations to construct the Improvements as provided by the Agreement furthers the objectives of the Urban Renewal Plan to provide additional housing, employment opportunities and tax base in the Drake Urban Renewal Project



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Area, and to preserve and create an environment which will protect the health, safety and general welfare of City residents.

- b) The economic development incentives for the creation of the employment opportunities and development of the Improvements are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Drake Urban Renewal Area in accordance with the Urban Renewal Plan; and (ii) it will further the City's efforts to retain and create job opportunities within the Urban Renewal Area which might otherwise be lost.
  - c) The construction of the Improvements is a speculative venture and the construction and resulting benefits would not occur without the economic incentives provided by this Agreement.
  - d) The City Council believes that the redevelopment of the Property pursuant to the Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the project has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.
2. The Conceptual Development Plan for the project, which is contained in the Agreement, is hereby approved.
  3. The Urban Renewal Development Agreement between the City and Drake Multifamily LLC, is hereby approved. The Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines.
  4. The Economic Development Director or the Director's designee is directed to submit a copy of the fully executed Development Agreement to the Finance Department to enable the Finance Director to make any appropriate disclosure filings in accordance with the City's adopted revised Disclosure Policy.
  5. Upon requisition by the City Manager or the City Manager's designee, the Finance Department shall advance the installments on the Economic Development Grant pursuant to Article 4 of the Agreement.





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- 6. The City Manager or his designees are hereby authorized and directed to administer the Urban Renewal Development Agreement on behalf of the City, including the filing of the Agreement, and to monitor compliance by the Developer with the terms and conditions of the Agreement. The City Manager is further directed to forward to City Council all matters and documents that require City Council review and approval in accordance with the Agreement.

MOVED by Gatto to adopt.

(Council Communication No. 20- 199 )

FORM APPROVED:

/s/ Thomas G. Fisher Jr.  
Thomas G. Fisher Jr.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED  
T. M. Frankhu Cownie Mayor

P. Kay Cmelik City Clerk

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Prepared by/Return to:	Thomas G. Fisher Jr., Assistant City Attorney, 400 Robert D. Ray Drive Des Moines, IA 50309 (515) 283-4547
Taxpayer:	Drake Multifamily, LLC
Grantors' Names:	Drake Multifamily, LLC
Grantee's Name:	City of Des Moines, Iowa
Legal Description:	Shown on Page 22, Exhibit A

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**URBAN RENEWAL DEVELOPMENT AGREEMENT**  
(This Agreement includes restrictive covenants in Article 3)

**Drake Urban Renewal Project**

**By and Between:**

**CITY OF DES MOINES, IOWA**

**and**

**DRAKE MULTIFAMILY, LLC**

Approved by City Council:

Date: May 4, 2020

Roll Call No. 20- 0757

Exhibits:

Exhibit A: Legal Description of Property  
Exhibit B: Conceptual Development Plan

**Recording note:** This Agreement will be recorded without Exhibit B attached. The entire Agreement including Exhibit B will be on file and available for inspection in the office of the City Clerk of Des Moines, Iowa.



## URBAN RENEWAL DEVELOPMENT AGREEMENT

This **URBAN RENEWAL DEVELOPMENT AGREEMENT**, including Exhibits A and B, attached hereto and by this reference made a part hereof (the Agreement and Exhibit are together hereinafter called the "Agreement"), is made as of April 29, 2020 (the "Effective Date"), by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation (the "City"), acting pursuant to Chapter 403 of the Code of Iowa, (the "Urban Renewal Law"), and **DRAKE MULTIFAMILY, LLC**, an Iowa limited liability company (the "Developer").

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken a program for the economic development of areas in the City and which seeks to encourage private development of the Project Area for high quality commercial use through economic development assistance that will be funded in part with tax increment financing revenues generated by the Project Area and is engaged in carrying out an urban renewal project known as the Drake Urban Renewal Project (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City of Des Moines; and,

WHEREAS, as of the date of this Agreement there has been prepared and approved by City a plan for the Project, consisting of the Urban Renewal Plan and amendments thereto indicated in the following table, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as indicated in the following table:

<u>Action</u>	<u>Date Adopted</u>	<u>Roll Call</u>	<u>Book-Page</u>
Plan Adopted	1/14/2019	19-0085	17222-355

(which plan, as so amended is hereinafter called the "Urban Renewal Plan");  
and,

WHEREAS, the Developer, Drake Multifamily, LLC (Nelson Development, 218 6<sup>th</sup> Avenue, Suite 200, Des Moines, IA 50309) will acquire property locally known as 2530 University Avenue and 1161, 1159, 1157 26<sup>th</sup> Street all in Des Moines, Iowa, more specifically described in Exhibit A and hereinafter referred to as the "Property"; and,

WHEREAS, the Property is located in a part of the Project Area characterized by underutilized real estate in need of economic development; and,

WHEREAS, the Developer is proposing to construct an approximately 83,000-square-foot, 4-story, mixed-use building on the Property.

WHEREAS, the Developer's obligations under this Agreement to develop the Property for use as an apartment building with retail and commercial uses on a portion of the first floor, furthers the objectives of the Urban Renewal Plan to preserve and create an environment which will protect the health, safety and general welfare of City residents,

and maintain and expand taxable values and employment opportunities within the Urban Renewal Project Area; and,

WHEREAS, the economic development incentives under this Agreement are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements (defined below) will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Project Area in accordance with the Urban Renewal Plan; (ii) it will establish conditions which attract further new investments and prevent the recurrence of blight and blighting conditions to the surrounding area; and, (iii) it will further the City's efforts to retain and create job opportunities within the Project Area and surrounding area which might otherwise be lost; and,

WHEREAS, the construction of the Improvements is a speculative venture and the construction and resulting benefits would not occur without the economic incentives and other City covenants provided by this Agreement; and,

WHEREAS, City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Project has been undertaken, and warrant the provision of the economic assistance set forth in this Agreement.

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 1. CONSTRUCTION OF IMPROVEMENTS.**

### **Sec. 1.1. Duty to Construct Improvements.**

- A. Developer, subject to the terms of this Agreement, shall acquire the Property and undertake the construction of a 4-story mixed-use apartment building with retail and commercial uses on a portion of the first floor (the "Improvements") on the Property.
- B. Developer shall provide 10 percent of the units (14 units) as affordable housing, defined as units with rent at rates equal to the sixty-five percent (65%) rent limit as published by the U.S. Department of Housing and Urban Development under its HOME Program Rents for Des Moines-West Des Moines, IA MSA, which limit corresponds to individuals who earn 80% of the area median income (AMI).
- C. Developer shall construct the Improvements with four electric vehicle charging stations and 25 percent of the remaining parking lot will have the necessary



electrical infrastructure including properly located conduit on the west side of said parking to allow the later addition of electric vehicle charging stations.

- D. Developer shall participate in and receive approval from Mid-American Energy's Commercial New Construction program. The design of the building shall exceed the minimum requirements of the International Energy Conservation Code edition adopted by the State of Iowa at the time Developer begins working with the Mid-American Energy's Commercial New Construction program. Developer shall provide to City documents, including but not limited to the Verification Report issued by Mid-American Energy's energy consultant, establishing that it has met this requirement to the reasonable satisfaction of City.
- E. The Improvements shall be constructed in substantial compliance with the approved Conceptual Development Plan attached hereto as Exhibit B and with such future amendments thereto as may be approved by City as provided in Article 2. The Improvements shall also comply with the terms of this Agreement and with all applicable State and local laws and regulations.

Sec. 1.2. Time for Completion of Improvements. Subject to Section 7.4 of this Agreement, Developer shall cause construction of the Improvements to be commenced by July 1, 2021 and shall cause such construction to be diligently pursued to completion. Subject to Sections 7.2 and 7.4 of this Agreement, the Improvements shall be substantially completed by November 1, 2021, so as to qualify for the issuance of the Certificate of Completion under Section 2.4 of this Agreement.

Sec. 1.3. Progress Reports. From commencement of construction until construction of the Improvements has been substantially completed, Developer shall make reports, in such detail and at such times as may reasonably be requested by City, as to the actual progress of Developer with respect to such construction; provided, however, City may not request such report more than once per month.

Sec. 1.4. Access to Property. During construction of any of the Improvements and prior to expiration of the Urban Renewal Covenants, as defined in Article 3, Developer shall permit City's representatives access to the Improvements at all reasonable times which City reasonably deems necessary for the purposes of this Agreement, such access to be subject to advance notice of at least 24 hours and accompaniment by Developer or any agent of Developer. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

Sec. 1.5. Prohibition Against Transfer.

- A. Prior to issuance of the Certificate of Completion for the Improvements pursuant to Section 2.4, Developer shall not, without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein (each, a "Transfer"), or any agreement to Transfer, except (i) any Transfer to a lender for the purpose of or related to



obtaining funds for the construction of the Improvements; (ii) leases made in the ordinary course of business; (iii) easements or other encumbrances necessary for the Improvements; and (iv) transfers to an Affiliate of Developer (each, a "Permitted Transfer"). For purposes of this Agreement, an "Affiliate of the Developer" means any person or entity directly or indirectly controlling, controlled by or under common control with Developer; any officer, director, manager, general partner, member or trustee of Developer; or any person or entity who is an officer, manager, director, general partner, member or trustee of another Affiliate of Developer. While no approval is required for a Permitted Transfer, in cases of a Permitted Transfer under subsection (iv) hereof, Developer shall execute, along with the transferee Affiliate, an instrument substantially similar to the one contemplated under Section 1.5(B)(2), below, and record the same with the Polk County Recorder.

- B. City shall be entitled to require as a condition to any such approval, other than with respect to a Permitted Transfer, that:
1. Any proposed transferee shall have similar qualifications and financial responsibility as Developer, determined by City in its sole discretion, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer (or, in the event the Transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);
  2. Any proposed transferee, by an instrument in writing satisfactory to City in its sole discretion and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the Transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part);
  3. All instruments and other legal documents involved in effecting the Transfer be submitted to City for review prior to the Transfer unless the transfer is to an Affiliate of the Developer.
- C. In the absence of specific written agreement by City to the contrary, no such Transfer, other than a Permitted Transfer, shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.
- D. When requested by Developer, the City Manager or a Deputy City Manager of City shall acknowledge the City's consent to any Permitted Transfer under this section.

## Sec. 1.6. Limitation Upon Encumbrance of Property.

- A. Prior to issuance of the Certificate of Completion pursuant to Section 2.4, Developer shall not engage in any transaction imposing any encumbrance or lien upon the Property, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.
- B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only for the purpose of (i) constructing the Improvements and obtaining funds to complete the same; (ii) the payment of installments of property taxes and special assessments that are due, but not delinquent; (iii) leases made in the ordinary course of business; and (iv) easements or other encumbrances necessary for the Improvements. Developer shall use its best efforts to cause to be included in any mortgage on the Property, a provision requiring that whenever the mortgagee shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Section 8.5(b) hereof.
- C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraph A, above, so long as Developer shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Developer to settle any such contest), and Developer shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable in order to remove the encumbrance or lien, together with all penalties, interest, costs and expenses thereon or in connection therewith. Developer shall give City prompt written notice of any such contest and of the final outcome thereof; provided, however, Developer shall not be required to disclose to City any privileged or confidential information from such contest.

## **ARTICLE 2. CONCEPTUAL DEVELOPMENT PLAN**

Sec. 2.1. Site Plan Review Pre-Application Conference. The Developer shall undertake the pre-application conference for the Improvements pursuant to the Site Plan Review process as required by City of Des Moines Municipal Code Chapter 135, Article 9. The review required by the Planning and Design Ordinance, Des Moines Municipal Code Chapter 135, is a separate review process from the review of the Conceptual Development Plan provided for in this Agreement. Approval of a plan or an amendment thereto pursuant to one does not constitute approval for purposes of the other.



Sec. 2.2. Conceptual Development Plan.

A. The approved Conceptual Development Plan for the Improvements is attached hereto as Exhibit B. Any amendment to the Conceptual Development Plan by Developer is subject to approval by the City in the manner hereafter required, which approval shall not be unreasonably withheld or delayed.

B. All changes to the approved Conceptual Development Plan must be submitted by Developer to City and are subject to City approval, which approval shall not be unreasonably withheld or delayed. City shall endeavor to promptly review the Conceptual Development Plan and any amendments thereto within the applicable limits of the agenda deadlines and public notice requirements. If City rejects an amendment to the Conceptual Development Plan, in whole or in part, it will set forth in writing the reasons for such rejection. Any proposed change which is determined by the City Manager of City to be a minor or unsubstantial change may be administratively approved by the City Manager or by the Director of the Office of Economic Development.

C. The Conceptual Development Plan as amended shall include a conceptual site plan, detailed building elevations for each building face, floor plans for each story, and a streetscape and signage plan for the Property, and otherwise satisfy the following criteria:

1. The Conceptual Development Plan must comply with the requirements of this Agreement and must satisfy the land use requirements of the Urban Renewal Plan.
2. The Plan must comply with the recommendations of the Urban Design Review Board as adopted or amended by the Director of the Office of Economic Development, unless such recommendations are waived or amended by City Council resolution.
3. The Improvements must comply with the applicable site plan standards, including but not limited to the landscape standards, and all applicable zoning and building codes.
4. The durability, appearance and quality of the exterior materials must be substantially equivalent to, or better than, that provided by the Plan.
5. Developer shall participate in and receive approval from Mid-American Energy's Commercial New Construction program. The design of the building shall exceed the minimum requirements of the International Energy Conservation Code edition adopted by the State of Iowa at the time Developer begins working with the Mid-American Energy's Commercial New Construction program. Developer shall provide to City documents, including but not limited to the Verification Report issued by Mid-American Energy's energy consultant,



establishing that it has met this requirement to the reasonable satisfaction of City.

6. The Conceptual Development Plan must contain sufficient detail to demonstrate that the Improvements comply with the Commercial Construction and Sustainability Design Standards set forth in Appendix A-1 to the Third Restated Urban Revitalization Plan for the Citywide Urban Revitalization Area (the "Revitalization Plan").<sup>1</sup>

Sec. 2.3. Building Permits/Construction Permits. All construction and construction plans submitted by Developer must comply with City zoning, site plan and building code requirements. In addition, Developer shall make certain that both the construction and the construction plans are in substantial compliance with the Conceptual Development Plan shown in Exhibit B of this Agreement, as may be amended pursuant to Section 8.8 from time to time. City may withhold approval of building permits if the Construction Plans do not substantially comply with the Conceptual Development Plan, as may be amended pursuant to Section 8.8. However, approval or issuance of a building permit is not an acknowledgment that the construction and construction plans are in substantial compliance of the obligations of this Agreement or the Conceptual Development Plan. If there is any reason to question whether the construction or the construction plans substantially conform with the Conceptual Development Plan, Developer shall immediately contact the City of Des Moines Office of Economic Development.

Sec. 2.4. Certificates of Completion.

- A. Developer shall request a "Certificate of Completion" for the Improvements by notifying City in writing that it has completed the Improvements in substantial compliance with the approved Conceptual Development Plan and Construction Plans, and furnishing City with an architect's certificate or reasonable equivalent to that effect.
- B. Promptly upon receipt of Developer's notification of completion of the Improvements, City shall inspect the Improvements. If City determines that Developer has completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan and Construction Plans, as may be amended in accordance with this Agreement, City shall issue a "Certificate of Completion." Issuance of the Certificate of Completion shall not be unreasonably withheld, conditioned or delayed by City. If City determines that Developer has not completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan and Construction Plans, as may be amended in accordance with this Agreement, City shall, within thirty (30) days of receiving Developer's notification of completion, provide

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<sup>1</sup> A copy of the Third Restated City-wide Urban Revitalization Plan containing the Commercial Construction and Sustainability Design Standards is available for inspection in the office of the City Clerk at City Hall, and is filed with Roll Call No. 15-1816, adopted October 26, 2015.

Developer with a written statement of the reasonable basis for City's determination which specifies the actions to be performed by Developer in order to obtain the Certificate of Completion.

- C. The determination by City regarding completion of the Improvements is independent of any determination by City regarding the issuance of an Occupancy Permit pursuant to the Building Code of City. The issuance of an Occupancy Permit for any portion of the Property shall not serve as a substitute for the Certificate of Completion referenced in this Section.

Sec. 2.5. Effect of Issuance.

A. Upon issuance of the Certificate of Completion, the obligations and covenants contained in this Agreement with respect to the construction of the Improvements and the dates for the beginning and completion thereof, shall be satisfied and terminated. However, all other obligations and covenants contained in this Agreement shall remain in full force for the remaining Term of this Agreement (as defined in Section 8.7, below). Developer may utilize the Certificate of Completion only as evidence of compliance with or satisfaction of Developer's construction obligations under this Agreement.

B. The Certificate of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office.

### **ARTICLE 3. URBAN RENEWAL COVENANTS.**

Sec. 3.1. Duration. The Urban Renewal Covenants imposed pursuant to this article shall apply to the Property and shall run with the land upon which the Property is located for a term (the "Restricted Term") commencing upon the date of recording of this Agreement and continuing until December 31, 2040, unless earlier terminated in accordance with, or as otherwise provided by, this Agreement, including, without limitation, pursuant to Section 4.6(D) of this Agreement.

Sec. 3.2. Covenants. During the Restricted Term, the Property and each portion thereof shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Urban Renewal Covenants"):

- 1) *Prohibition Against Discrimination in Sale or Leasing.* Developer shall not discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability, familial status, or source of income, as defined in Des Moines Municipal Code section 62-1, in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the Improvements erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the Property or the Improvements erected thereon.



- 2) *Prohibition Against Discrimination in Employment.* In the employment of persons upon the Property, Developer and its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
- 3) *Maintenance.* The Improvements constructed upon the Property pursuant to this Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan, as may be amended in accordance with this Agreement. If the Improvements are materially damaged by fire or other casualty, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan, as may be amended in accordance with this Agreement, shall be commenced within ninety (90) days and shall be diligently pursued to completion, subject, however, to Section 7.4 of this Agreement.
- 4) *Fire, Extended Coverage Insurance.* Developer shall keep in force fire and extended coverage insurance upon the Improvements with insurance underwriters authorized to do business in the State of Iowa and reasonably satisfactory to City. Such insurance shall be in an amount equal to the replacement cost of the Improvements, excluding cost of foundations, underground pipes, wiring, and outside paving, and excluding the cost of any fixtures and contents under the ownership and control of any tenants. If requested by the City, Developer shall deliver to City a current certificate of insurance that clearly discloses on its face coverage in conformity with all of the foregoing requirements and a copy of the policy. In the event of destruction of the Improvements or any part thereof, said insurance and all monies payable by reason of such insurance or destruction received by Developer shall be held in trust by Developer, and shall be used by Developer exclusively for the purpose of: (i) repairing the Improvements and restoring the same to their former condition and use; (ii) replacing the Improvements, with equivalent or more suitable improvements in substantial conformance with the approved Conceptual Development Plan, as amended in accordance with this Agreement; or (iii) payment of loans used to finance or refinance the construction of the Improvements or other improvements to the Property, if required by the lender.
- 5) *Classification for Taxation.*
  - (a) Developer, its successors and assigns, shall not cause or voluntarily permit any part of the Property or the Improvements to be owned by a telephone utility or any other entity of a type that would lead to the assessed value of the Property being centrally assessed by the State of Iowa or otherwise exempt from local real estate taxation by Polk County, Iowa.
  - (b) Developer shall further not cause or voluntarily permit any part of the Property or the Improvements to be owned or leased by any entity that can qualify for property tax exemption under Iowa Code Chapter 427, and shall not apply for, seek or voluntarily allow, the classification of any portion of the property as exempt from taxation.



- (c) No portion of the Property shall be used for any use that would cause the Property to be reclassified for property tax purposes as other than residential or commercial property.
- 6) *Payment of Taxes.* Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property.

Sec. 3.3. Covenants; Binding Upon Successors in Interest. It is intended that the Urban Renewal Covenants undertaken by Developer pursuant to this Agreement shall be covenants running with the land on which the Property is located until the expiration of the Restricted Term or their earlier termination in accordance with this Agreement and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding for such period of time, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against the Developer, and its successors and assigns and every successor in interest to any portion of the Property and the Improvements, or any part thereof or any interest therein, and any party in possession or occupancy of any of such Property or Improvements, or any part thereof.

Sec. 3.4. Required Terms in any Conveyance. During the Restricted Term, or until the earlier termination of the Urban Renewal Covenants, as provided in this Agreement, Developer shall endeavor to include in every deed, lease, sublease and other instrument conveying all or any part of Developer's ownership interest in any portion of the Property (exclusive of the leases of individual units in the regular course of business), a provision identifying the terms, conditions, restrictions and requirements of this article, and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this article against Developer's successors and assigns to the same extent as against the Developer. Developer shall cooperate in good faith in the City's enforcement of the requirements of this article against Developer's successors and assigns to any interest in the Property.

## **ARTICLE 4. ECONOMIC ASSISTANCE.**

### Sec. 4.1. Consideration for Agreement.

- A. In consideration of Developer's obligation to construct the Improvements in accordance with this Agreement and in consideration of the economic development in and around the Project Area as a result of such undertaking, City shall cause to be provided the economic incentives identified in this Agreement.
- B. In consideration of the City's obligation to provide the economic incentives pursuant to this article, Developer shall construct the Improvements.

### Sec. 4.2. Economic Development Grant.

- A. Subject to Sections 4.3, 4.4, 4.5 and 4.6 of this Agreement, City shall pay to Developer an Economic Development Grant (the "Development Grant") payable in thirty-four (34) semi-annual installments payable each November 1<sup>st</sup> and April 1<sup>st</sup>, or the first business day thereafter, commencing November 1<sup>st</sup> of the calendar year following the year in which the Improvements are first assessed at completed value. The amount of each payment shall be the sum of a and b below:
  - a. for years one through fifteen, one hundred percent (100%) of the Commercial Project TIF and for years sixteen and seventeen, seventy percent (70%) of the Commercial Project TIF; plus,
  - b. for year nine, forty percent (40%) of the Residential Project TIF, for year ten, sixty percent (60%) of the Residential Project TIF, for years eleven through fifteen, one hundred percent (100%) of the Residential Project TIF, and years sixteen and seventeen, 70% of the Residential Project TIF.<sup>2</sup>
  
- B. The total amount paid to Developer shall not exceed Three Million Four Hundred Thousand Dollars (\$3,400,000.00), calculated on a net present value basis. Net present value shall be calculated by using an interest rate of 4.5 percent. If the total amount provided for in this subsection has been paid, no further installment payments shall be made.
  
- C. The Economic Development Grant provided by the City in this Agreement is based in part on the unavailability of Workforce Housing Tax Credits for this project. Developer shall not apply for Workforce Housing Tax Credits or any similar tax credit program if such a program becomes available. Developer further understands that the City will not recommend or support an application for funding under any such program. The receipt of funding under the Workforce Housing Tax Credit Program or any similar program is a breach of this agreement and the City may lower the maximum amount available under section 4.2(B) above to offset the credit in addition to any other remedies available at law.
  
- D. The "Commercial Project TIF" means the total amount of property tax revenues generated in the preceding six months by the Improvements in the commercial and retail areas of the project, which is defined as the assessed value of the

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<sup>2</sup> The timing of the installments on the Development Grant will change based upon the calendar year of completion. If completion is in calendar year 2021, the schedule will be as follows:

CY2021	Improvements completed.
1-1-2022	Improvements first assessed at completed value.
9-2023	Taxes first payable on completed value.
11-1-2023	First Installment due on Economic Development Grant.



commercial or retail portion of the building located on the Property as determined by the Polk County Iowa Assessor's Office, by imposing the levies subject to division and allocation into the special fund pursuant to Iowa Code Section 403.19(2) on the incremental taxable value of the building on the Property used in the calculation of the property taxes due and payable in that fiscal year.

The "Residential Project TIF" means the total amount of property tax revenues generated in the preceding six months by the Improvements in the multifamily areas of the project, which is defined as the assessed value of the multifamily residential portion of the building located on the Property as determined by the Polk County Iowa Assessor's Office, by imposing the levies subject to division and allocation into the special fund pursuant to Iowa Code Section 403.19(2) on the incremental taxable value of the building on the Property used in the calculation of the property taxes due and payable in that fiscal year.

*Any commercial property tax credit and tax replacement funds provided by the State of Iowa shall be disregarded in the calculation of Project TIF. Any tax levy and taxes generated by a self-supported municipal improvement district shall be disregarded in the calculation of the Project TIF.*

Sec. 4.3. Conditions Precedent. City shall have no obligation to advance the first installment and any future installment on the Development Grant unless Developer has substantially completed the Improvements and has qualified for issuance of the Certificate of Completion pursuant to Section 2.4.

Sec. 4.4. Reporting.

A. Commencing on October 1, 2023 and continuing on each October 1<sup>st</sup> thereafter until all installments on the Economic Development Grant have been paid, Developer shall cause an Annual Report to be prepared and delivered to the City containing the following:

- 1) *Amount of taxes due*. A statement identifying the total amount of property taxes due and payable in that fiscal year upon the Property, and the portion thereof attributable to levies subject to allocation to the special fund pursuant to Iowa Code § 403.19(2), as amended from time to time.
- 2) *Verification*. A statement signed by the President, Chief Executive Officer, Treasurer, Secretary, Manager, Managing Member or Chairman of the Board of Directors of the reporting business, verifying that the information contained in the Annual Report is true and accurate.



Sec. 4.5. Source of Funding.

- A. The Development Grant shall be paid by City solely from the special fund financed by the division of revenue pursuant to Iowa Code § 403.19(2) from taxes levied on the Project Area. The obligations of City under this Agreement shall not constitute a general obligation of the City.
- B. The City represents, warrants and agrees that for so long as Developer is not in default under this Agreement and the City is obligated to pay future installments on the Development Grant in accordance with the terms of this Agreement:
- 1) City shall not repeal the designation of the Property or any part thereof as being within an urban renewal area pursuant to Iowa Code § 403.5.
  - 2) City shall not repeal Ordinance No. 15,427 nor amend such ordinance in any manner that impairs the City's ability to pay the installments on the Development Grant as contemplated by this Agreement.
  - 3) City will timely certify to Polk County the estimated amount each installment on the Development Grant for payment from the special fund for the Project in accordance with Iowa Code § 403.19(6).

Sec. 4.6. Non-appropriation.

- A. Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay any installment of the Development Grant shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit under the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation reserved by the City Council as provided in this section. City may exercise its right of non-appropriation as to the amount of the installment 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 to Developer in the next fiscal year under this Agreement.
- B. In the event the City Council of City elects to not appropriate sufficient funds in the budget for any future fiscal year for the payment in full of the installment on the Development Grant due and payable in that fiscal year, then the City shall have no further obligation to Developer for the payment of any portion of the installment due in the next fiscal year which cannot be paid with the funds then appropriated for that purpose. Should the City Council of City elect not to appropriate sufficient funds for the full payment of the installment on the Development Grant for three or more fiscal years, Developer may terminate this Agreement.

- C. The right of non-appropriation reserved to the City in this section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to pay future installments on the Development Grant 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, cause, or result in the creation of, such a legal indebtedness of the City, the application and enforcement of any such provision(s) shall be deemed suspended as of the date of such determination, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no event of default shall be deemed to have occurred as a result of the suspension of any such provision(s). If any provision of this Agreement is so suspended, the suspension shall not affect other provisions or application of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.
- D. The Urban Renewal Covenants in Article 3 of this Agreement shall not be applicable to conduct by the Developer and its successors and assigns in ownership or possession of the Property during any fiscal year in which the installment on the Development Grant will not be paid in full due to the City's exercise of the right of non-appropriation under this article. However, any conduct in violation of the Urban Renewal Covenants shall be promptly remedied in any subsequent fiscal year in which the City appropriates sufficient funds to fully pay the estimated amount of the installment on the Development Grant due in that fiscal year.

## **ARTICLE 5. TAX ABATEMENT.**

Sec. 5.1. Tax Abatement. City represents and warrants that the Property is located within the Targeted Multiple-Family Residential Area, as designated and described in the Revitalization Plan, and if the Improvements are completed in compliance with this Agreement and a timely application is made following completion, the value added by the portions of the multi-residential Improvements assessed will qualify for a ten (10) year declining abatement of one hundred percent (100%) exemption for eight years, sixty percent (60%) in year 9 and forty percent (40%) in year 10 from taxation under Iowa Code Section 404.3(4) and the corresponding schedule in the Revitalization Plan.

## **ARTICLE 6. CITY COVENANTS.**

Sec. 6.1. Urban Renewal Plan. City has included the Project in Appendix "C" of the Urban Renewal Plan.



## ARTICLE 7. REMEDIES.

### Sec. 7.1. In General.

- A. Except as otherwise specifically provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party shall by written notice of default (a, "Notice of Default") to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within forty-five (45) days or such other time as may be specifically provided herein after receipt of such Notice of Default. Any default on an obligation to pay money shall be cured within five (5) business days after receipt of such notice. Notwithstanding the foregoing, if any non-monetary default reasonably requires more than forty-five (45) days to cure, such default shall not constitute a breach of this Agreement if the defaulting party commences to cure the default promptly upon receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion. Without limiting or shortening any of the foregoing cure periods, in the event of a non-monetary default, if the default occurs after Developer no longer directly or indirectly controls the homeowner's association or other owner of the common areas, Developer may request an extension of time to cure of up to an additional forty-five (45) days, which the City shall not reasonably deny if Developer is proceeding with due diligence to cure the default.
- B. In the event that a Notice of Default is given as provided above and action to cure or remedy the default is not promptly taken or not diligently pursued, or the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute proceedings for damages for breach of contract. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party for any breach of this Agreement.

### Sec. 7.2. Special Remedies.

- A. *Minor delay in completing the Improvements.* In the event the Improvements are not substantially completed by November 1, 2021, to qualify for issuance of the Certificate of Completion as required by Section 1.2, but the Improvements are substantially completed by September 30, 2022, to then qualify for issuance of the Certificate of Completion, the delay shall not constitute a default under this Agreement and the only remedy is a delay in the start of the installments on the Development Grant as provided in Section 4.3.

B. *Major delay in completing the Improvements.* If the Improvements are not substantially completed by September 1, 2022, to qualify for issuance of the Certificate of Completion, it shall constitute a default under this Agreement. If such default is not timely remedied and Developer is declared to be in breach of this Agreement pursuant to Section 7.1, above, then City may elect to terminate this Agreement, whereupon, subject to the foregoing, neither party shall have any further obligation to the other under this Agreement, including, without limitation, with respect to the Urban Renewal Covenants.

Sec. 7.3. Other Rights and Remedies, No Waiver by Delay. City and Developer shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this article. Provided, that any delay by City or Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive either City or Developer of or limit such rights in any way; it being the intent of this provision that City and Developer should not be constrained to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or Developer with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Developer with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Developer.

Sec. 7.4. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Developer shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including redevelopment, or the beginning and completion of construction of the Improvements, in the event of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, temporary injunctions, acts of God, acts of the public enemy, acts of government (provided City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Developer, as the case may be, shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this article shall, within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.

Sec. 7.5. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same



default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either party shall be deemed a waiver in any respect in regard to any other rights of the party making the waiver or of any other obligations of the other party.

## **ARTICLE 8. MISCELLANEOUS.**

Sec. 8.1. Representatives Not Individually Liable. No member, official, or employee of City or Developer shall be personally liable in the event of any default or breach by either party under this Agreement, or for any amount which may become due or on any obligations under the terms of this Agreement.

Sec. 8.2. City Not a Guarantor, Surety or Partner. City is not a guarantor or surety for the redevelopment of the Project nor for any indebtedness incurred by Developer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Developer as a contractor, agent or representative of City for any purpose or in any manner whatsoever.

Sec. 8.3. Interpretation of Contract.

A. *Documents to be Considered Together*. The approved Conceptual Development Plan and any approved changes or modifications thereto shall be incorporated into this Agreement effective as of the date of such approvals. Any interpretation of the provisions of this Agreement shall be made by construing this Agreement and its Exhibit hereto together with the approved Conceptual Development Plan and any approved amendments thereto. Copies of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

B. *Choice of Laws*. This Agreement shall be construed in accordance with the laws of the State of Iowa.

C. *Timing*. Time is of the essence in the performance of this Agreement.

D. *Non-working Days*. In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

E. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

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

G. *Construction*. Headings are included for convenience only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. All

section references, unless otherwise clearly indicated, are to sections in this Agreement. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context. This Agreement is not to be construed more strictly against a party hereto merely because it may have been drafted or prepared by such party or its counsel, this Agreement being the product of negotiation.

Sec. 8.4. Waiver of Jury Trial. City and Developer each hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

Sec. 8.5. Notices. 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; delivered personally; or sent by overnight courier service, as follows:

(a) in the case of Developer, addressed to:

Drake Multifamily, LLC  
218 6<sup>th</sup> Avenue, Suite 200  
Des Moines, Iowa 50309

with copy to:

Kirton McConkie  
Attn: Bryce K. Dalton  
50 E. South Temple, Suite 400  
Salt Lake City, UT 84111

(b) in the case of City, addressed to:

Attn: City Manager  
c/o Office of Economic Development  
City of Des Moines  
400 Robert D. Ray Drive  
Des Moines, Iowa, 50309,

or to such other address, Department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this article.

Sec. 8.6. Recordation. City shall cause this Agreement (exclusive of the Conceptual Development Plan) to be promptly recorded at City's expense with the Polk County Recorder. A copy of this Agreement, including all the Exhibits shall be maintained and available for public inspection in the office of the City Clerk of City.

Sec. 8.7. Termination Certificate. Upon the termination of this Agreement as provided herein or upon satisfaction by the parties of all their obligations under this Agreement (including payment of the Development Grant), City shall promptly issue to



Developer a Termination Certificate certifying that Developer has satisfied all its obligations under this Agreement. Such Termination Certificate shall be in recordable form to permit it to be recorded in the records of the Polk County Recorder. Developer may utilize the Termination Certificate as evidence of its compliance with and satisfaction of all its obligations under this Agreement. Any reference to the "Term" of this Agreement shall mean the period of time between the Effective Date and the termination of this Agreement, whether or not memorialized in a Termination Certificate.


Sec. 8.8. Amendment. No amendment of this Agreement is binding unless set forth in a writing, duly signed by the parties hereto.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed on or as of the Effective Date.

**Drake Multifamily, LLC**  
an Iowa limited liability company

By: ND Drake Multifamily, LLC  
an Iowa limited liability company  
Its: Manager

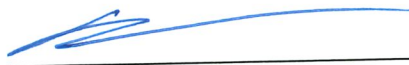
By: Nelson Development 1, LLC  
an Iowa limited liability company  
Its: Manager

By:   
Name: Michael K. Nelson  
Its: Manager

STATE OF IOWA }  
COUNTY OF POLK } ss:

This instrument was acknowledged before me on April 29, 2020, by Michael K. Nelson as Manager of Nelson Development 1, LLC, an Iowa limited liability company, Manager of ND Drake Multifamily, LLC, an Iowa limited liability company, and Manager of **Drake Multifamily, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.



  
Notary Public in the State of Iowa  
My commission expires: 6/3/22

CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*  
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*  
T.M. Franklin Cownie, Mayor

STATE OF IOWA }  
COUNTY OF POLK } ss:

On this 4 day of May, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- 0157 of City Council on the 4th day of May, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

*Linda S. Main*  
Notary Public in the State of Iowa

APPROVED AS TO FORM:

*Thomas G. Fisher Jr.*  
Thomas G. Fisher Jr.  
Assistant City Attorney





**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 38, 39, 40, 41, 42, 43 and 44, except the North 7 feet of Lot 44; and the vacated North/South alley lying East of and adjoining Lots 38-44 except the North 7.00 feet and except the east 0.75 feet of the south 148.0 feet of the North 192.0 feet of said North/South alley; all in DRAKE UNIVERSITY'S SECOND ADDITION TO THE CITY OF DES MOINES, an Official Plat now included in and forming a part of the City of Des Moines, Polk County, Iowa.

## **Exhibit B**

Conceptual Development Plan

*(Not Attached to Filed Document)*