

★ Roll Call Number

20-1117

Agenda Item Number

33 ✓

Date July 13, 2020

RESOLUTION APPROVING FIRST AMENDMENT TO AN URBAN RENEWAL DEVELOPMENT AGREEMENT WITH BH 3750 GRAND, LLC AT 3750 GRAND.

WHEREAS, on February 24, 2020 in Roll Call number 20-0346, the City Council approved a Development Agreement with BH 3750 Grand, LLC, Harry Bookey, Developer, 400 Locust Street, Suite 790, Des Moines, Iowa (the "Developer") for the construction of a project that would include construction of an 8-story building with approximately 42 condominiums on the upper 6 stories and approximately 36 indoor parking stalls located on floors 1 and 2 and that would include a partial preservation of the vacant First Church of Christ Scientist property located at 3750 Grand Avenue (the "Agreement"); and,

WHEREAS, conditions have changed justifying a modification of the terms of the Agreement; and,

WHEREAS, the City Manager has negotiated a proposed First Amendment to the Development Agreement that modifies the terms of the Agreement.

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

- 1. The First Amendment to Urban Renewal Development Agreement between the City and the Developer, is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines.
3. The Economic Development Director or the Directors 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.

MOVED by Gatto to adopt. (Council Communication No. 20- 310 )

FORM APPROVED: /s/ Thomas G. Fisher Jr.
Thomas G. Fisher Jr., Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL. Includes 'MOTION CARRIED' and 'APPROVED' labels.

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.

J. M. Franklin 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:	No Change
Grantors' Names:	3750 Grand LLC.
Grantee's Name:	City of Des Moines, Iowa
Legal Description:	Shown on Page 5, Exhibit A

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## **First Amendment to Urban Renewal Development Agreement Between City of Des Moines, Iowa and 3750 Grand LLC**

This **FIRST AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT**, is made as of July 13, 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 **3750 Grand LLC**, an Iowa limited liability company (the "Developer").

WHEREAS, the City and Developer are parties to an Urban Renewal Development Agreement dated February 24, 2020 (the "Agreement") and filed of record in Book 17723 at Page 246 of the Polk County, Iowa records for a proposed development on real estate described in Exhibit A of this Amendment; and,

WHEREAS, the parties desire to amend certain portions of the Agreement to provide for modifications of the obligations of the Developer and the City.

NOW, THEREFORE, the Parties Amend the Agreement as follows:

1. Section 1.2 is amended by changing "July 1, 2020" to "October 1, 2020" and by changing "December 31, 2021" to "July 1, 2022".
2. Section 3.1 is amended by changing "December 31, 2033" to "December 31, 2038".
3. Section 4.2(A) is amended by deleting the section and substituting in its place, the following:

- 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 twenty-eight (28) semi-annual installments payable each December 1<sup>st</sup> and May 1<sup>st</sup>, or the first business day thereafter, commencing December 1<sup>st</sup> of the calendar year the special fund referred to in section 4.5 is fully credited.<sup>1</sup> Installments on the Development Grant shall be in the amount of one hundred percent (100%) of the Project TIF for fourteen (14) years up to a maximum amount equal to the present value of \$6,800,000.00. The total amount paid to Developer shall not exceed Six Million Eight Hundred Thousand Dollars (\$6,800,000.00), calculated on a net present value basis as of the date twelve months prior to the date that the Certificate of Completion is issued pursuant to section 2.4 of this Agreement and the actual amount of each installment of the Development Grant and the date on which the installment is actually paid by the City to the Developer. Net present value shall be calculated by using an interest rate of 4.5 percent. An illustration of potential payments is shown on Exhibit C.

Footnote 2 on page 12 is amended by deleting the footnote and substituting in its place, the following:

The expected timing of the installments on the Development Grant is based upon the following schedule:

CY2022	Improvements completed.
1-1-2023	Improvements first assessed at completed value.
CY2023	Taxes first accrue on completed value.
9/2024	Taxes first payable on completed value.
12-1-2024	First Installment due on Economic Development Grant

4. Section 4.2(B) is deleted.

5. Section 7.2(A) is amended by changing "December 31, 2021" to "July 1, 2022" and by changing "June 30, 2022" to "December 1, 2022".

6. Section 7.2(B) is amended by changing "December 31, 2022" to "December 1, 2022".

7. Exhibit C is deleted and in its place is substituted the Exhibit C attached to this First Amendment.

8. Except as expressly amended above, the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly

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<sup>1</sup> The expected timing of the installments on the Development Grant is based upon the following schedule:

CY2021	Improvements completed.
1-1-2022	Improvements first assessed at completed value.
CY2022	Taxes first accrue on completed value.
9/2023	Taxes first payable on completed value.
12-1-2023	First Installment due on Economic Development Grant



executed on or as of the Effective Date.

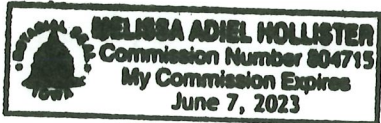
**3750 Grand LLC**  
an Iowa limited liability company

By: Kate Miller  
Name: Kate Miller  
Its: Authorized signer

STATE OF IOWA }  
COUNTY OF POLK } ss:

This instrument was acknowledged before me on July 8th, 2020, by Kate Miller as Manager of **3750, L.L.C.**, an Iowa limited liability company, on behalf of whom the instrument was executed.

Melissa Hollister  
Notary Public in the State of Iowa  
My commission expires: 6/7/23



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 13<sup>th</sup> day of July, 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- 1117 of City Council on the 13<sup>th</sup> day of July, 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.

*Rachel MARIKO BROWN*  
Notary Public in the State of Iowa

APPROVED AS TO FORM:

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

  
RACHEL MARIKO BROWN  
COMMISSION NO. 803679  
MY COMMISSION EXPIRES  
05 2020 2023

**EXHIBIT A  
LEGAL DESCRIPTION**

Lots 2, 3, 4, and 5 and, except the South 127 feet thereof, Lots 11, 12, 13, and 14 in MASON PLACE, an Official Plat now included in and forming a part of the City of Des Moines, Polk County, Iowa.

**NOTE TO RECORDER: THIS AMENDMENT HAS NO EXHIBIT B**

EXHIBIT C

SCHEDULE DEMONSTRATING DETERMINATION OF PRESENT VALUE OF DEVELOPMENT GRANT AND APPLICATION OF MAXIMUM AMOUNT IMPOSED BY SECTION 4.2A

	Date	Hypothetical Unrestricted Installment	Hypothetical Installment Restricted by Maximum Imposed by Section 4.2A	Present Value Without Application of Maximum Amount Imposed by Section 4.2A	Present Value Taking into Account Imposition of Maximum Amount Imposed by Section 4.2A
12 mo prior to COC	1/1/2021	0	0		
	1 12/1/2023	329,968	329,968	290,233	290,233
	2 6/1/2024	329,968	329,968	574,131	574,131
	3 12/1/2024	338,490	338,490	859,004	859,004
	4 6/1/2025	338,490	338,490	1,137,693	1,137,693
	5 12/1/2025	343,731	343,731	1,414,520	1,414,520
	6 6/1/2026	343,731	343,731	1,685,338	1,685,338
	7 12/1/2026	352,597	352,597	1,957,077	1,957,077
	8 6/1/2027	352,597	352,597	2,222,916	2,222,916
	9 12/1/2027	358,050	358,050	2,486,975	2,486,975
	10 6/1/2028	358,050	358,050	2,745,270	2,745,270
	11 12/1/2028	367,274	367,274	3,004,436	3,004,436
	12 6/1/2029	367,274	367,274	3,257,976	3,257,976
	13 12/1/2029	372,947	372,947	3,509,812	3,509,812
	14 6/1/2030	372,947	372,947	3,756,182	3,756,182
	15 12/1/2030	382,543	382,543	4,003,375	4,003,375
	16 6/1/2031	382,543	382,543	4,245,201	4,245,201
	17 12/1/2031	388,445	388,445	4,485,399	4,485,399
	18 6/1/2032	388,445	388,445	4,720,354	4,720,354
	19 12/1/2032	398,429	398,429	4,956,087	4,956,087
	20 6/1/2033	398,429	398,429	5,186,703	5,186,703
	21 12/1/2033	404,405	404,405	5,415,669	5,415,669
	22 6/1/2034	404,405	404,405	5,639,665	5,639,665
	23 12/1/2034	414,515	414,515	5,864,249	5,864,249
	24 6/1/2035	414,515	414,515	6,083,957	6,083,957
	25 12/1/2035	420,733	420,733	6,302,094	6,302,094
	26 6/1/2036	420,733	420,733	6,515,469	6,515,469
	27 12/1/2036	431,251	431,251	6,729,405	6,729,405
	28 6/1/2037	431,251	145,464	6,938,696	6,800,000
		\$10,606,751	\$10,320,964		