



Date March 21, 2022

RESOLUTION APPROVING SECOND AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH BRIDGE DISTRICT LEVEL, LLC, BRIDGE DISTRICT II TOWNHOMES, LLC, AND BRIDGE DISTRICT II, LLC (RICK TOLLAKSON; KRIS SADDORIS), FOR THE NEW CONSTRUCTION OF A 5-STORY, 114-UNIT MULTI-FAMILY HOUSING PROJECT AND 25-UNIT ROWHOME PROJECT LOCATED IN THE 300 BLOCK OF MAPLE STREET

WHEREAS, Hubbell Realty Company doing business as (d/b/a) Bridge District Level, LLC, represented by Kris Sadoris, Officer, has proposed to construct a new 114-unit multi-family residential project to be known as “Level”, located on a vacant site owned by Bridge District II, LLC (“Owner”) in the 300 block of Maple Street and part of Hubbell Realty Company’s master-planned “Bridge District” community, which is expected to include a mix of 1-unit to 4-unit bedroom apartments within a 5-story building and accommodate parking through indoor climate controlled parking and surface parking, at an estimated total project cost of \$26,900,000.00, subject to receipt of the financial assistance identified below; and

WHEREAS, Hubbell Realty Company doing business as (d/b/a) Bridge District II Townhomes, LLC, has proposed to construct 25 owner-occupied rowhome units within the second and third phases of “The Banks” townhome development located on the adjoining property south of the Level Apartments site owned by Owner; and

WHEREAS, construction of the Level Apartment building and rowhome units (collectively “Project” or “Improvements”) had been anticipated to commence in spring 2020, with a previously estimated completion date in the last quarter of 2021 for the apartment phase and of January 1, 2024 for the rowhome phase; and

WHEREAS, pursuant to Roll Call No. 19-2018, the City Council directed the City Manager to proceed with negotiation of a development agreement with Bridge District Level, LLC, for said Project; and

WHEREAS, on March 23, 2020, by Roll Call No. 20-0533, the City Council approved an Urban Renewal Development Agreement (the “Development Agreement”) with Bridge District Level, LLC, as well as Bridge District II Townhomes, LLC and Bridge District II, LLC (collectively “Developer”), whereby the Developer has agreed to construct the Project, in accordance with a City-approved PUD Conceptual Plan and Development Plans and the Conceptual Development Plan, in exchange for economic development assistance described in said Roll Call and Development Agreement; and

WHEREAS, the Developer was unable to commence and/or diligently pursue construction of the Improvements in accordance with said commencement deadline in the Development Agreement due to circumstances related to unanticipated environmental remediation, and requested an one-year extension of all construction-related deadlines set forth in the Development Agreement, which also required a delay to provision of economic development (TIF) assistance; and

WHEREAS, on December 7, 2020, by Roll Call No. 20-2015, the City Council approved the First Amendment to the Development Agreement to extend the above-referenced deadlines in the Agreement and Declaration of Covenants related thereto; and

WHEREAS, the Developer now anticipates that it will be unable to meet the completion deadline as extended by the First Amendment to the Development Agreement due to delays in the construction material supply chain, and has requested an additional six-month extension of the deadline for substantial completion of the Phase 1

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Date March 21, 2022

Improvements from December 31, 2022 to July 31, 2022, which again requires a delay to provision of economic development (TIF) assistance; and

WHEREAS, City Economic Development staff and the Developer have negotiated terms of a Second Amendment to the Development Agreement and to the Declaration of Covenants related thereto, on file in the office of the City Clerk, extending deadlines for Developer’s substantial completion of the Phase 1 Improvements (Level apartment building) from December 31, 2022 to July 31, 2022.

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

1. The Second Amendment to the Urban Renewal Development Agreement, including Declaration of Covenants, by and between the City and Developer, as defined above, is hereby approved, and the Mayor is authorized and directed to execute said documents on behalf of the City of Des Moines and the City Clerk to attest to his signature and to accept the Covenants on behalf of the City of Des Moines.
2. The Development Services Director and designee(s) are hereby authorized and directed to administer the Development Agreement on behalf of the City and to monitor compliance by the Developer, as defined above, with the terms and conditions of the Development Agreement, as amended. The Development Services Director is further directed to forward to City Council all matters and documents that require further City Council review and approval in accordance with the Development Agreement, as amended.

(Council Comm. No. 22-138)

MOVED BY _____ TO ADOPT.

SECONDED BY _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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.

_____ City Clerk

Exhibit B
To Development Agreement

Prepared by: Glenna K Frank, Assistant City Attorney, 400 Robert D. Ray Dr., Des Moines, IA 50309 Phone: 515/283-4130
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: Bridge District Level, LLC
Title of Document: Amended Declaration of Covenants
Grantor's Name: Bridge District Level, LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: See Exhibit A.

(Herein "Property")

**AMENDED
DECLARATION OF COVENANTS**

BRIDGE DISTRICT LEVEL, LLC, an Iowa limited liability company (hereinafter "Developer"), in consideration of the mutual obligations undertaken by Developer and the **City of Des Moines, Iowa**, a municipal corporation (hereinafter "City"), in the **Development Agreement** dated as of March 23, 2020 (hereinafter the "Agreement"), does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to the real estate in the City of Des Moines, Polk County, Iowa, identified as the Property in said Agreement, and more specifically described above.

Sec. 1. Agreement / Conceptual Development Plan. The Agreement is recorded in Book 18007, Page 960, with First Amendment thereto recorded in Book 18260, Page 143, and **Second Amendment thereto recorded in Book _____, Page _____**, all in the office of the Polk County Recorder and available for public inspection in the office of the City Clerk, at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. This Declaration of Covenants is executed and filed by Developer in performance of its obligations under Article 3 of the Agreement. All references herein to the approved Conceptual Development Plan are intended to refer to the Conceptual Development Plan attached as Exhibit "C" to the Agreement as the same may be amended from time to time by Developer in accordance with the terms of the Agreement.

Sec. 2. Duration. The Property shall be subject to the covenants set forth herein for a term (the "Restricted Term") commencing upon the recording of this Declaration of Covenants and continuing until the earlier of May 1, 2038, or the recording of a Termination Certificate by City

which certifies that Developer has satisfied all of its obligations under the Agreement or that the Agreement has otherwise terminated. However, such obligations and covenants shall be binding on the Developer itself, each successor in interest to the Property and any improvements thereon, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property or any improvements thereon or part thereof.

Sec. 3. 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 “Covenants”):

1. Development. Developer shall undertake the development of the Property by constructing the Improvements thereon in accordance with all terms of the Agreement and specifically Section 1.1 thereof, including the approved Conceptual Development Plan, and any City-approved Site Plan (as defined in the Agreement), and all applicable State and City permits, laws, and regulations.
2. Property Use. The Improvements shall be devoted, maintained and used for residential/multifamily purposes, as required by the Agreement and in conformity with and in the proportions shown by the approved Conceptual Development Plan. Such use includes, but it not limited to:
 - (a) At least 10% of total apartment unit count, and no fewer than 11 apartment units, included in the Phase 1 Improvements, as defined by the Agreement, shall be committed to affordable housing by keeping rent structures at 80% of the area median income (AMI) for the duration of this Agreement. For the purposes of this Section, 11 apartments units committed to affordable housing in accordance with this Covenant shall satisfy this requirement so long as the number of units in the Phase I Improvements are 114 or fewer.
3. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not knowingly 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 Chapter 62, 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.
4. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
5. Maintenance. The Improvements constructed upon the Property pursuant to the Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan and Construction Plans. In the event of fire or other casualty loss to the Improvements, repairs to restore the Improvements to their former

condition in substantial conformance with the approved Conceptual Development Plan and Construction Plans shall be commenced within one hundred twenty (120) days and diligently pursued to completion.

6. Situs for Taxation. Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property. Developer, its successors and assigns, and every successor in interest to the Property and the Improvements thereon, or any part thereof, shall not cause or voluntarily permit any part of the Property and the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the City of Des Moines in its entirety, or apply for a deferral of property tax on the Property pursuant to any present or future statute or ordinance.

Sec. 4. Required Terms in any Conveyance. During the Restricted Term, Developer shall endeavor to include in every deed and other similar instruments conveying all or any part of Developer's interest in any portion of the Property, a provision identifying the terms, conditions, restrictions and requirements of this Declaration and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this Declaration against Developer's successors and assigns to the same extent as against Developer. Developer shall cooperate in good faith in the City's enforcement of the requirements of this Declaration of Covenants against Developer's successors and assigns to any interest in the Property.

Sec. 5. Covenants; Binding Upon Successors in Interest. It is intended that the terms of this Declaration of Covenants shall be covenants running with the land 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 the Agreement, be binding, 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 Developer, its successors and assigns and every successor in interest to any portion of the Property and the Improvements erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such Property, or any part thereof.

Sec. 6. City's Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Declaration of Covenants, both for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Sec. 7. Warranty of Title. Developer does hereby covenant with City that Developer holds legal and equitable title to the Property.

[Signatures and acknowledgments follow]

ACCEPTANCE:

I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, do hereby certify that the within and foregoing Amended Declaration of Covenants was duly approved and accepted by the City Council of said City of Des Moines by Resolution and Roll Call No. 22-_____, passed on the _____ day of _____, 2022, and this certificate is made pursuant to authority contained in said Resolution.

Signed this _____ day of _____, 2022.

P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa

EXHIBIT A

Lot 1 in Bridge District Plat 4, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

**SECOND AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT BY
AND BETWEEN CITY OF DES MOINES, IOWA AND BRIDGE DISTRICT LEVEL,
LLC, BRIDGE DISTRICT II TOWNHOMES, LLC, AND BRIDGE DISTRICT II, LLC
(METRO CENTER URBAN RENEWAL PROJECT)**

THIS SECOND AMENDMENT to Urban Renewal Development Agreement by and between City of Des Moines, Iowa and Bridge District Level, LLC, Bridge District II Townhomes, LLC, and Bridge District II, LLC (collectively “Developer”)(Metro Center Urban Renewal Project) (hereinafter “First Amendment”) is entered into this _____ day of _____, 2022, by and between the City of Des Moines, Iowa (“City”) and Developer.

It is agreed by and between City and the Developer that:

1. The above-referenced Urban Renewal Development Agreement (herein referred to as “Agreement”), as authorized by the Des Moines City Council on March 23, 2020, by Roll Call No. 20-0533, and recorded with the Polk County Recorder in Book 18007, Page 960, and as amended by the First Amendment authorized by the Des Moines City Council on December 7, 2020, by Roll Call No. 20-2015. and recorded with the Polk County Recorder in Book 18260, Page 143, is hereby amended in accordance with the terms set forth in this Second Amendment.

2. Section 1.2, “Time for Completion of Improvements”, with the exception of footnote 2 thereto which remains as originally stated, is hereby deleted in its entirety and replaced with the following:

Sec. 1.2. Time for Completion of Improvements. A. Developer shall cause the initial construction of the Phase 1 Improvements to be commenced by June 1, 2021 and shall cause such construction to be diligently pursued to completion. The Phase 1 Improvements shall be substantially completed by **July 31, 2023**, subject to a delay in performance pursuant to Section 5.4 hereunder, so as to qualify for the issuance of the Certificate of Completion.²

B. Developer shall cause the initial construction of the Phase 2 Improvements to be commenced by June 1, 2021 and shall cause such construction to be diligently pursued to completion. The Phase 2 Improvements shall be substantially completed by January 1, 2025, subject to a delay in performance pursuant to Section 5.4 hereunder, so as to qualify for the issuance of the Certificate of Completion. (See FN 2.)

3. Section 3.1, “Duration”, and footnote (5) thereto, are hereby deleted in its entirety and replaced with the following:

Sec. 3.1. Duration. The Urban Renewal Covenants imposed pursuant to this Article shall apply to the portion of the Property containing the Phase 1 Improvements and shall run with the land upon which the Property containing the Phase 1 Improvements is located for a term commencing upon the date of recording of the

Declaration of Covenants for each applicable parcel and continuing until May 1, 2038⁵, unless earlier terminated in accordance with, or otherwise limited by, this Agreement.

[FN5] ⁵ Pursuant to Article 4, the final installment of the Economic Development Grant is estimated to be due on May 1, 2038.

4. Section 4.2, “Economic Development Grant”, subsections (1) and (2), with the exception of footnotes 6 and 7 thereto which remain as originally stated, are hereby deleted in their entirety and replaced with the following:

1) City shall pay to Developer an Initial Economic Development Grant in six (6) annual installments payable each May 1st, commencing May 1, 2024. Each annual installment of the Initial Economic Development Grant shall be payable from Tax Increment Financing (TIF) allocated to the Metro Center Urban Renewal Project Area, in the following amounts:

Years 1 and 2: Two-Hundred Seventy-Five Thousand and No/100 U.S. Dollars (\$275,000.00) each

Years 3 and 4: Two-Hundred Fifty Thousand and No/100 U.S. Dollars (\$250,000.00) each

Years 5 and 6: Two-Hundred Twenty-Five Thousand and No/100 U.S. Dollars (\$225,000.00) each.

Commencing with the Initial Economic Development Grant to be paid by City in Year 4 and continuing through Year 12 of the Supplemental Economic Development Grant described in subsection (2) of this Section 4.2, Developer shall forfeit and/or owe to the City the amount of Ten-Thousand Five Hundred and No/100 U.S. Dollars (\$10,500.00), per Year, for each unit of the Phase 2 Improvements for which a certificate of occupancy has not been issued by the City.⁶ In the event that the amount of the Initial Economic Development Grant owed in Years 4, 5, and/or 6 is less than the amount owed by Developer due to failure to so obtain a certificate of occupancy, and thereafter in Years 7-12 of the Supplemental Economic Development Grant, Developer shall deposit a check issued to the City of Des Moines in the total amount owed no later than May 1 of the applicable Year.

2) City shall pay to Developer a Supplemental Economic Development Grant in eighteen (18) semi-annual installments each November 1st and May 1st, commencing November 1, 2029 (Year 7), payable from the Project TIF as defined herein allocated to the Improvements⁷, as follows:

Years 7-10 (estimated 11/2029-5/2033): One-Hundred Percent (100%) of Project TIF (50% per semi-annual installment)

Years 11-15 (estimated 11/2033-May 2038): The lesser of One-Hundred Percent (100%) of the Project TIF (50% per semi-annual installment) or Four-Hundred Sixty-Thousand and No/100 U.S. Dollars (\$460,000.00) (\$230,000.00 per semi-annual installment)

5. Footnote 8 is hereby deleted in its entirety and replaced with the following:

[FN 8] ⁸ For example, if Developer is in full compliance with this Agreement and the related Declaration of Covenants, then:

- If the 18th semi-annual installment payment of the Supplemental Economic Development Grant brings the total amount of payments to Developer to \$4,800,634.00, then payment by the City of said Grant is complete.
- If the 10th semi-annual installment payment of the Supplemental Economic Development Grant brings the total amount of payments to Developer to \$4,800,634.00, then payment by the City of said Grant is complete.
- If the 18th semi-annual installment (May 1, 2038) payment of the City Grant brings the total amount of payments to Developer to \$4,000,000.00 due to lower-than-estimated Project TIF Revenue, then payment by the City of said Grant is complete.

6. Section 4.4, “Reporting”, with the exception of subsections (1) through (7) thereto which remain as originally stated, is hereby deleted in its entirety and replaced with the following:

Sec. 4.4. Reporting. Commencing on April 1, 2024, and continuing on each April 1st thereafter until all installments on the Initial Economic Development Grant have been paid and on each November 1st and May 1st thereafter until all installments of the Supplemental Economic Development Grant have been paid, Developer shall cause an Annual or Semi-Annual Report, as applicable, to be prepared and delivered to the City containing the following:

7. All other terms, provisions, and conditions originally set forth in the Agreement, including all exhibits thereto, remain effective and binding upon City and the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Urban Renewal Development Agreement as of the _____ day of _____, 2022.

BRIDGE DISTRICT LEVEL, LLC

An Iowa limited liability company

By: Hubbell Realty Company, Manager

By: _____
Its: _____

By: _____
Its: _____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2022, by _____ and _____ as _____ and _____, respectively, of Hubbell Realty Company, Manager of Bridge District Level, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Iowa
My commission expires: _____

**BRIDGE DISTRICT II
TOWNHOMES, LLC**
An Iowa limited liability company

By: Hubbell Realty Company, Manager

By: _____
Its: _____

By: _____
Its: _____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2022, by _____ and _____ as _____ and _____, respectively, of Hubbell Realty Company, Manager of Bridge District II Townhomes, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Iowa
My commission expires: _____

BRIDGE DISTRICT II, LLC
An Iowa limited liability company

By: Hubbell Realty Company, Manager

By: _____
Its: _____

By: _____
Its: _____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2022, by _____ and _____ as _____ and _____, respectively, of Hubbell Realty Company, Manager of Bridge District II, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Iowa
My commission expires: _____

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2022, 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. 22-_____ of City Council on the ___ day of _____, 2022, 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.

Notary Public in the State of Iowa