



**Date** February 6, 2023

**RESOLUTION APPROVING FIRST AMENDMENT AND ASSIGNMENT TO URBAN RENEWAL AGREEMENT WITH ND 22 FLEMING, LLC AND ASSIGNMENT FOR COLLATERAL**

**WHEREAS**, on September 26, 2011, by Roll Call No. 11-1640, the City Council approved an Urban Renewal Development Agreement with ND 22 Fleming, L.L.C. (the "Developer"), whereby the Developer agreed to rehabilitate and renovate floors 3 through 11 of the Fleming Building into approximately 96 residential units, to retain the commercial use of the first floor, to have the option to retain the commercial use of the second floor or to convert it into approximately 15 additional apartments, and to upgrade the exterior appearance of the building and perform extensive renovation including asbestos abatement, new windows, new heating and cooling systems, new lighting and construction of a new internal stairwell, all to be in conformance with the proposed Conceptual Development Plan, in consideration of the City's agreement to provide Economic Development Grants payable in installments over 15 years; and,

**WHEREAS**, on May 21, 2012, by Roll Call No. 12-0791, the City Council approved the Developer's assignment of the Development Agreement to Bankers Trust Company ("Bankers Trust Assignment") as collateral for financing to be provided for the rehabilitation of the Fleming Building; and,

**WHEREAS**, Developer and City wish to clarify certain terms relating to the outstanding economic incentives remaining under the Development Agreement; and

**WHEREAS**, Developer has entered into an agreement to sell the Fleming Building to KMC Properties, LLC, "Buyer" on or before February 10, 2023; and

**WHEREAS**, the Bankers Trust Assignment will be released at closing; and

**WHEREAS**, the City, Developer and Buyer have negotiated an Amendment and Assignment of Urban Renewal Development Agreement to clarify certain terms and assign the Developer's interest from Developer to Buyer upon closing ("Amendment and Assignment"); and

**WHEREAS**, Buyer has asked that the City consent to the Partial Assignment of Urban Renewal Development Agreement to Security National Bank as collateral for financing on the purchase of the building ("Collateral Assignment"); and

**WHEREAS**, the City Manager recommends the City approve and consent to said Amendment and Assignment and Collateral Assignment, both of which are now on file and available for inspection in the office of the City Clerk; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that said Amendment and Assignment and Collateral Assignment, are hereby approved; 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; the City Manager or his designee(s) are authorized and directed to monitor compliance

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by the Developer with said Agreement as amended; and the City Manager is authorized and directed to execute any additional minor amendments to the Agreement and to return any substantive amendments to the Agreement to the City Council for consideration and approval.

(Council Communication No. 23-065)

MOVED BY \_\_\_\_\_ to adopt, Second by \_\_\_\_\_.

FORM APPROVED:

/s/ Lisa A. Wieland  
 Lisa A. Wieland, Assistant City Attorney

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

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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.

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk