

**FIRST AMENDMENT TO  
URBAN RENEWAL DEVELOPMENT AGREEMENT**

**Between:**

**CITY OF DES MOINES, IOWA**

**and**

**THE DISTRICT DEVELOPER, LLC**

This **FIRST AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT**, is made as of December 6<sup>th</sup>, 2021 (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 **THE DISTRICT DEVELOPER, LLC** an Iowa limited liability company (the “Developer”). The City and the Developer are each a “Party” and together, the “Parties”.

WHEREAS, the City and Developer are parties to an Urban Renewal Development Agreement dated January 25, 2021 (the “Agreement”); and,

WHEREAS, the Parties desire to amend certain portions of the Agreement.

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

1. Section 1.4 is amended by deleting the final sentence and replacing with: “Unless the City approves, City Property shall not be transferred to Developer prior to approval of the Final Plat. City approval under this section shall not be unreasonably denied. The City Manager shall have the authority, without further City Council approval, to approve for the City under this Section.”

2. Section 2.1(F)(d) shall be amended to add the following sentence at the end of such Section: “Sidewalks shall be open to public access at all times and, if located outside of public right of way, subject to a pedestrian access agreement, in a form substantially similar to Exhibit E-1, attached hereto and hereby made a part hereof, or on such other form that is reasonable and mutually agreeable to the Parties.”

3. Section 3.4 is amended by deleting the section and substituting in its place the following:

Sec 3.4. City Parcels 1, 2, 3, 4, and 8—Agreement to Purchase. Subject to the terms and conditions set forth in this Agreement, Developer hereby agrees to purchase from City, City Parcels 1, 2, 3, 4, and 8 on or by the following dates:

Parcel 8:	January 31, 2022
Parcel 1:	June 1, 2022
Parcels 2, 3, and 4:	April 1, 2023

Developer may close on City Parcel 1, City Parcel 2 and/or City Parcel 4 prior to the above-referenced date, with 120 days’ written notice to the City or upon mutual agreement of such

lesser time, provided that the City has relocated off the Parcels upon completion of the Municipal Services Center Phase II. The City plans to use City Parcel 3 to relocate a portion of its vehicles from City Parcel 1. Therefore, City Parcel 3 is not available until the City permanently relocates such vehicles therefrom, which the City shall complete by September 1, 2022. If City Parcel 3 is available prior to September 1, 2022, the City shall provide written notice to Developer of such City Parcel's availability and, thereafter, Developer may close on City Parcel 3 before the date specified above, with 120 days' written notice to the City or upon mutual agreement of such lesser time. Developer and the City agree to cooperate in making City Parcels available as needed by Developer, which cooperation could include, subject to terms mutually acceptable to the City and Developer, Developer providing temporary vehicle storage for the City on property in vicinity owned by Developer, and specifically allows the City to store vehicles at 404 SE 5<sup>th</sup> until September 1, 2022.

4. Section 3.5(1) and Section 3.5(3) shall be deleted and replaced with:

- 1) Unless the City provides approval under Section 1.4, above, the City has approved the Final Plat.
- 3) Unless the Parties agree otherwise, Developer has accepted the condition of title to the relevant City Parcel.

5. Section 6.1(A) shall be amended to change the date from February 15, 2021 to December 1, 2021.

6. Section 6.3(E)(1) shall be amended to change 15% to 10%.

7. Except as expressly amended hereby, the Agreement remains in full force and effect. To the extent of any conflict between this Amendment and the Agreement, this Amendment's terms control. Any further amendment of this Amendment or the Agreement will require a writing signed by the Parties.

8. This Amendment may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, and all of which, together, will constitute one and the same instrument.

[Signature Page Follows]

**The District Developer, LLC**  
an Iowa limited liability company

By: *P.D.H.*  
Paul D. Hayes, Manager

STATE OF IOWA                    }  
  } ss:  
COUNTY OF POLK

This instrument was acknowledged before me on November 29, 2021, by Paul D. Hayes as a Manager of **The District Developer, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.

*Danelle England*  
Notary Public in the State of Iowa  
My commission expires: 2/22/22



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 6<sup>th</sup> day of December, 2021, 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. 21- 1827 of City Council on the 6<sup>th</sup> day of Dec 2021, 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.

*Sandi L. Deery*  
Notary Public in the State of Iowa

APPROVED AS TO FORM:

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



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Prepared by: [INSERT]

Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891

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### PERMANENT EASEMENT FOR PUBLIC ACCESS

\_\_\_\_\_ (“Grantor”), in consideration of \$1.00 and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby convey unto the City of Des Moines (the “City”) a Permanent Easement for Public Access over and across the following described property:

See Exhibit “A”, attached hereto and hereby incorporated by this reference,

(hereinafter referred to as the "Easement Area") for the purpose of public pedestrian travel between the adjoining lots and parcels and the adjoining public streets (this “Easement”).

The Easement Area shall be subject to the following conditions:

1. **MAINTENANCE OF EASEMENT AREA.** Grantor shall maintain a sidewalk for pedestrian travel over and across the Easement Area in accordance with Chapter 102 of the City of Des Moines Code of Ordinances and as otherwise provided in this Agreement. Grantor shall maintain the sidewalk in a safe and functional condition for pedestrian travel consistent with applicable City standards and shall remove any accumulations of snow or ice from the Easement Area. Grantor shall otherwise have the same obligations, liabilities, rights and privileges with regard to the use, maintenance and repair of the sidewalk within the Easement Area, and for the removal of snow and ice, as all other property owners in the City of Des Moines have with regard to a public sidewalk in an adjoining public right-of-way. Nothing in this Easement shall be interpreted to impose any duty upon the City to maintain the Easement Area. To the extent there is a conflict in the maintenance standards or obligations imposed hereunder, the stricter standard and obligation shall apply.
2. **OBSTRUCTIONS PROHIBITED.** Except for any sidewalk installed in furtherance of this Easement, Grantor shall not erect any structure over or within the Easement Area that interferes with pedestrian access or conflicts with City standards for a public sidewalk, without obtaining the prior written approval of the City Engineer.
3. **PLANTINGS.** The planting of trees and shrubs is prohibited within the Easement Area.
4. **CHANGE OF GRADE PROHIBITED.** Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer.

5. **RIGHT OF ACCESS.** The City, its agents, contractors and employees shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to remove any unauthorized obstructions, structures, plants, etc., placed or erected on the Easement Area.
6. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.
7. **APPROVAL BY CITY.** This Easement shall not be binding until it has received final approval and acceptance by the City of Des Moines which approval and acceptance shall be noted on this Easement.
8. **INDEMNIFICATION.** Grantor agrees to indemnify and hold the City harmless from all injury or damages to persons or property or claims thereof resulting from or arising out of the use of the Easement Area including all expenses of litigation and legal fees, arising therefrom, except to the extent caused by the City or its employees, contractors, consultants, elected and appointed officials, agents and volunteers. Nothing herein shall limit Grantor's enforcement of indemnity against third parties under other agreements.
9. **WAIVER.** The failure of Grantor or Grantee to insist in any one or more instances upon performance of any term or condition of this Easement shall not be construed as a waiver of future performance of any such term, covenant or condition, but the obligation of such party with respect thereto will continue in full force and effect.
10. **AMENDMENT.** This Easement and any provision herein contained may not be terminated, extended, modified or amended without the express written consent of Grantor and Grantee, or their successors in interest, as applicable.
11. **GOVERNING LAW.** This Easement shall be construed and governed in accordance with the laws of the State of Iowa.

Grantor does hereby covenant with the City that Grantor holds said real estate described in this Easement by Title in Fee Simple; that Grantor has good and lawful authority to convey the same; and said Grantor covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement. Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

[INSERT]  
a[n] [INSERT]

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 202\_\_\_\_, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said State  
My commission expires: \_\_\_\_\_

**ACCEPTANCE BY CITY:**

The preceding conveyance of an interest in real estate is hereby accepted by the City of Des Moines, Iowa. This Acceptance is made by the City Manager under authority delegated to the City Manager by §2-201 of the Municipal Code of the City of Des Moines, Iowa.

Date: \_\_\_\_\_, 20\_\_\_\_

**City of Des Moines, Iowa**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

FORM APPROVED:

\_\_\_\_\_  
Thomas G. Fisher, Jr.  
Assistant City Attorney

Exhibit "A"  
[Legal Description/Plat of Easement Area]  
(see next page)



Exhibit E-1  
(see next page)



Roll Call Number

21-1827

Agenda Item Number

37

Date December 6, 2021

APPROVAL OF FIRST AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH THE DISTRICT DEVELOPER, LLC

WHEREAS, on January 25, 2021, by Roll Call No. 21-0154, the City Council approved a Development Agreement with The District Developer, LLC. (the "Developer") to develop property located in the Market District of the East Village; and

WHEREAS, the Developer has requested an amendment to the Agreement that would approve a revised Conceptual Development Plan that clarifies and provides additional detail on the scope of public improvements and changes the closing dates of parcel sales and modifies other terms in the agreement; and,

WHEREAS, the Amendment is in the best interest of both parties.

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

- 1. That the First Amendment to Urban Renewal Development Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines.
2. The City Clerk is directed to record the Amendment with the Polk County, Iowa Recorder's Office.

(Council Communication No. 21- 528 )

MOVED by Gatto to adopt.

APPROVED AS TO FORM:

/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, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL (YEAS: 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.

Signature of Mayor T. M. Franklin Cownie

Signature of P. Kay Cmelik

City Clerk



Roll Call Number

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Signature of P. Kay Cmelik

City Clerk