CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Amendment No. 1 to Phase II Development Agreement between JGC Holdings, LLC (FKA JARCOR, LLC), Series 7 of JGC Holdings, LLC and the City of West Des Moines **DATE: May 3, 2021**

RESOLUTION: Amendment No. 1 of Phase II Development Agreement

FINANCIAL IMPACT: The applicant has agreed to a figure of $6,385,000 as the value of the Minimum Assessment Agreement. The company has signed two Development Agreements with the City, both include a Minimum Assessment Agreement to guarantee the investments, to guarantee the valuation for ten (10) years, and to guarantee the retention/creation of seven (7) full-time equivalents (FTE) jobs. With this amendment, there is no additional financial impact.

BACKGROUND: On February 15, 2021, City Council approved the execution of a Development Agreement between JGC Holdings, LLC (FKA JARCOR, LLC) and the City.

JGC Holdings, LLC (FKA JARCOR, LLC) is constructing two, three-story, mixed use buildings with retail on the ground floor and 41 units of affordable housing with Phase II in the balance of the building. The affordability of those units is covered in the Development Agreement. This development will be located on property that they own at 1249 and 1261 8th Street.

At the request of the Developer, staff created two (2) Development Agreements in a Phase I and Phase II format to accommodate the requirements of the Developer's financing lenders. The rebate would be split between the two Development Agreements. The estimated minimum assessed value of the completed project for Phase II is $6,385,000.

During the loan closing, the developer realized that the properties needed to be deeded to appropriately match the Amended Operating Agreement of JGC Holdings, LLC and the new plats created after acquiring the properties. New deeds were filed for the parcels being developed using Series LLC's.

Per City legal counsel, it is in the best interests of the City to amend both Development Agreements to reflect the property reassignments to ensure proper contract compliance. The Phase II amendment will reflect Series 7 of JGC Holdings, LLC, as the owner of the property.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution amending the Development Agreements for Phase II.

Lead Staff Member: Rachel Wacker, Business Development Coordinator, Community & Economic Development

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	N/A	
Date(s) Published	N/A	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	4/21/2021		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution to Amend Phase II Development Agreement
Exhibit II - Amended Development Agreement between the City and JGC Holdings, LLC

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE AGREEMENT FOR PRIVATE DEVELOPMENT BY AND AMONG THE CITY OF WEST DES MOINES, JGC HOLDINGS, LLC, AN IOWA SERIES LIMITED LIABILITY COMPANY AND SERIES 7 OF JGC HOLDINGS, LLC, AN IOWA SERIES LIMITED LIABILITY COMPANY (PHASE 2 OF KEYSTONE ON 8th STREET)

WHEREAS, by action taken on August 21, 2017, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Midtown Urban Renewal Plan (the "Plan" or "Urban Renewal Plan") for the Midtown Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Midtown Urban Renewal Plan has been subsequently amended two times, most recently in 2020, and which Plan, as amended, is on file in the office of the Polk County Recorder; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City of West Des Moines, Iowa ("City") and JGC Holdings, LLC, an Iowa series limited liability company ("Developer") (collectively the "Initial Parties") have previously entered into an Agreement for Private Development dated February 15, 2021 ("Agreement"), a memorandum of which Agreement was recorded with the Polk County Recorder at Book 18384 Page 581-584; and

WHEREAS, pursuant to the Agreement, the Developer agreed to build certain Minimum Improvements on certain property (the "Development Property") located within the Urban Renewal Area, and to create and retain employment and housing opportunities thereon (the "Project"), and in consideration of these obligations, the City agreed to provide certain incentives to Developer; and

WHEREAS, subsequent to the Agreement, the Developer determined that the Development Property should be transferred to Series 7 of JGC Holdings, LLC, and Iowa series limited liability company (the "Owner") to comply with the Amended Operating Agreement of Developer, and Developer conveyed fee simple title for the Development Property to the Owner ("Conveyance"); and

WHEREAS, the City is willing to amend the Agreement pursuant to a proposed Amendment No. 1 to the Agreement (the "Amendment") that would, among other things, add the Owner as a party to the Agreement and provide for execution of a First Amendment to the Minimum Assessment Agreement; and

WHEREAS, the Council has determined that the Amendment is in the best interests of the City and the residents thereof and that the performance by the City of its obligations under

the Agreement, as amended, remains a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES IN THE STATE OF IOWA:

Section 1. That the performance by the City of its obligations under the Agreement, as amended by the Amendment, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement, as amended by the Amendment, and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 2. That the form and content of the Amendment, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Amendment for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Amendment, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as amended by the Amendment as executed.

PASSED AND APPROVED this 3rd day of May, 2021.

_____

Steven K. Gaer, Mayor

ATTEST:

_____

Ryan T. Jacobson, City Clerk

AMENDMENT NO. 1
TO
AGREEMENT
FOR PRIVATE DEVELOPMENT
(PHASE 2 OF KEYSTONE ON 8th STREET)

THIS AMENDMENT NO. 1 TO AGREEMENT FOR PRIVATE DEVELOPMENT (hereafter called "Amendment") is entered into on or as of the _____ day of _____, 2021 by and among the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2021, as amended (the "Urban Renewal Act"), JGC HOLDINGS, LLC, an Iowa series limited liability company, having offices for the transaction of business at 950 Office Park Road, Suite 300, West Des Moines, Iowa 50265 ("Developer"), and SERIES 7 of JGC HOLDINGS, LLC, an Iowa series limited liability company (the "Owner"). The City, Developer, and Owner are Parties to this Amendment.

WITNESSETH:

WHEREAS, the City and Developer (the "Initial Parties") previously entered into an Agreement for Private Development dated February 15, 2021 ("Agreement"), a Memorandum of which was recorded with the Polk County Recorder at Book 18384, Page 581-584; and

WHEREAS, pursuant to the Agreement, the Developer agreed to redevelop certain real property legally described as follows:

LOT 2:

ALL THAT PART OF LOTS 8 AND 9 IN COLBY'S FACTORY ADDITION, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 9; THENCE NORTH 88°45'37" EAST, A DISTANCE OF 27.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF 8TH STREET, AS PRESENTLY ESTABLISHED, AND SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 01°00'06" WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 182.30 FEET; THENCE NORTH 88°59'55" EAST, A DISTANCE OF 372.42 FEET; THENCE SOUTH 00°51'00" EAST, A DISTANCE OF 180.45 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8; THENCE SOUTH 66°28'22" WEST ALONG THE SOUTHERLY LINE OF SAID LOT 8, A DISTANCE OF 167.99 FEET; THENCE NORTH 00°51'00" WEST, A DISTANCE OF 63.41 FEET; THENCE SOUTH 88°45'37" WEST, A DISTANCE OF 216.94 FEET TO THE POINT OF BEGINNING, CONTAINING 72,450 SQUARE FEET OR 1.66 ACRES, MORE OR LESS, AND SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.

(the "Development Property"), and the Developer agreed to build certain Minimum Improvements on the Development Property and create and retain employment and housing opportunities thereon (the "Project"); and

WHEREAS, subsequent to the Agreement, the Developer determined that the Development Property should be transferred to the Owner to comply with the Amended Operating Agreement of Developer, and Developer conveyed fee simple title for the Development Property to the Owner ("Conveyance"); and

WHEREAS, the City believes that the development of the Development Property pursuant to the Agreement, as amended hereby, and the fulfillment generally of the amended Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

Section 1. Admission of Owner as a Party to the Agreement.

A. The Initial Parties acknowledge and agree that, pursuant to this Amendment, the Owner is hereby admitted as a Party to the Agreement. The City, by virtue of its execution of this Amendment, grants any and all consents or approvals necessary for the effectuation of the Conveyance.

B. The Owner hereby agrees to be bound by and comply with all of the obligations, liabilities, covenants, and agreements applicable to the owner of the Development Property pursuant to the Agreement. Pursuant to this Section 1, references to the "Developer" in the Agreement shall hereafter refer to the Owner and the Developer collectively and each shall be jointly and severally responsible for the completion or compliance with all obligations, liabilities, covenants, and agreements applicable to the "Developer" (as that term was defined in the Agreement prior to this Amendment) under the Agreement, as amended. For the avoidance of doubt, wherever in the Agreement compliance with the terms of the Agreement by the Developer (as that term was defined in the Agreement prior to this Amendment) is a condition precedent to the receipt of any payment from the City, such term now requires compliance with the terms of the Agreement, as amended, at the time of payment by the Developer and Owner.

C. Pursuant to this Section 1, Section 2.2 (a) of the Agreement is amended to include the following sentence: "Series 7 of JGC Holdings, LLC, an Iowa series limited liability company is a series of JGC Holdings, LLC, duly organized and validly existing under the laws of the State of Iowa, and is authorized to operate in the state of Iowa." For the avoidance of doubt, the Owner hereby reaffirms each representation and warranty attributed to the "Developer" (as that term was defined in the Agreement prior to this Amendment) contained in Section 2.2 of the Agreement, as amended.

D. The Parties agree to add the following Section 10.2(c) to the Agreement:

c. In the case of Owner, is addressed or delivered personally to Series 7 of JGC Holdings, LLC at 950 Office Park Road, Suite 300, West Des Moines, Iowa 50265, Attn: Jackie Nickolaus.

E. Within forty-five (45) days after July 1, 2021, Developer shall file a Protected Series Designation under Iowa Code §489.14201, and thereafter take all steps necessary to incorporate any revised name or notice information for Developer and Owner into the Agreement, as amended, to ensure said information in the Agreement is consistent with the information contained in the Protected Series Designation.

Section 2. First Amendment to the Minimum Assessment Agreement. The Parties agree to execute simultaneous with the Amendment, and thereafter promptly record, the First Amendment to the Minimum Assessment Agreement attached hereto as Exhibit E.

Section 3. Future Documentation of Contractual Relationship. The Developer and Owner shall execute and deliver or cause to be executed and delivered such agreements and other documents and take or cause to be taken such other actions as the City may reasonably request from time to time in order to implement this Amendment.

Section 4. Fees and Expenses. Owner and Developer agree to pay to the City an amount equivalent to the City's reasonable (as determined in the sole discretion of the City) costs and attorney fees incurred in connection with the drafting and approval of this Amendment within thirty (30) days from the date the City presents the Owner and Developer with a statement demonstrating such costs, and if not previously reimbursed such costs shall be deducted from Developer's first Economic Development Grant.

Section 5. No Further Modifications. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Agreement shall remain in full force and effect and are hereby in all respects ratified and affirmed.

Section 6. Counterparts. This Amendment may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

[Signatures start on the next page]

IN WITNESS WHEREOF, the City has caused this Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer and Owner have caused this Amendment to be duly executed in their name and behalf by their authorized representatives, all on or as of the day first above written.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2021, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____ passed on the _____ day of _____, 2021, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

[Signature page to Amendment – City of West Des Moines]

IN WITNESS WHEREOF, the City has caused this Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer and Owner have caused this Amendment to be duly executed in their name and behalf by their authorized representatives, all on or as of the day first above written.

JGC HOLDINGS, LLC

By: _____
Joseph Cordaro, President

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on June 28 2021, 2021, by Joseph Cordaro as President of JGC Holdings, LLC, an Iowa series limited liability company.

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2023

Michelle D. Riesenberg
Notary, State of Iowa

[Signature page to Amendment – Developer]

IN WITNESS WHEREOF, the City has caused this Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer and Owner have caused this Amendment to be duly executed in their name and behalf by their authorized representatives, all on or as of the day first above written.

SERIES 7 of JGC HOLDINGS, LLC,
an Iowa series limited liability company

By: _____
Joseph Cordaro, President

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on April 28, 2021, 2021, by Joseph Cordaro as President of Series 7 of JGC Holdings, LLC, an Iowa series limited liability company.

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2023

Michelle D. Riesenberg
Notary, State of Iowa

[*Signature page to Amendment –Owner*]

Prepared by: Nathan J. Overberg, Ahlers & Cooney, 100 Court Ave. #600, Des Moines, IA 50309, 515-243-7611
Return to: Ryan T. Jacobson, City of West Des Moines, 4200 Mills Civic Parkway, Suite 1A, West Des Moines, IA 50265

EXHIBIT E

FIRST AMENDMENT TO
MINIMUM ASSESSMENT AGREEMENT
(PHASE 2 OF KEYSTONE ON 8th STREET)

WHEREAS, the City of West Des Moines, Iowa (the "City") and JGC HOLDINGS, LLC, an Iowa series limited liability company, having offices for the transaction of business at 950 Office Park Road, Suite 300, West Des Moines, Iowa 50265 ("Developer"), and SERIES 7 of JGC HOLDINGS, LLC, an Iowa series limited liability company ("Owner") did on or about the ___ day of _____, 2021, make, execute, and deliver, each to the other, an Amendment No. 1 to the Agreement for Private Development (the "Amendment to APD") which amended that certain Agreement for Private Development dated February 15, 2021 by and among the City and Developer (the "Initial APD" and collectively with the Amendment to APD, the "APD"), wherein and whereby Developer agreed to own and develop certain real property located within the City and within the Midtown Urban Renewal Area, in accordance with the terms of the APD and the Midtown Urban Renewal Plan (the "Plan"), which property is legally described as:

LOT 2:

ALL THAT PART OF LOTS 8 AND 9 IN COLBY'S FACTORY ADDITION, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 9; THENCE NORTH 88°45'37" EAST, A DISTANCE OF 27.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF 8TH STREET, AS PRESENTLY ESTABLISHED, AND SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 01°00'06" WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 182.30 FEET; THENCE NORTH 88°59'55" EAST, A DISTANCE OF 372.42 FEET; THENCE SOUTH 00°51'00" EAST, A DISTANCE OF 180.45 FEET TO THE SOUTHEAST CORNER OF SAID LOT 8; THENCE SOUTH 66°28'22" WEST ALONG THE SOUTHERLY LINE OF SAID LOT 8, A DISTANCE OF 167.99 FEET; THENCE NORTH 00°51'00" WEST, A DISTANCE OF 63.41 FEET; THENCE SOUTH 88°45'37" WEST, A DISTANCE OF 216.94 FEET TO THE POINT OF BEGINNING, CONTAINING 72,450

SQUARE FEET OR 1.66 ACRES, MORE OR LESS, AND SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.

(the "Development Property"); and

WHEREAS, the City, Developer, and Owner desire to record this First Amendment to Minimum Assessment Agreement (this "Amendment") amending that certain Minimum Assessment Agreement dated February 15, 2021 by and among the City and Developer (the "Initial Parties") and recorded on February 26, 2021 at Book 18384, Page Number 585-593 (the "Initial Agreement").

NOW, THEREFORE, the parties to this First Amendment to Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein. Except as noted herein, all capitalized terms appearing herein and not otherwise defined herein shall have the meanings assigned to such terms in the Initial Agreement or APD.

2. The Initial Parties acknowledge and agree that, pursuant to this Amendment, the Owner is hereby admitted as a Party to the Initial Agreement. The Owner hereby agrees to be bound by and comply with all of the obligations, liabilities, covenants, and agreements applicable to the owner of the Development Property pursuant to the Initial Agreement, and agrees that such obligations, liabilities, covenants, and agreements shall have the same force and effect as though the Owner had originally executed and delivered the Initial Agreement as the "Developer"(as that term was defined in the Initial Agreement prior to this Amendment). Pursuant to the above, references to the "Developer" in the Initial Agreement shall hereafter refer to the Developer and the Owner collectively, and each shall be jointly and severally responsible for the completion or compliance with all obligations, liabilities, covenants, and agreements applicable to the "Developer" (as that term was defined in the Initial Agreement prior to this Amendment) under the Initial Agreement.

3. The Developer and Owner shall execute and deliver or cause to be executed and delivered such agreements and other documents and take or cause to be taken such other actions as the City may reasonably request from time to time in order to implement this Amendment.

4. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Initial Agreement shall remain in full force and effect and are hereby in all respects ratified and affirmed.

5. This Amendment may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Minimum Assessment Agreement as of the date first set forth above.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2021, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____ passed on the _____ day of _____, 2021, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

[*Signature Page Continues*]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Minimum Assessment Agreement as of the date first set forth above.

JGC HOLDINGS, LLC

By: _____
Joseph Cordaro, President

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on April 28, 2021, 2021, by Joseph Cordaro as President of JGC Holdings, LLC, an Iowa series limited liability company.

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2023

Michelle D. Riesenberg
Notary, State of Iowa

[*Signature Page Continues*]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Minimum Assessment Agreement as of the date first set forth above.

SERIES 7 of JGC HOLDINGS, LLC,
an Iowa series limited liability company

By: _____
Joseph Cordaro, President

STATE OF IOWA)
) SS
COUNTY OF POLK)

This record was acknowledged before me on April 28, 2021, 2021, by Joseph Cordaro as President of Series 7 of JGC Holdings, LLC, an Iowa series limited liability company.

MICHELLE D. RIESENBERG
Commission Number 223052
My Commission Expires
June 16, 2023

Michelle D. Riesenberg
Notary, State of Iowa

Execution Version