CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval to execute a Development Agreement between 111 5th Street, LLC and the City of West Des Moines **DATE: May 16, 2022**

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: 111 5th Street, LLC, represented by Tim Rypma, the developer and owner of the property, has signed a Development Agreement with the City that includes a Minimum Assessment Agreement to guarantee the investment, to guarantee the valuation for ten (10) years, and to guarantee the retention/creation of five (5) Full Time Equivalent (FTEs). The applicant has agreed to a figure of $1,400,000 as the value of the Minimum Assessment Agreement. Based upon the minimum assessment of $1,400,000, the annual property tax rebate would be approximately $30,221 or $302,210 over the ten years of the rebate

BACKGROUND: On September 6, 2016, the City Council adopted a resolution creating the Property Tax Rebate Pilot Program to stimulate economic development activity in certain parts of the City. Basically, the program would provide a five-year, 100% rebate of the incremental increase in property taxes on a property if the owner of the property would expend a minimum of $500,000 on building upgrades/construction. The program also required the creation/retention of a minimum of five jobs.

This proposal was reviewed by the Finance & Administration Council Subcommittee at their December 8, 2021 meeting, and recommended to the City Council funding through a 10-year, 100% property tax rebate under the Property Tax Rebate Program. The City has approved a 10-year property tax rebate once in the Historic Valley Junction Commercial District (329 5th Street redevelopment).

On December 20, 2021, the City Council directed staff to initiate the drafting of the Development Agreement.

On March 7th, 2022, City Council approved amendment #5 of the Historic West Des Moines plan, which authorized the economic development incentive for this property.

On April 18th, 2022, City Council approved the site plan for the project (Case No. SP-005470-2022).

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Staff recommends that the City Council adopt a resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: J. Bradley Munford, Business Development Coordinator JBM

STAFF REVIEWS

Department Director	Clyde E. Evans, Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	Des Moines Register	
Date(s) Published	May 6, 2022	
Letter sent to surrounding property owners	N/A	

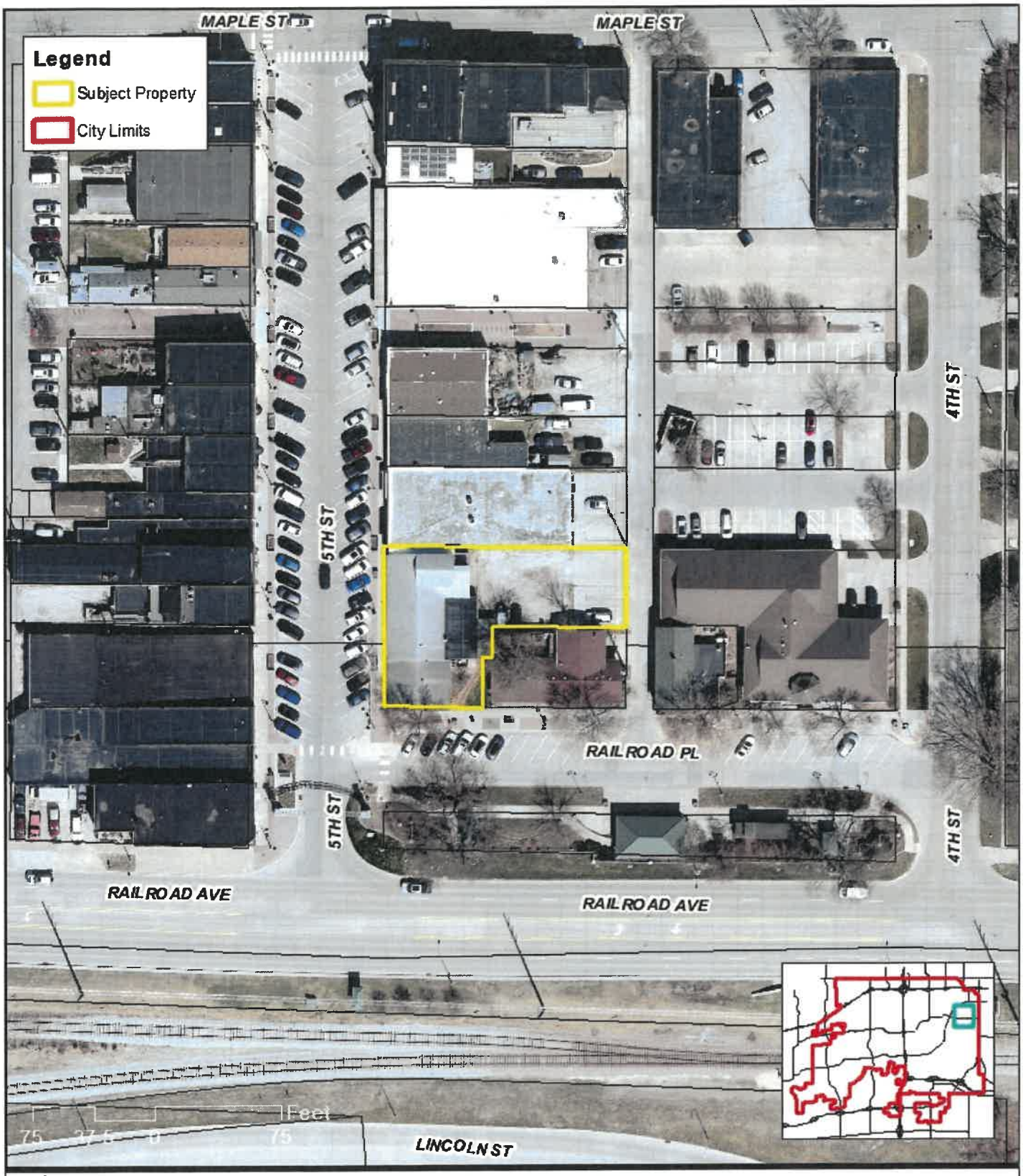
SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	December 8, 2021		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Location Map
Exhibit II - Development Agreement
Exhibit III - Resolution

EXHIBIT I



111 5th Street
Location Map

The City of West Des Moines makes no claim as to the accuracy, completeness or correctness of the City of West Des Moines digital maps and associate data and assumes no responsibility for their positional or content accuracy.

AGREEMENT FOR PRIVATE DEVELOPMENT

by and between

CITY OF WEST DES MOINES, IOWA

AND

111 5TH STREET, LLC

_____, 2022

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the ____ day of _____, 2022, by and between the CITY OF WEST DES MOINES, IOWA, a municipality ("City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2021, as amended ("Urban Renewal Act") and 111 5TH STREET, LLC, a limited liability company formed under the laws of the State of Iowa and having an office for the transaction of business at 512 1/2 East Grand Avenue, Des Moines, Iowa, 50309 ("Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, City has undertaken a program for economic development within its corporate limits and, in connection therewith adopted the Historic West Des Moines Urban Renewal Plan (the "Urban Renewal Plan") for purposes of carrying out urban renewal activities in an area known as the Historic West Des Moines Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, a copy of the Urban Renewal Plan, as subsequently amended, has been recorded among the land records in the office of the Recorder of Polk County; and

WHEREAS, Developer is the owner of certain real property located in the Urban Renewal Area, said property being more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"): and

WHEREAS, the Developer is willing to cause the completion of certain improvements ("Minimum Improvements") on the Development Property and will use its best efforts to lease the Development Property to a business or businesses which will use the Minimum Improvements as part of their ongoing operations and will commit to hire and retain employees in the community in accordance with this Agreement; and

WHEREAS, the City is willing to provide certain incentives to Developer in consideration for its obligations all pursuant to the terms and conditions of this Agreement: and

WHEREAS, the City believes that the redevelopment of the Development Property pursuant to this Agreement and the fulfillment generally of this 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:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

111 5th Street, LLC TIF Account means a separate account within the Historic West Des Moines Urban Renewal Tax Increment Revenue Fund of the City, in which there shall be deposited Tax Increments received by the City with respect to the Minimum Improvements and Development Property (land and building value) under the provisions of Section 403.19 of the Code and the Ordinance.

Agreement means this Agreement for Private Development and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Area or Urban Renewal Area means the area known as the Historic West Des Moines Urban Renewal Area.

Assessor means the Polk County, Iowa Assessor.

Base Valuation means $459,000, the assessed value of the Development Property and any improvements or buildings thereon as of January 1, 2021.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit D and hereby made a part of this Agreement.

City means the City of West Des Moines, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2021, as amended.

Commencement Date means the date of this Agreement.

Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction work to be performed by the Developer on the Development Property; the Construction Plans shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the building inspection division of the City as required by applicable City codes.

County means Polk County, Iowa.

Developer means 111 5th Street, LLC and its permitted successors and assigns.

Development Property means that portion of the Urban Renewal Area described in Exhibit A.

Economic Development Grants means the payments to be made by the City to Developer under Article VIII of this Agreement.

Event of Default means any of the events described in Section 10.1 of this Agreement.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements or all such Mortgages as appropriate.

Full-Time Equivalent Employment Unit means either (i) a "full time" employee who works at least 40 hours per week or 2,000 hours per year or (ii) any combination of "part time" employees, who, in the aggregate, work at least 2,000 hours per year.

Historic West Des Moines Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund was created in order to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403, or 384 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

Minimum Assessment Agreement means an agreement establishing a minimum assessed value for the Minimum Improvements on the Development Property as authorized by Iowa Code Section 403.6(19) and as described in Section 4.1 of this Agreement.

Minimum Improvements means the demolition of existing structures on the Development Property, proper disposal of any debris, site preparation of the Development Property, and the construction of an approximately 5,500 square foot building to be used at least partially as a restaurant, with remaining space used consistent with applicable zoning requirements, together with all related site improvements on the Development Property, as further outlined in Exhibit B and depicted in Exhibit B-1, attached hereto.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Developer under a policy or policies of insurance required to be provided and maintained by Developer, pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means the Ordinance(s) of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the Historic West Des Moines Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code.

Project means the construction of the Minimum Improvements on the Development Property and the retention and creation of Full-Time Equivalent Employment Units on the Development Property as set forth in this Agreement.

State means the State of Iowa.

Tax Increments means the property tax revenues derived from the assessed valuation of the Minimum Improvements and Development Property (land and building value) above the Base Valuation,

that are divided and made available to the City for deposit in the 111 5th Street, LLC TIF Account of the Historic West Des Moines Urban Renewal Area Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 11.8 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State, or local governmental unit (other than the City, with respect to a City-claimed delay).

Urban Renewal Plan means the Historic West Des Moines Urban Renewal Plan, as may be amended, approved with respect to the Historic West Des Moines Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions, or provisions of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City only, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. 111 5th Street, LLC is a limited liability company formed under the laws of the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer shall cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

f. Developer will use its best efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

g. The construction of the Minimum Improvements will require a total investment of approximately $2,259,715 for construction costs.

h. Developer has not received any notice from any local, State, or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

i. Developer has firm commitments for construction or acquisition and permanent financing in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the terms of this Agreement.

j. Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction of the Minimum Improvements and operation of its business on the Development Property.

k. Subject to Unavoidable Delays, the Developer will complete construction of the Minimum Improvements by December 31, 2022.

l. Developer would not undertake its obligations under this Agreement without the payment by the City of the Economic Development Grants being made to Developer pursuant to this Agreement.

m. Developer will not seek to change the current land assessment category, or the zoning classification, of the Development Property during the term of this Agreement.

ARTICLE III. CONSTRUCTION

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in accordance with the terms of this Agreement and in conformance with the Construction Plans submitted to the City pursuant to Section 3.2. Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed in this Agreement and shall require a total investment of approximately $2,259,715 for construction costs.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by City's building official and/or economic development staff as provided in this Section 3.2. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable federal, State, and local laws and regulations. City's building official shall approve the Construction Plans in writing and issue all required permits if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the terms and conditions of the Urban Renewal Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules, and regulations, and City permit requirements; (iv) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (v) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Development Property shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State, and local laws, ordinances, and regulations, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and completed: (i) by no later than December 31, 2022; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in conformity with the site plans approved by the building official or any amendments thereto as may be approved by the building official.

Developer agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

Section 3.4. Certificate of Completion. Upon written request of Developer after completion of the Minimum Improvements, the City will inspect the Minimum Improvements and, if the Minimum Improvements have been completed in accordance with this Agreement, then the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit D attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.4, the City shall, within twenty (20) days after written request by Developer provide a written statement indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts will be necessary, in the opinion of the City, for Developer to take or perform in order to obtain such Certificate of Completion.

Issuance by the City of the Certificate of Completion pursuant to this Section 3.4 is solely for the purposes of this Agreement and shall not constitute approval for any other City purpose nor shall it subject the City to any liability for the Development Property or the Minimum Improvements as constructed.

ARTICLE IV. ASSESSED VALUE AND PROPERTY TAXES

Section 4.1. Assessment Agreement. As further consideration for this Agreement, Developer and the City shall execute the Minimum Assessment Agreement in the form of Exhibit F, pursuant to the provisions of Iowa Code Section 403.6(19), whereby Developer shall agree to a minimum actual value for the Minimum Improvements and the Development Property for the purpose of calculating real property taxes (the "Assessment Agreement" or "Minimum Assessment Agreement") through the Termination Date. Specifically, Developer, the holder of any mortgage, and all prior lienholders shall agree to a minimum actual value for the Minimum Improvements and the Development Property (land and building value) of not less than $1,400,000 (the "Assessor's Minimum Actual Value"), before rollback. Nothing in the Assessment Agreement shall:

a. limit the discretion of the Assessor for the County to assign an actual value to the Development Property in excess of the Assessor's Minimum Actual Value; or

b. prohibit Developer from seeking, through the exercise of legal or administrative remedies, a reduction in such actual value for property tax purposes, provided, however, that Developer shall not seek a reduction of such actual value below the Assessor's Minimum Actual Value.

The Assessment Agreement must be certified by the Assessor for the County, as provided for in Iowa Code Section 403.6(19), and be filed for record in the office of the County Recorder. Such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Development Property or any part thereof, whether voluntary or involuntary. The Assessment Agreement will be binding and enforceable in its entirety against any such subsequent encumbrancer or purchaser, as well as all prior lienholders and the holder of a mortgage, each of which shall sign a consent to the Minimum Assessment Agreement.

Section 4.2. Real Property Taxes. Developer, or its successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property and Minimum Improvements. Until Developer's obligations have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Developer and shall be solely responsible for all assessments and taxes.

Developer and its permitted successors and assigns agree that prior to the Termination Date:

a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

b. They will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal, or local law with respect to taxation of real property contained on the Development Property between the date of execution of this Agreement and the Termination Date.

ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of the City, furnish the City with proof of payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk–Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with

limits against bodily injury and property damage of at least $1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Developer, its directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than $50,000 or self-insurance up to not more than $1,000,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer, and approved by the City.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount of each occurrence and for each year of $1,000,000.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer on the Development Property, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer which is authorized under the laws of the State to assume the risks covered thereby. Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, Developer shall

furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. Developer agrees to notify the City immediately in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer, and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer will apply the Net Proceeds to any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof.

e. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE VI. FURTHER COVENANTS OF DEVELOPER

Section 6.1. Maintenance of Properties. Developer will maintain, preserve, and keep its properties within the City (whether owned in fee or a leasehold interest), including but not limited to the Development Property and the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to their business and affairs relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Developer will comply with all State, federal, and local laws, rules, and regulations relating to the Development Property, Minimum Improvements, and the Project.

Section 6.4. Non-Discrimination. In the construction and operation of the Project, Developer shall not discriminate against any applicant for employment or tenancy, employee, or tenant because of age, color, creed, disability, gender identity, national origin, race, religion, marital status, sex, sexual orientation, familial status, or veteran status. Developer shall ensure that such applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, disability, gender identity, national origin, race, religion, marital status, sex, sexual orientation, familial status, or veteran status.

Section 6.5. Available Information. Upon request, Developer shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with this Agreement.

Section 6.6. Employment Obligations. Developer is constructing the Minimum Improvements with the anticipation that the commercial space in the Minimum Improvements will be occupied at least partially by a restaurant and remaining space utilized by commercial enterprises that will be employing individuals therein at least until the Termination Date of this Agreement. Additionally, from within 30 days after Developer's receipt of a certificate of occupancy for the Minimum Improvements and until the Termination Date, a total Monthly Average of at least 5 Full-Time Equivalent Employment Units will be employed at the Development Property. The Annual Certifications submitted by the Developer pursuant to Section 6.7, starting with the Certification due on October 15, 2023 and continuing until the Termination Date, shall show that a Monthly Average of the number of Full-Time Equivalent Employment Units has been maintained on the Development Property in accordance with the terms of this Section 6.6. "Monthly Average" means the average number of Full-Time Equivalent Employment Units employed on the Development Property as of October 1 of each year and as of the first day of each of the preceding eleven (11) months as shown on the Annual Certifications, provided however that the first Annual Certification shall be prorated. Developer shall provide information as reasonably requested by the City to determine compliance with the foregoing employment obligations.

Section 6.7. Developer Annual Certification. To assist the City in monitoring this Agreement and the performance of Developer hereunder, a duly authorized officer of Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property have been timely paid for the prior fiscal year (and for the current year, if due); (ii) the date of the first full assessment after completion of the Minimum Improvements; (iii) the total number of Full-Time Equivalent Employment Units employed at the Minimum Improvements as of each October 1 and the first day of each of the preceding eleven (11) months; and (iv) certification that such officer has re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof and certificate shall be provided not later than October 15 of each year, commencing October 15, 2023 and ending on October 15, 2033, both dates inclusive. Developer shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit E for the form required for Developer's Annual Certification.

Section 6.8. Term of Operation. Developer shall ensure that the Minimum Improvements are occupied by one or more restaurant and other commercial businesses as of the completion date for the Minimum Improvements, or as soon thereafter as possible, and continuing through the Termination Date of this Agreement, during which period the commercial business(es) will maintain operations at the Minimum Improvements and satisfy the employee obligations in Section 6.6.

Section 6.9. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements.

Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in accordance with the terms of this Agreement and any site/construction plans submitted to the City's building officials; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Developer; Transfer of Substantially All Assets; Assignment.

a. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof, which consent shall be given or withheld in the sole discretion of the City.

b. In the event that Developer wishes to assign this Agreement, Developer and the transferee individual or entity shall request that the City consent to an amendment or assignment of this Agreement to accommodate the transfer and to provide for the assumption of all Developer's obligations under this Agreement. Such transfer shall not be effective unless and until the City consents in writing to an amendment or assignment of this Agreement authorizing the transfer, which consent shall be given or withheld in the sole discretion of the City. The City shall not unreasonably withhold consent.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Developer, or its successors, or assigns agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

ARTICLE VIII. ECONOMIC DEVELOPMENT GRANTS

Section 8.1. Economic Development Grants.

a. Amount of Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make up to ten (10) consecutive annual payments of Economic Development Grants to Developer up to a total amount not to exceed Three Hundred Two Thousand Two Hundred Ten Dollars ($302,210) under the formula and terms set forth below.

b. Schedule of Grants. Assuming the completion of the Minimum Improvements by December 31, 2022, and full assessment of the Minimum Improvements on January 1, 2023, and debt certification by the City to the County Auditor prior to December 1, 2023, the Economic Development Grants shall commence on June 1, 2025 and end on June 1, 2034 pursuant to Section 403.19 of the Urban Renewal Act in the following amounts:

Date	Amount of Economic Development Grants
June 1, 2025	100% of Tax Increments for the Fiscal Year 24-25
June 1, 2026	100% of Tax Increments for the Fiscal Year 25-26
June 1, 2027	100% of Tax Increments for the Fiscal Year 26-27
June 1, 2028	100% of Tax Increments for the Fiscal Year 27-28
June 1, 2029	100% of Tax Increments for the Fiscal Year 28-29
June 1, 2030	100% of Tax Increments for the Fiscal Year 29-30
June 1, 2031	100% of Tax Increments for the Fiscal Year 30-31
June 1, 2032	100% of Tax Increments for the Fiscal Year 31-32
June 1, 2033	100% of Tax Increments for the Fiscal Year 32-33
June 1, 2034	100% of Tax Increments for the Fiscal Year 33-34

c. Calculation of Grants. Each annual payment shall be equal in amount to the above percentages of the Tax Increments collected by the City with respect to the Minimum Improvements and Development Property under the terms of the Ordinance and deposited into the 111 5th Street, LLC TIF Account (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the "Economic Development Grants").

d. Limitation to Minimum Improvements. The Economic Development Grants are only derived from the increase in assessed value of the Minimum Improvements and Development Property (land and building value) above the Base Valuation caused by the completion of the Minimum Improvements described in this Agreement and not any expansions or improvements not included within the definition of the Minimum Improvements which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

Section 8.2. Payment Schedule. After the Minimum Improvements are first fully assessed and if in compliance with this Agreement, if Developer's Annual Certification is timely filed and contains the information required under Section 6.7, then the City shall certify to the County prior to December 1 of that year its request for the available Tax Increments resulting from the assessments imposed by the County as of January 1 of that year, to be collected by the County and paid to the City as taxes are paid during the following fiscal year and which shall thereafter be disbursed to Developer on the following June 1. (Example: assuming completion of construction of the Minimum Improvements by December 31, 2022 and first full assessment on January 1, 2023, if Developer provides their Annual Certification in October 2023, then the City will certify to the County by December 1, 2023, and the first Economic Development Grant would be paid to Developer on June 1, 2025 (for 100% of the Tax Increment for Fiscal Year 24-25)).

Section 8.3. Maximum Amount of Grants. The aggregate amount of the Economic Development Grants that may be paid to Developer under this Agreement shall be equal to the sum of the total amount of the applicable percentage of Tax Increments collected in respect of the assessments imposed on the Minimum Improvements and Development Property above the Base Valuation over the specified time period, but in no event shall exceed Three Hundred Two Thousand Two Hundred Ten Dollars ($302,210) over ten (10) years. The City makes no guarantee that the Developer will receive the maximum amount of grants.

Section 8.4. Conditions Precedent. Notwithstanding the provisions of Section 8.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

a. Developer's compliance with the terms of this Agreement, including, but not limited to, the employment obligations in Section 6.6 of this Agreement and the payment of real property taxes; and

b. Execution of the Minimum Assessment Agreement by and among the City, Developer, any lienholders, and Assessor in substantially the form of Exhibit F, pursuant to Section 4.1 of this Agreement;

c. Developer's timely filing of the Annual Certification required under Section 6.7 hereof and the Council's approval thereof; and

d. No Event of Default has occurred and is continuing.

In the event that an Event of Default occurs or any certification filed by Developer under Section 6.7 (or other information) discloses the existence or prior occurrence of an Event of Default that was not cured or cannot reasonably be cured, the City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants and the provisions of this Article shall terminate and be of no further force or effect.

Each Annual Certification filed by Developer under Section 6.7 hereof shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Article. Under no circumstances shall the failure by Developer to qualify for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Developer fully complies with the provisions hereof and Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Sections 8.1 and 8.3.

Section 8.5. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the 111 5th Street, LLC TIF Account of the Historic West Des Moines Urban Renewal Tax Increment Revenue Fund of the City. The City hereby covenants and agrees to maintain the Ordinance in force on the Development Property during the term hereof and to apply the appropriate percentage of Tax Increments collected in respect of the Development Property and Minimum Improvements and allocated to the 111 5th Street, LLC TIF Account to pay the Economic Development

Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received under chapter 441.21A shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under chapter 426C relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments to Developer as contemplated under this Agreement until the City Council annually appropriates the funds necessary to make such payments. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction or by the City's bond counsel to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 8.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if, at any time during the term hereof, the City fails to appropriate funds for payment; the City receives an opinion from its legal counsel to the effect that the use of Tax Increments resulting from the Minimum Improvements and Development Property to fund an Economic Development Grant to Developer, as contemplated under said Section 8.1, is not authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof; or the City's ability to collect Tax Increment from the Minimum Improvements and Development Property is precluded or terminated by legislative changes to Iowa Code chapter 403. Upon occurrence of any of the foregoing circumstances, the City shall promptly forward notice of the same to Developer. If the circumstances continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer under the terms of Section 8.1, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.

Section 8.6. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the percentages to be given to Developer in this Agreement, or any available Tax Increments resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Developer with respect to the use thereof.

ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Developer releases the City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Article IX, the "Indemnified Parties") from, covenant and agree that the Indemnified Parties shall not be liable for, and agree to indemnify, defend, and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action, or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against the City to enforce its rights under this Agreement); (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer, or their officers, agents, servants, or employees or any other person who may be about the Minimum Improvements or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants, or employees.

d. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

e. The provisions of this Article IX shall survive the termination of this Agreement.

ARTICLE X. REMEDIES

Section 10.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the term of this Agreement:

a. Failure by Developer to cause the Minimum Improvements to be constructed or operated pursuant to the terms and conditions of this Agreement;

b. Transfer of any of Developer's interests in the Development Property, Minimum Improvements, or this Agreement or the assets of Developer in violation of the provisions of this Agreement;

c. Failure by Developer to timely pay ad valorem taxes on the Development Property and Minimum Improvements;

d. Failure by Developer to substantially observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;

e. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;

f. Developer:

i. files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. makes an assignment for the benefit of its creditors; or

iii. admits in writing its inability to pay its debts generally as they become due; or

iv. is adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment;

g. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date of the issuance or making thereof; or

h. Failure of Developer to execute the Minimum Assessment Agreement or comply with the terms thereof or failure of the Minimum Improvements to qualify for the Assessor's Minimum Actual Value established therein.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City may take any one or more of the following actions after giving thirty (30) days' written notice to Developer, and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured to the satisfaction of the City within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

a. The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue performance under this Agreement;

b. The City may terminate this Agreement;

c. The City may withhold the Certificate of Completion;

d. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement; or

e. The City shall be entitled to recover from the Developer, and the Developer shall pay to the City, an amount equal to the full amount of the Economic Development Grant previously made to Developer under Article VIII hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amount from Developer. The City may demand such payment at any time following its determination that Developer is in default under this Agreement.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the negotiation, drafting and adoption of this Agreement, including, but not limited to, publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City. Payment by Developer of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs, or if not previously paid the costs shall be deducted from the first Economic Development Grant.

b. Whenever any Event of Default occurs and the City employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer herein contained, Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE XI. MISCELLANEOUS

Section 11.1. Conflict of Interest. Developer represents and warrants that, to the best of its knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.2. Notices and Demands. A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of Developer, is addressed or delivered personally to 111 5th Street, LLC, 512 1/2 East Grand Avenue, Des Moines, Iowa 50309, Attn: Tim Rypma, Manager;

c. In the case of the City, is addressed to or delivered personally to the City at City of West Des Moines at City Hall, 4200 Mills Civic Parkway, P.O. Box 65320, West Des Moines, Iowa 50265, Attn: City Clerk;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 11.8. Termination Date. This Agreement shall terminate and be of no further force or effect on and after December 31, 2034, unless terminated earlier under the provisions of this Agreement.

Section 11.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit C, to

serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 11.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement 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 has caused this Agreement to be duly executed in its name and behalf by its authorized representative, all on or as of the day first above written.

[Remainder of page intentionally left blank; signature pages follow]

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

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 _____, 2022, 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

DEVELOPER:
111 5TH STREET, LLC
a limited liability company formed under the laws of the State of Iowa

By _____
Tim Rypma, Manager

STATE OF Iowa)
) ss
COUNTY OF Polk)

This record was acknowledged before me on April 7, 2022, by Tim Rypma as the Manager of 111 5th Street, LLC, a limited liability company formed under the laws of the State of Iowa.

_____
Notary Public in and for said State

NOTARIAL SEAL IOWA
RHONDA BISHOP
Commission No. 782351
My Comm. Expires January 27, 2023

EXHIBIT A
DEVELOPMENT PROPERTY

The Development Property is legally described as follows:

LOT 9 (EXCEPT THE EAST 79 FEET AND ALSO THE EAST 6 FEET OF THE SOUTH 31 FEET OF THE WEST 66 FEET) AND LOT 10, IN BLOCK 4 IN VALLEY JUNCTION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, SUBJECT TO EASEMENTS OF RECORD

Locally known as: 111 5th Street, West Des Moines, Iowa

EXHIBIT B
MINIMUM IMPROVEMENTS

Minimum Improvements shall mean the demolition of existing structures on the Development Property, proper disposal of any debris, site preparation of the Development Property, and the construction on the Development Property of an approximately 5,500 square foot building to be used at least partially as a restaurant with any remaining space used consistently with any applicable zoning ordinance, and related site improvements as depicted in Exhibit B-1. The construction of the Minimum Improvements is expected to be substantially completed by December 31, 2022. Costs for the Minimum Improvements are expected to be approximately $2,259,715.

EXHIBIT B-1
SITE PLANS AND ELEVATIONS
(4 pages)

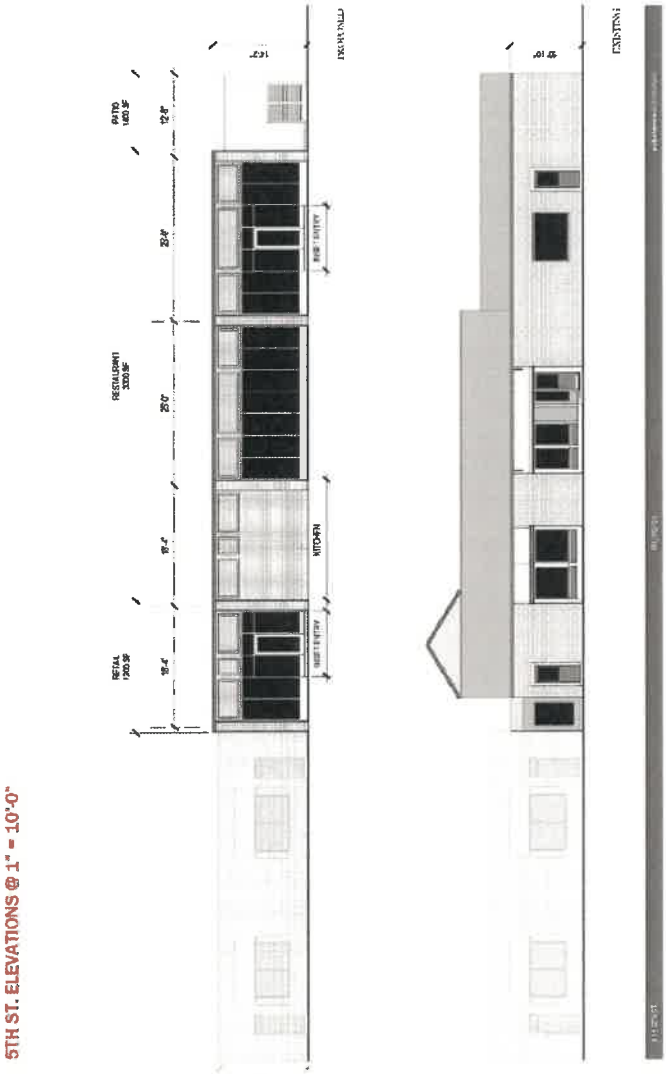
SITE PLAN @ 1" = 30'-0"

Execution Version

EXHIBIT B-1

SITE PLANS AND ELEVATIONS

(4 pages)



Execution Version

EXHIBIT B-1
SITE PLANS AND ELEVATIONS
(4 pages)

AXON – SOUTH PATIO

EXHIBIT B-1
SITE PLANS AND ELEVATIONS
(4 pages)

PERSPECTIVE – SOUTH PATIO

Prepared by: Nathan J. Overberg, Ahlers & Cooney, 100 Court Ave. #600, Des Moines, IA 50309, 515-243-7611
Return to: Ryan Jacobson, City Clerk, City Hall, 4200 Mills Civic Pkwy, 2B, West Des Moines, IA 50265

EXHIBIT C

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of West Des Moines, Iowa ("City") and 111 5th Street, LLC, a limited liability company formed under the laws of the State of Iowa ("Developer"), did on or about the _____ day of _____, 2022, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Historic West Des Moines Urban Renewal Plan ("Plan") to develop certain real property located within the City and within the Historic West Des Moines Urban Renewal Area, legally described as follows:

LOT 9 (EXCEPT THE EAST 79 FEET AND ALSO THE EAST 6 FEET OF THE SOUTH 31 FEET OF THE WEST 66 FEET) AND LOT 10, IN BLOCK 4 IN VALLEY JUNCTION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, SUBJECT TO EASEMENTS OF RECORD

Locally known as: 111 5th Street, West Des Moines, Iowa

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the ____ day of _____, 2022 and terminates on December 31, 2034, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement for Private Development shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement for Private Development made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement for Private Development on the _____ day of _____, 2022.

[Remainder of page intentionally left blank; signature pages follow]

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

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 _____, 2022, 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

DEVELOPER:
111 5TH STREET, LLC,
a limited liability company formed under the laws of the State of Iowa

By_____
Tim Rypma, Manager

STATE OF Iowa)
) ss
COUNTY OF Polk)

This record was acknowledged before me on April 7, 2022, by Tim Rypma as the Manager of 111 5th Street, LLC, a limited liability company formed under the laws of the State of Iowa.

_____
Notary Public in and for said State

NOTARIAL SEAL IOWA
RHONDA BISHOP
Commission No. 762351
My Comm. Expires January 27, 2023

EXHIBIT D
CERTIFICATE OF COMPLETION

WHEREAS, the City of West Des Moines, Iowa, ("City") and 111 5th Street, LLC, a limited liability company formed under the laws of the State of Iowa ("Developer"), did on or about the _____ day of _____, 2022, make, execute, and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

LOT 9 (EXCEPT THE EAST 79 FEET AND ALSO THE EAST 6 FEET OF THE SOUTH 31 FEET OF THE WEST 66 FEET) AND LOT 10, IN BLOCK 4 IN VALLEY JUNCTION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, SUBJECT TO EASEMENTS OF RECORD

Locally known as: 111 5th Street, West Des Moines, Iowa

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer, and their successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder of Polk County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

[Remainder of page intentionally left blank; signature pages follow]

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

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 20__, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 _____, 2022, 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

EXHIBIT E

DEVELOPER ANNUAL CERTIFICATION

(due before October 15th as required under terms of Development Agreement)

The Developer certifies the following:

During the time period covered by this Certification, the Developer is and was in compliance with Section 6.7 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) the Minimum Improvements were first fully assessed on January 1, 20___, at a full assessment value of $_____;

(iii) the total number of Full-Time Equivalent Employment Units employed by the Developer at the Minimum Improvements as of October 1, _____ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__: _____	April 1, 20__:_____
September 1, 20__:_____	March 1, 20__:_____
August 1, 20__:_____	February 1, 20___:_____
July 1, 20__:_____	January 1, 20__:_____
June 1, 20__:_____	December 1, 20__:_____
May1, 20__: _____	November 1, 20__:_____

(iv) the undersigned officer of Developer is familiar with the terms and provisions of this Agreement and certifies that Developer is not in default in the fulfillment of any of the terms and conditions of this Agreement, or if the signer is aware of any such Event of Default, said officer has disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

111 5TH STREET, LLC,
a limited liability company formed under the laws of the State of Iowa

By: _____

Name: _____

Its: _____

Attachments: Proof of payment of taxes

Prepared by: Nathan J. Overberg, Ahlers & Cooney, 100 Court Ave. #600, Des Moines, IA 50309, 515-243-7611
Return to: Ryan Jacobson, City Clerk, City Hall, 4200 Mills Civic Pkwy, 2B, West Des Moines, IA 50265

EXHIBIT F
MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of the ___day of _____2022, by and among the CITY OF WEST DES MOINES, IOWA (the "City"), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2021, as amended, and 111 5TH STREET, LLC, a limited liability company formed under the laws of the State of Iowa having an office for the transaction of business at 512 1/2 East Grand Avenue, Des Moines, Iowa 50309 ("Developer").

RECITALS

WHEREAS, the City and Developer have entered into a Development Agreement dated as of _____, 2022 ("Agreement" or "Development Agreement") regarding certain real property to be located in the City, which is legally described as follows:

LOT 9 (EXCEPT THE EAST 79 FEET AND ALSO THE EAST 6 FEET OF THE SOUTH 31 FEET OF THE WEST 66 FEET) AND LOT 10, IN BLOCK 4 IN VALLEY JUNCTION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, SUBJECT TO EASEMENTS OF RECORD

Locally known as: 111 5th Street, West Des Moines, Iowa

(the "Development Property"); and

WHEREAS, the defined terms in the Development Agreement will also apply to this Minimum Assessment Agreement; and

WHEREAS, it is contemplated that Developer undertake the construction of Minimum Improvements (as described in the Development Agreement) on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a Minimum Actual Value for the Development Property and Minimum Improvements following completion of the Minimum Improvements by Developer pursuant to the Development Agreement; and

WHEREAS, the City and the Polk County Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed; and

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

1. Upon substantial completion of construction of the Minimum Improvements, but in no event no later than January 1, 2023, the Minimum Actual Value fixed for assessment purposes for the Minimum Improvements and the Development Property (building and land value) in the aggregate shall be not less than One Million Four Hundred Thousand Dollars ($1,400,000). The Minimum Actual Value is the value before commercial rollback.

The Minimum Actual Value shall terminate and be of no further force or effect as of December 31, 2034 ("Assessment Termination Date"). Upon the Assessment Termination Date, this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents, or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that their obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason.

4. Developer agrees that, prior to the termination of this Assessment Agreement, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of the Development Property determined by any tax official to be applicable to the Development Property, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of the Development Property; or

(c) request the Assessor to reduce the Minimum Actual Value for the buildings on the Development Property; or

(d) appeal to the board of review of the County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value for the buildings on the Development Property; or

(e) cause a reduction in the actual value or the Minimum Actual Value for the buildings on the Development Property through any other proceedings.

5. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Polk County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

6. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

7. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

8. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Values established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties, or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

9. If any term, condition, or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid, or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

10. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate pursuant to the Assessment Termination Date set forth in Section 1 above.

11. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed

a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit F, which consents are attached hereto and made a part hereof.

[Remainder of this page is blank; signatures start on the next page.]

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

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2022, before me a Notary Public in and for said County, personally appeared Russ Trimble 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 _____, 2022, 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

DEVELOPER:
111 5TH STREET, LLC,
a limited liability company formed under the laws of the State of Iowa
By_____
Tim Rypma, Manager

STATE OF Iowa)
) ss
COUNTY OF Polk)

This record was acknowledged before me on April 7, 2022, by Tim Rypma as the Manager of 111 5th Street, LLC, a limited liability company formed under the laws of the State of Iowa.

_____
Notary Public in and for said State

RHONDA BISHOP
Commission No. 782351
My Comm. Expires January 27, 2023

EXHIBIT F (Cont.)
LIENHOLDER CONSENT

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to, and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms and subordinates any previously acquired mortgage, lien, or other interest in the Development Property to the City of West Des Moines, Iowa. This provision shall be binding on the parties and their respective successors and assigns.

_____
Name of Lienholder

By: _____
Signature

By: _____
Signature

Date: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 2022, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of _____ and that said instrument was signed on behalf of said company, and that the said acknowledged the execution of said instrument to be the voluntary act and deed of said company, by them voluntarily executed.

_____
Notary Public in and for the said state

[add additional pages for each lienholder]

Note: If there are no lienholders, this page shall have no signatures.

EXHIBIT F (Cont.)
CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Minimum Improvements on the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the Minimum Improvements and the Development Property (land and building value) in the aggregate upon substantial completion of the Minimum Improvements, but no later than January 1, 2023, shall be at least One Million Four Hundred Thousand Dollars ($1,400,000) until the Assessment Termination Date contained in Section 1 of the Assessment Agreement.

The Minimum Actual Value is the value before commercial rollback.

_____
Assessor for the County of Polk, Iowa

_____
Date

STATE OF IOWA)
) SS
COUNTY OF POLK)

Subscribed and sworn to before me by _____, Assessor for the County of Polk, Iowa on this _____ day of _____, 2022.

_____
Notary Public for the State of Iowa

EXHIBIT F (cont.)

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

> The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than $ .....

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

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RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST DES MOINES AND 111 5TH STREET, LLC

WHEREAS, by Resolution No. 17-04-03-14, adopted April 3, 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 Historic West Des Moines Urban Renewal Plan for the Historic West Des Moines Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Plan has been subsequently amended five times, most recently by Amendment No. 5 to the Plan adopted March 7, 2022, and which Plan, as amended, is on file or will be filed 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 has received a proposal from 111 5th Street, LLC (the "Developer"), in the form of a proposed Development Agreement (the "Agreement") by and between the City and the Developer, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the Urban Renewal Area, as defined and legally described in the Agreement (the "Development Property"), which Minimum Improvements include demolishing the existing structures on the Development Property, constructing a mixed-use building containing approximately 5,500 square foot building to be used at least partially as a restaurant with any remaining space used consistently with any applicable zoning ordinance, and all related site improvements, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, the Agreement further proposes that the City will make up to ten (10) consecutive annual payments of Economic Development Grants to Developer consisting of 100% of the Tax Increments pursuant to Section 403.19, Code of Iowa, and generated by the construction of the Minimum Improvements; the cumulative total for all such payments not to exceed the lesser of $302,210, or the amount accrued under the formula outlined in the proposed Agreement, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, the Agreement also proposes that Developer will enter into a Minimum Assessment Agreement with the County setting the minimum actual value of the Minimum Improvements for tax purposes at not less than $1,400,000; and

WHEREAS, Chapters 15A and 403, Code of Iowa, authorize cities to make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

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

a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement 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, Code of Iowa, taking into account any or all of the factors set forth in Chapter 15A, Code of Iowa, to wit:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes, or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

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

That the performance by the City of its obligations under the Agreement, including but not limited to making grants to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, 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 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, Code of Iowa, taking into account the factors set forth therein.

That the form and content of the Agreement, 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 Agreement 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 Agreement, 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 executed.

PASSED AND APPROVED this 16th day of May, 2022.

_____
Russ Trimble, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk