CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Amendment No. 1 to the Development Agreement between Jordan Creek Associates, LLC and the City of West Des Moines

DATE: August 15, 2022

RESOLUTION: Amendment No. 1 of the Development Agreement

FINANCIAL IMPACT: None

BACKGROUND: On January 18, 2022, City Council approved the execution of a Development Agreement between Jordan Creek Associates, LLC and the City.

Jordan Creek Associates, LLC is constructing a four-story, mixed-use building with the Ruth's Chris restaurant as the anchor for the retail development and 203 units of housing in the balance of the building. This development is located on the property located at the southwest corner of Jordan Creek Parkway and Ashworth Road.

At the request of the City, we are amending the Development Agreement to extend the amount of time that the City must complete the construction of 76th Street from March 31, 2023, to July 1, 2023. The change of dates is to ensure that there is adequate time to complete the improvements.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution amending the Development Agreement.

Lead Staff Member: Clyde Evans, AICP, Community & Economic Development

STAFF REVIEWS

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

PUBLICATION(S) (if applicable)

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

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	N/A		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution to Amend Development Agreement
Exhibit II - Amended Development Agreement between the City and Jordan Creek Associates, LLC

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE AGREEMENT FOR PRIVATE DEVELOPMENT BY AND BETWEEN THE CITY OF WEST DES MOINES AND JORDAN CREEK ASSOCIATES, LLC

WHEREAS, by Resolution No. 09-11-02-10, adopted November 2, 2009, 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 Ashworth Corridor Urban Renewal Plan for the Ashworth Corridor Urban Renewal Area (the "Area" or "Urban Renewal Area") described therein, which Plan has been subsequently amended several times, most recently by Amendment No. 5 to the Plan adopted November 1, 2021, and which Plan, as amended, is on file in the office of the Dallas County Recorder; and

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

WHEREAS, the City of West Des Moines, Iowa (the "City") and Jordan Creek Associates, LLC (the "Developer") have previously entered into an Agreement for Private Development on January 18, 2022 ("Agreement"); and

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

WHEREAS, the City and Developer desire to amend the Agreement by a proposed Amendment No. 1 to the Agreement ("Amendment") in order to extend the deadline for the completion of the Public Improvements, pursuant to the terms and conditions of the Amendment; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to undertake activities for the promotion of 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 Amendment is in the best interests of the City and the residents thereof and that the performance by the City of its obligations under the Agreement as amended is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement, as proposed to be amended by the Amendment, and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code.

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

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

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

PASSED AND APPROVED this 15th day of August, 2022.

_____
Russ Trimble, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

AMENDMENT NO. 1 TO AGREEMENT FOR PRIVATE DEVELOPMENT

THIS AMENDMENT NO. 1 TO AGREEMENT FOR PRIVATE DEVELOPMENT (this "Amendment") is entered into effective as of August ____, 2022 (the "Effective Date"), by and between JORDAN CREEK ASSOCIATES, LLC, an Indiana limited liability company ("Developer") and the CITY OF WEST DES MOINES, IOWA, a municipality ("City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2021, as amended.

BACKGROUND

A. Developer and City are parties to a certain Agreement for Private Development dated January 18, 2022 (the "Development Agreement"), regarding among other things, Developer's (i) acquisition of the Development Property (as defined in the Development Agreement), and (ii) construction of the Project (as defined in the Development Agreement) on such Development Property.

B. In support of the Project, the City agreed to construct certain Public Improvements (as defined in the Development Agreement); namely, 76th Street from Ashworth road southerly to its current terminus (including paving/curbs/water main/storm sewer/sanitary sewer as appropriate) and following the general path depicted in Exhibit B-3 to the Development Agreement.

C. Section 8.1(c) of the Development Agreement provided that the City would cause construction of the Public Improvements to be completed by no later than March 31, 2023, subject to Unavoidable Delays.

D. The City and Developer are willing to extend the completion date for the Public Improvements to July 1, 2023.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City covenant and agree as follows:

1. Background Provisions and Definitions. The background provisions set forth above are incorporated into the body of this Amendment as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Development Agreement.

2. Revised Deadline for Completion of Public Improvements. Section 8.1(c) of the Agreement is hereby revised such that the date March 31, 2023 is replaced by the date July 1, 2023.

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

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

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

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CITY OF WEST DES MOINES

By: _____
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

My Commission Expires:

DEVELOPER:

JORDAN CREEK ASSOCIATES, LLC,
an Indiana limited liability company

By: _____
Name: CHRISTOPHER D. REID
Title: PRESIDENT

STATE OF INDIANA)
) ss.
COUNTY OF HAMILTON)

On this 1ST day of ~~January,~~ AUGUST 2022, before me, a Notary Public in and for said State, personally appeared CHRISTOPHER D. REID, PRESIDENT of JORDAN CREEK ASSOCIATES, LLC, an Indiana limited liability company, personally known to me to be the same person who executed, as such official, the within instrument on behalf of said limited liability company and such person duly acknowledged to me that he executed the same for the purposes therein stated, and that the execution of the same was the free act and deed of said limited liability company.

_____
Notary Public

My Commission Expires:

6/13/2030

SEAL
HAYLEY M RAMSEY
My Commission Expires
June 13, 2030
Commission Number NP0741762
Hamilton County