# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**ITEM:** Approval of a Development Agreement between the City of West Des Moines, and BTC Investments, LLC for 130 5th Street **DATE:** October 17, 2022

**RESOLUTION:** Approval of the Development Agreement for the Regulatory Compliance Fund Program for BTC Investments, LLC at 130 5th Street.

**FINANCIAL IMPACT:** At the City Council meeting of June 20, 2022, the Council allocated $600,324.75 towards the Property Improvement Fund and the Regulatory Compliance Fund Program awards. This project was allocated up to $25,158.75 as a grant award. The applicant must match the City funds on a 1:1 basis.

**BACKGROUND:** On June 20, 2022, the City Council approved the awarding of funds up to the amounts stipulated to the following applicants:

***Property Improvement Fund (Loan)***

| Address | Applicant | Award |
|---|---|---|
| 122 5th Street | Commonwealth Properties | $100,000 |
| 111 5th Street | Bix & Company | $56,250 |
| 304 5th Street | P.R.E.A.M | $56,250 |
| | Subtotal | $212,500 |

***Regulatory Compliance Fund (Grant)***

| Address | Applicant | Award |
|---|---|---|
| 122 5th Street | Commonwealth Properties | $100,000 |
| 401 Railroad | Mark Gremler | $75,000 |
| 130 5th Street | BTC Investment | $25,158.75 |
| 138 5th Street | Cedar Hill Land & Cattle Co. | $30,564 |
| 114 5th Street | Lane Properties | $15,562.50 |
| 116 5th Street | Lane Properties | $6,937.50 |
| 411 5th Street | WB Properties | $26,250 |
| 111 5th Street | Bix & Co. | $56,250 |
| 304 5th Street | P.R.E.A.M | $37,500 |
| 304 5th Street | Des Moines Culinary | $14,602 |
| | Subtotal | $387,824.75 |
| | Grand Total | $600,324.75 |

At that meeting the City Council also directed staff to begin the preparation of Development Agreements with the applicants. This agreement is for the property at 130 5th Street.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Staff is recommending that the City Council pass a resolution approving the Development Agreement between the City of West Des Moines, and BTC Investments, LLC for 130 5th Street.

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

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | Clyde E. Evans, Director, Community and Economic Development |
| Appropriations/Finance | |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | N/A |
| Dates(s) Published | N/A |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | F&A | | |
| Date Reviewed | June 10, 2022 | | |
| Recommendation | ☒ Yes | ☐ No | ☐ Split |

**ATTACHMENTS:**

Exhibit I Resolution

Exhibit II Development Agreement

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A RCF PROGRAM AGREEMENT FOR PRIVATE DEVELOPMENT BY AND BETWEEN THE CITY OF WEST DES MOINES AND BTC INVESTMENTS, LLC (114 5TH STREET)

WHEREAS, by Resolution No. 17-02-06-21, the City established the Regulatory Compliance Fund ("RCF") Program, as amended by Resolution No. 17-06-12-11 and by Resolution No. 4-4-2022, which is an economic incentive policy to assist property owners with costs of compliance with government regulations on properties within designated areas of the City; and

WHEREAS, the City has received an application from BTC Investments, LLC (the "Property Owner") under the RCF Program; and

WHEREAS, in furtherance of the RCF Program, the City proposes to enter into an agreement for private development (the "Agreement") by and between the City and the Property Owner, pursuant to which, among other things: (i) the Property Owner would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located at 130 5th Street, West Des Moines, Iowa (the "Development Property"); (ii) the Property Owner would lease the Development Property to commercial tenants that satisfy minimum employment requirements for the duration of the Agreement; and (iii) the City would provide an incentive to the Property Owner, under the terms and following satisfaction of the conditions set forth in the Agreement and pursuant to the requirements and terms of the RCF Program; and

WHEREAS, pursuant to the terms and conditions of the Agreement and the terms and conditions of the RCF Program, the City would provide a Grant payment to Property Owner in the amount of up to 35% of the certified and approved "Project Costs" (as defined in the Agreement) incurred by Property Owner in constructing those Minimum Improvements necessary to comply with government regulations, but not to exceed $25,158.75; and

WHEREAS, Chapter 15A, Code of Iowa, authorizes cities to make grants for economic development and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapter, 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, 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 Iowa Code Chapter 15A taking into account any or all of the factors set forth in Chapter 15A, 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.

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

Section 1. That the performance by the City of its obligations under the Agreement, including but not limited to making of grants to the Property Owner 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 the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Iowa Code Chapter 15A, taking into account the factors set forth therein.

Section 2. 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 17th day of October, 2022.

_____

Russ Trimble, Mayor

ATTEST:

_____

Ryan T. Jacobson, City Clerk

**REGULATORY COMPLIANCE FUND**
**AGREEMENT FOR PRIVATE DEVELOPMENT**
**(130 5th Street)**

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the 3rd day of October, 2022, by and between the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapter 15A of the Code of Iowa, 2021, and BTC INVESTMENTS, LLC, an Iowa limited liability company (the "Property Owner").

**BACKGROUND**

**WHEREAS**, the City has approved Resolution No. 17-02-06-21 establishing the Regulatory Compliance Fund ("RCF") Program, and the program was later amended by Resolution No. 17-06-12-11 and by Resolution No. 4-4-2022, which is an economic incentive policy to assist property owners with costs of compliance with government regulations; and

**WHEREAS**, the Property Owner has submitted an application to receive funding through the above program for certain construction activities as described on the attached Exhibit B (hereinafter the "Project") that the Property Owner seeks to undertake on the property legally described on the attached Exhibit A (the "Development Property"); and

**WHEREAS**, Property Owner shall cause commercial tenant(s) to operate at the Development Property, including hiring and retaining employees thereon; and

**WHEREAS**, the City has conditionally approved the Property Owner to receive economic development incentive funding as specified in Article II of this Agreement (the "Development Incentives") in return for the Property Owner's completion of the Project, provided that the Property Owner agrees to and remain in compliance with the terms of this Agreement; and

**WHEREAS**, the City Council has found the Project to be consistent with the objectives of the RCF program, and has further found that the use of City funds to finance the Development Incentives is in accord with the provisions of the applicable laws under which the Project will be undertaken, including but not limited to, Iowa Code Chapter 15A.

**NOW, THEREFORE**, the City and the Property Owner, in consideration of the promises and mutual obligations set forth in this Agreement, now agree and covenant as follows:

**ARTICLE I**
**REPRESENTATIONS AND COVENANTS OF PROPERTY OWNER**

1. Representations and Covenants of the Property Owner. Property Owner makes the following representations and covenants:

a. Minimum Improvements. Property Owner shall cause the improvements described in Exhibit B to this Agreement (the "Minimum Improvements") to be constructed in accordance with the terms of this Agreement, the RCF Program and all local, State, and federal laws and regulations. The Minimum Improvements shall be completed consistent with the design guidelines



*Execution Version*

adopted for the Historic West Des Moines Master Plan area. The Minimum Improvements shall remain on the property for the duration of this Agreement.

b. No Violations or Claims. To its knowledge and with respect to the Project, the Property Owner is not in material violation of any local, state, or federal environmental law or regulation and is not aware of any pending or threatened claim against the Property Owner with respect to such laws.

c. Total Investment. Property Owner represents that its total investment in the Development Property for the Project will be not less than $62,866.25, and that without the Development Incentives contemplated herein, Property Owner would not undertake the Project.

d. Insurance. Property Owner agrees during construction of the Minimum Improvements and thereafter until the Termination Date, as that term is defined in Article VI, Section 11, to maintain builder's risk, property damage, and liability insurance coverages with respect to the Minimum Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request.

e. Cooperation. Property Owner 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 and operation of the Minimum Improvements.

f. Completion Date. Property Owner expects that the Minimum Improvements will be completed by June 30, 2023 (the "Completion Date"), but under no circumstances, barring delays resulting from acts or occurrences outside its reasonable control, 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), shall the Minimum Improvements be completed later than the date one hundred and eighty (180) days after the Completion Date. If the Minimum Improvements are not completed by the Completion Date, but are completed within one hundred and eighty (180) days of the Completion Date, then the date of the issuance of the certificate of occupancy for the Minimum Improvements or the date the City building official completes a final inspection and approves the last discrete portion of the Minimum Improvements shall be used as the "Completion Date" for all purposes under this Agreement, including but not limited to Article I, Sections 1(k) (Property Owner's Annual Certification) and 1(m) (Employment).

g. Compliance with Laws. Property Owner will comply with all state, federal, and local laws, rules, and regulations relating to the Minimum Improvements, including laws prohibiting discrimination against any applicant, employee, or tenant because of age, color, creed, gender identity, national origin, race, religion, sexual orientation, marital status, sex, physical disability, or familial status.

h. Available Information. Upon request, Property Owner shall promptly provide the City with copies of information requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

i. Inspection. Property Owner 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.

j. Real Property Taxes and Assessments. Property Owner agrees that prior to the Termination Date of this Agreement:

(i) Property Owner 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, Minimum Improvements, or Property Owner, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

(ii) Property Owner 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; and

(iii) Property Owner will not seek to change the current land assessment category from commercial/industrial, or the zoning classification, of the Development Property or the Minimum Improvements.

k. Annual Certification. To assist the City in monitoring the Agreement and performance of Property Owner hereunder, a duly authorized officer of Property Owner shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) certification of the number of Full-Time Equivalent Employees employed by Property Owner's tenant(s) on the Development Property as of October 1 and as of the first day of each of the preceding eleven (11) months (prorated for the first certification); and (iii) 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, Property Owner 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 directly following the Completion Date, as defined in Article I, Section 1(f), and each subsequent October 15 through the Termination Date. Property Owner shall provide supporting information for its Annual Certifications upon request of the City. See Exhibit C for the form required for Property Owner's Annual Certification.

l. Lease to Commercial Tenants; Employment. Property Owner shall lease the Development Property to commercial business tenant(s) that satisfy the employment obligations set forth in

Article I, Section 1(m) until at least the Termination Date of this Agreement, as that term is defined in Article VI, Section 11. If all tenants on the Development Property cease their operations on the Development Property prior to the Termination Date, such event shall constitute an Event of Default under this Agreement. Notwithstanding the forgoing, if the Property Owner is the recipient of the Development Incentives under this Agreement, the Event of Default shall be deemed cured if, within three (3) months of such event, a new tenant begins operations on the Development Property consistent with the terms of this Agreement.

m. Employment. Within two (2) years after Completion Date, as defined in Article I, Section 1(f), the commercial business tenant(s) operating on the Development Property shall employ at least three (3) Full-Time Equivalent Employees at the Development Property, and thereafter shall retain at least three (3) Full-Time Equivalent Employees at the Development Property through the Termination Date of this Agreement, as that term is defined in Article VI, Section 11.

For purposes of this Agreement, "Full-Time Equivalent Employees" shall mean 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.

n. Signage. Property Owner shall prominently post a sign viewable by the public during the construction of the Minimum Improvements and for at least sixty (60) days following the receipt of a certificate of occupancy which reads: "This project is made possible by funding from the City of West Des Moines Redevelopment Funding Programs for Historic West Des Moines." The sign will be provided by the City of West Des Moines.

## ARTICLE II
## DEVELOPMENT INCENTIVES

1. Applicable Development Incentives. Subject to the conditions set forth in this Article and this Agreement, the City has conditionally approved Property Owner to receive Development Incentives through the Regulatory Compliance Fund ("RCF") Program. Property Owner is only eligible to receive those Development Incentives described in this Agreement. The Development Incentives granted through the RCF Program shall be the only monetary consideration given by the City to the Property Owner in connection with this Agreement.

2. Reserved.

3. Regulatory Compliance Fund Program ("RCF") Incentives

a. Grant. For and in consideration of the obligations of the Property Owner as set forth herein, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make a Grant to the Property Owner for up to 35% of the certified and approved Project Costs (as described in Section 3(b)(iv)-(v) below) incurred by Property Owner in constructing those Minimum Improvements necessary to comply with government regulations, but not to exceed $25,158.75 (the "Grant"). The Grant shall not include any Project Costs that must be paid by the Property Owner in order to qualify for the RCF incentive.

b. Conditions Precedent. The City's obligation to provide Property Owner the Grant under

this Agreement shall be subject to satisfaction of ALL of the following conditions precedent:

(i) Property Owner shall be in material compliance with all the terms and provisions of this Agreement;

(ii) Project construction shall have begun within six (6) months from the date of this Agreement;

(iii) A portion of the improvements included in the Minimum Improvements must be necessary to comply with government regulations as set forth in Exhibit B;

(iv) Property Owner shall certify to the City the amount of the incurred Project Costs in the form attached as Exhibit D with accompanying proof of payment and lien waivers; and

(v) The Project Costs are subject to review and approval by the City, which shall approve the certified Project Costs if it determines, in good faith but in its sole discretion, that the Project Costs were incurred for the Project, were fully paid by the Property Owner, are free and clear of any liens, and have not otherwise been reimbursed by the City.

c. Timing of Grant Payment(s). Conditioned upon satisfaction of the Conditions Precedent in Article II, Section 3(b) and the approval by the applicable City building official of the satisfactory completion of a discrete portion of the Minimum Improvements, the City shall provide Property Owner that portion of the Grant necessary to reimburse the Property Owner for the approved Project Costs incurred in constructing the completed portion of the Minimum Improvements, but not to exceed the maximum amount described in Article II, Section 3(e) in the aggregate. Each payment under this provision shall be made consistent with the City's disbursement schedule following the City's approval of the completion of the discrete portion of the Minimum Improvements and the approval of the associated Project Costs.

d. Event of Default/Repayment of Grant. If an Event of Default (as defined in Article V, Section 1) occurs under this Agreement and is not timely cured within thirty (30) days of notice of the same (as described in Article V, Section 2), then Property Owner shall be obligated to repay to the City all or a portion of the amount of the Grant received by the Property Owner (the "Repayment Amount"), with interest on the Repayment Amount at 4% per annum, such interest to be calculated from the date occurring thirty (30) days following the notice described in Article V, Section 2 below. The Repayment Amount is initially the full amount of the Grant paid to Property Owner but will be reduced by an amount equal to twenty percent (20%) of the Grant paid to Property Owner on each December 31, beginning on the December 31st immediately following submission of the Property Owner's first Annual Certification, provided there is no uncured Event of Default on each date that the Repayment Amount would be reduced.

e. Maximum Amount. The total amount of the Grant paid by the City to Property Owner shall not exceed the lesser of: (i) 35% of the amount of the certified and approved Project Costs incurred by Property Owner in constructing those Minimum Improvements necessary to comply with government regulations, or (ii) $25,158.75. The City makes no guarantee as to the actual amount of the Grant which Property Owner shall receive. The Grant is only for the Minimum Improvements described in this Agreement and not any future expansions which, to be eligible for additional incentives, would be the subject of an amendment or new agreement, at the sole

discretion of the City Council.

4. Overpayment. In the event of an overpayment by the City through the Development Incentives described in this Article II for expenses not actually incurred by Property Owner or for unallowable expenses (e.g., expenses not related to constructing the Minimum Improvements), or if payment was received from another governmental program/incentive for any portion of the expenses claimed, then the Property Owner shall repay to the City an amount equal to the overpayment of Development Incentives.

## ARTICLE III
## INDEMNIFICATION

1. Release and Indemnification. The Property Owner releases the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees 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 Project.

Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Property Owner agrees to protect and defend the Indemnified Parties, now or forever, and further agrees 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 the Property Owner 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 Project or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Property Owner or its 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.

2. Survival. The provisions of this Article III shall survive the termination of this Agreement.

## ARTICLE IV
## PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

1. Status of Property Owner; Transfer of Substantially All Assets; Assignment. As security for the obligations of Property Owner under this Agreement, Property Owner represents and agrees that, prior to the Termination Date, Property Owner will maintain its existence as 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, the Minimum Improvements, or its interest in this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Property Owner under this Agreement; and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or any other provisions of this Agreement, Property Owner may pledge any and/or all of its assets as security for any

financing of the Minimum Improvements, and the City agrees that Property Owner may collaterally assign its interest in the Grant under this Agreement for such purpose.

2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, the Property Owner, 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 V
## DEFAULT AND REMEDIES

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 Property Owner to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement, including completion within the time frame set forth under the terms of Article I, Section 1(f);

b. Transfer of Property Owner's interest in the Development Property or any interest in this Agreement in violation of the provisions of this Agreement;

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

d. Failure by Property Owner to substantially observe or perform any covenant, condition, or obligation to be performed on its part under this Agreement, including but not limited to the employment obligations;

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. Property Owner shall:

(i) file 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) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Property Owner as a 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 Property Owner or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Property Owner, and shall not be discharged within ninety (90) days after such appointment, or if Property Owner shall consent to or acquiesce in such appointment; or

g. Any representation or warranty made by Property Owner in this Agreement or in any written statement or certificate furnished by Property Owner 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.

2. Property Owner Breach. If an Event of Default occurs, and Property Owner fails to cure said Event of Default within thirty (30) days after written notice from the City to the Property Owner, the City shall be entitled to do any one or more of the following: (i) suspend its performance under this Agreement, (ii) terminate this Agreement upon written notice to the Property Owner, (iii) demand from and receive payment of from Property Owner the Repayment Amount as described in Article II, Section 3(d), and/or (iv) take any other legal or equitable action deemed appropriate to enforce the Property Owner's obligations under this Agreement.

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.

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.

5. Enforcement Costs. Whenever any Event of Default occurs and the City shall employ attorneys or incur 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 Property Owner herein contained, Property Owner 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 VI
## MISCELLANEOUS

1. Conflict of Interest. Property Owner represents and warrants that, to its best 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.

2. Notices. Notices, demands, or other communications under this Agreement by either 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 the City, to the City of West Des Moines at 4200 Mills Civic Pkwy, P.O. Box 65320, West Des Moines, Iowa 50265-0320, Attn: Ryan Jacobson, City Clerk;

b. In the case of the Property Owner, to BTC Investments, LLC, 130 5th Street, Suite A, West Des Moines, Iowa 50265, Attn: Tim Bratvold.

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

3. Iowa Law Controlling. This Agreement shall be governed and construed under the laws of the State of Iowa.

4. Entire Agreement. This Agreement and the Exhibits here referenced shall constitute the entire agreement between the City and the Property Owner, and supersedes all other written and oral agreements, discussions and negotiations.

5. Amendments. This Agreement may not be amended or assigned by either party without the express written permission of the other party.

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

7. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

8. 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 successors and assigns.

9. 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.

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

11. Termination Date. Unless terminated earlier under the provisions of this Agreement, the Agreement shall terminate and be of no further force or effect on December 31, 2027.

**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 the Property Owner has caused this Agreement to be duly executed in its name and on its behalf by its authorized representatives, 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

*[Signature page to Development Agreement – City of West Des Moines, Iowa]*

**PROPERTY OWNER:**
**BTC INVESTMENTS, LLC, an Iowa limited liability company**

By: _____
Tim Bratvold, Member

STATE OF IOWA )
)SS
COUNTY OF POLK )

This record was acknowledged before me on this 3rd day of October, 2022, by Tim Bratvold, as Member of BTC Investments, LLC, on behalf of whom the record was executed.

_____
Notary Public in and for said State

MICHELE BEGG
Commission Number 838513
My Commission Expires
April 1, 2025

*[Signature page to Agreement for Private Development – Property Owner]*

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT PROPERTY**

Street address: 130 5th Street, West Des Moines, IA

Legal description: The North 26 ¼ feet of Lot 3 (except the West 34 feet thereof), in Block 5, Valley Junction, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

Polk County Parcel No.: 320/04253-001-000

**EXHIBIT B**

**DESCRIPTION OF PROJECT**

**MINIMUM IMPROVEMENTS:**

The Minimum Improvements consist of: Structural renovations to East windows, doors, storefront. Structural renovations to North exterior wall, reframing, insulation and siding replacement. Replacement of East access door to 2nd floor.

The construction of the Minimum Improvements will be completed by: June 30, 2023 (or, within 180 days of such date, under the terms of Article I, Section 1(g) of the Agreement)

Construction costs are expected to be approximately: $62,866.25

## EXHIBIT C

**PROPERTY OWNER ANNUAL CERTIFICATION**
(due before October 15th as required under terms of Development Agreement)

The Property Owner certifies the following:

During the time period covered by this Certification, the Property Owner is and was in compliance with the Agreement as follows:

(i) All ad valorem taxes on the Development Property then owned by the Property Owner 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 total number of Full-Time Equivalent Employees, as defined in Article I of the Agreement, employed by Property Owner's commercial business tenant(s) at the Development Property as of October 1, 20___ 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__:_____ |

(iii) The undersigned officer of Property Owner has re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Property Owner is not, or was not, in default in the fulfillment of any of the terms and conditions of the 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.

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___.

BTC INVESTMENTS, LLC

By:_____

Print Name: _____

Its: _____

**Attachments: Proof of payment of taxes**



*Execution Version*

**EXHIBIT D**
**PROPERTY OWNER CERTIFICATION OF PROJECT COSTS**

BTC Investments, LLC (the "Property Owner") certifies that the expenses shown on the table below were/are the actual expenses incurred by the Property Owner for the Minimum Improvements that are the subject of a Development Agreement entered into on or as of _____, 2022 between the City of West Des Moines, Iowa, and the Property Owner (the "Agreement"). The Property Owner certifies that no expenses claimed or shown on this table relate to personal or unallowable expenses.

In the event of an overpayment by the City for expenses not actually incurred or for unallowable expenses, or if payment was received from another source for any portion of the expenses claimed, the Property Owner assumes responsibility for repaying the City in full for those expenses.

| Certified Project Costs | | | | | |
|---|---|---|---|---|---|
| Necessary For Regulatory Compliance? Y/N (Y=will be applied to RCF program if eligible; N=will not be eligible) | Project Cost Category | Engineering, Plans, Specifications | Construction Costs | Material Costs | Miscellaneous |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Invoice description and cost | | | | |
| | Total Cost per category | | | | |

If you need additional space please attach another table.
**Attach actual receipts and invoices and lien waivers**

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.

**BTC INVESTMENTS, LLC**

By: _____

Print Name: _____

Its: _____



*Execution Version*

**EXHIBIT E**

| | |
|---|---|
| **Type of Document:** | **MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES AND BTC INVESTMENTS, LLC** |
| **Return Document to:** | Ryan Jacobson, City Clerk<br>City of West Des Moines<br>4200 Mills Civic Parkway, Suite 2B<br>West Des Moines, IA 50265 |
| **Preparer Information:** | Nathan J. Overberg, Ahlers & Cooney, P.C., 100 Court Avenue, Ste. #600, Des Moines, IA 50309, 515-243-7611 |
| **Taxpayer Information:** | **N/A** |
| GRANTORS: | N/A |
| GRANTEES: | N/A |

LEGAL DESCRIPTION:

The North 26 ¼ feet of Lot 3 (except the West 34 feet thereof), in Block 5, Valley Junction, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

Polk County Parcel No.: 320/04253-001-000

Address: 130 5th Street, West Des Moines, IA

WHEREAS, the City of West Des Moines, Iowa (the "City") and BTC Investments, LLC ("Property Owner") did on or about the 3rd day of October, 2022, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Property Owner agreed, in accordance with the terms of the Agreement to develop and operate certain real property located within the City, which real property is legally described as follows:

> The North 26 ¼ feet of Lot 3 (except the West 34 feet thereof), in Block 5, Valley Junction, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa
>
> Polk County Parcel No.: 320/04253-001-000
>
> Address: 130 5th Street, West Des Moines, IA

(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the 3rd day of October, 2022, and terminates as set forth in the Agreement; and

WHEREAS, the City and Property Owner 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.

*[Signatures Start on 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

*[Signature page to Memorandum of Agreement – City of West Des Moines, Iowa]*

**PROPERTY OWNER:**
**BTC INVESTMENTS, LLC, an Iowa limited liability company**

By: _____
**Tim Bratvold, Member**

**STATE OF IOWA )**
**)SS**
**COUNTY OF POLK )**

**This record was acknowledged before me on this 3rd day of October, 2022, by Tim Bratvold, as Member of BTC Investments, LLC, on behalf of whom the record was executed.**

_____
Notary Public in and for said State

MICHELE BEGG
Commission Number 838513
My Commission Expires
April 1, 2025

*[Signature page to Memorandum of Agreement – Property Owner]*

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*Execution Version*