



Date October 23, 2017

CONDITIONAL APPROVAL OF COLLATERAL ASSIGNMENT OF URBAN RENEWAL DEVELOPMENT AGREEMENT WITH DISTRICT AT 6TH, LLC

WHEREAS, on August 14, 2017, by Roll Call No. 17-1415, the City Council approved a Development Agreement with District at 6th, LLC. (the "Developer") to construct a new 4-story 213 unit apartment building with a minimum of 2,500 sq. ft. of commercial retail space and 200 underground parking spaces.; and

WHEREAS, pursuant to section 1.5 and 1.6 of the Development Agreement and in connection with the financing of the project, the Developer seeks to collaterally assign the Development Agreement prior to completion, which requires approval of the City; and,

WHEREAS, the Collateral Assignment does not impair any rights or cause any additional obligations by the City and has been approved as to form by the City Attorney's Office, but has not been executed by the parties.

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

- 1. That the attached Collateral Assignment of Urban Renewal Development Agreement is hereby approved subject to final approval by the City's Legal Department to determine that the execution copy materially conforms to the attached document.
2. The Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines upon approval by the Legal Department.

MOVED by _____ to adopt.

APPROVED AS TO FORM:

Handwritten signature of Thomas G. Fisher Jr.

Thomas G. Fisher Jr., Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MOORE, WESTERGAARD, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

Mayor

City Clerk

ASSIGNMENT OF REDEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF REDEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 2017, by and among the CITY OF DES MOINES, IOWA, a municipal corporation (the "City"), DISTRICT AT 6TH, LLC, an Iowa limited liability company (the "Borrower"), and LINCOLN SAVINGS BANK, an Iowa state banking corporation (the "Lender").

WITNESSETH:

WHEREAS, the City and the Borrower entered into that certain Urban Renewal Development Agreement dated as of August 14, 2017 (the "Development Agreement"), concerning the acquisition by the Borrower of property located in Des Moines, Iowa, legally described on Exhibit A attached hereto and hereby made a part hereof (the "Land"), and the construction thereon of an approximately 213-unit apartment building with a minimum of 2,500 square feet of commercial and retail facility and related improvements (the "Improvements") (the Land and the Improvements are hereinafter at times collectively referred to as the "Project"); and

WHEREAS, the Borrower and the Lender have entered into that certain Construction Loan Agreement of even date herewith (the "Loan Agreement"), concerning the extension by the Lender to the Borrower of a loan in the amount of up to \$33,947,357 (the "Loan"), to finance in part the acquisition and construction of the Project; and

WHEREAS, the obligation of the Borrower to repay the Loan is evidenced by that certain Construction Note in the original principal amount of \$31,603,355, that certain TIF Note in the original principal amount of \$2,184,000, and that certain Bridge Note in the original principal amount of \$160,002, each of even date herewith (collectively, the "Lender Notes"), and each executed by the Borrower in favor of the Lender; and

WHEREAS, the Lender Notes are secured, among other things, by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement and Assignment of Leases and Rents of even date herewith (the "Mortgage"), executed by the Borrower in favor of the Lender and encumbering the Project (the Loan Agreement, the Lender Notes and the Mortgage are hereinafter at times collectively referred to as the "Loan Documents"); and

WHEREAS, the Mortgage was filed of record in the office of the Polk County Recorder on _____, 2017, as Document No. _____; and

WHEREAS, the Lender has required, as an express condition to the making of the Loan, that (a) the Borrower assign all of its rights under the Development Agreement to the Lender to secure the obligations of the Borrower to the Lender under the Loan Documents, and (b) the City agrees to certain other matters all as more fully contained herein.

NOW THEREFORE, in consideration of foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. The Borrower hereby assigns to the Lender all of its right, title and interest under the Development Agreement to secure the Borrower's obligations under the Loan Documents.

2. Payment to Bank. The Borrower hereby directs the City to make all future payments under the Development Agreement directly to the Lender and the Borrower will take all steps necessary thereunder to have such payments made directly to the Lender. If the Borrower should receive such funds, such funds, while in the hands of the Borrower shall be held as a constructive trust for the Lender and immediately delivered to the Lender. The Borrower shall not be able to change the designation of the payment of these funds without the prior written consent of the Lender.

3. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that there have been no prior assignments of the Development Agreement, that the Development Agreement is a valid and enforceable agreement against the Borrower and that neither the Borrower nor, to Borrower's knowledge, the City is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Borrower agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Agreement as long as this Agreement is in effect. The Borrower hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the Borrower's rights with respect to the Development Agreement for and on behalf of and in the name of the Borrower, or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Borrower could do if this Agreement had not been made.

4. Present Assignment. This Agreement shall constitute a perfected, absolute and present Assignment, provided that the Lender shall have no right under this Agreement to enforce the provisions of the Development Agreement or exercise any of its rights or remedies under this Agreement until an Event of Default (as that term is defined in the Loan Agreement) shall occur and be continuing. All payments due under the Development Agreement shall be paid to Lender and shall be used to paydown amounts outstanding under the Loan pursuant to the Loan Agreement.

5. Event of Default. Upon the occurrence of an Event of Default, the Lender may, without affecting any of its other rights or remedies against the Borrower under any other instrument,

document or agreement, exercise its rights under this Agreement as the Borrower's attorney-in-fact in any manner permitted by law, and, in addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa. If notice to the Borrower of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the intended disposition or other action.

6. Representations and Warranties of the City. The City hereby consents and agrees to the terms and conditions of this Agreement. The City further represents and warrants to the Lender that the Development Agreement is a valid agreement enforceable against the City in accordance with its terms, that neither the City nor, to the City's knowledge, the Borrower is in default thereunder and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof.

7. Permitted Mortgage. The City acknowledges that the Mortgage is a permitted mortgage under the terms of the Development Agreement.

8. Approval of Plans. The City hereby acknowledges and agrees that pursuant to Article 2 of the Development Agreement, the City has approved the Conceptual Development Plan (as that term is defined in the Development Agreement).

9. Notice from City. So long as the Development Agreement remains in effect, the City agrees to give to the Lender at the address provided in Section 14 hereof copies of notices of any default given to the Borrower under the Development Agreement pursuant to Article 7 of the Development Agreement, but failure to do so shall not render invalid any such notice(s) and shall not affect any of the rights and remedies available to the City against the Borrower under the Development Agreement.

10. Lender Right to Cure. So long as the Development Agreement remains in effect, the City agrees to give the Lender the right to cure a default by the Borrower under the Development Agreement.

11. No Assumption. Unless the Lender elects to be bound by the Agreement pursuant to paragraph 17 of this Agreement, the City acknowledges that the Lender is not a party to the Development Agreement and, by executing this Agreement, does not become a party to the Development Agreement, and specifically does not assume and shall not be bound by any of the obligations of the Borrower to the City under the Development Agreement and that the Lender shall incur no obligations whatsoever to the City.

12. Amendments. The City and the Borrower agree that no change or amendment shall be made to the terms of the Development Agreement without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed.

13. Waiver. This Agreement can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the parties hereto. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies

hereunder. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

14. Headings. The descriptive headings for the several sections of this Agreement are inserted for convenience only and not to confine or limit any of the terms or provisions hereof.

15. Addresses for Notice. Any notice, request, demand or communication hereunder shall be deemed fully given if delivered or served by depositing the same with the United States Postal Service, postage prepaid, certified or registered, addressed to the parties as set forth below:

- | | |
|---------------------|---|
| If to the City: | City of Des Moines
c/o Office of Economic Development
400 Robert D. Ray Drive
Des Moines, Iowa 50309
Attn: City Manager |
| If to the Borrower: | District at 6th, LLC
333 N. Pennsylvania Street, Suite 100
Indianapolis, Indiana 46204
Attn: Louis A. Knoble |
| With a copy to: | Kuhl & Grant LLP
707 E. North Street, Suite 800
Indianapolis, Indiana 46202
Attn: Mark D. Grant |
| If to the Lender: | Lincoln Savings Bank
13523 University Avenue
Clive, Iowa 50325
Attn: Aaron J. Patterson |
| With a copy to: | Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
Attn: Holly A. Stocker |

or at such other address with respect to such party as that party may, from time to time, designate in writing and forward to the others, as provided in this Section.

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

17. Transfer of Title to the Lender. The City agrees that in the event the Lender, a transferee of the Lender, or a purchaser at foreclosure sale, acquires title to the Project pursuant to foreclosure, or deed in lieu thereof, the Lender, transferee or purchaser shall provide notice to the

City within 30 days of acquiring title and in that notice, it shall elect whether it will be bound by all terms and obligations of the Development Agreement. If Lender elects not to be bound by those terms and obligations of the Development Agreement, the rights and obligations under the Development Agreement shall immediately cease for all parties. Further, the City agrees that in the event the Lender, a transferee of the Lender, or a purchaser at foreclosure sale acquires title to the Project pursuant to a foreclosure sale or deed in lieu thereof, then the Lender, or any transferee or purchaser approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, shall be entitled to all rights conferred upon the Borrower under the Development Agreement, provided that no condition of default exists and remains uncured beyond any applicable cure periods in the obligations of the Borrower under the Development Agreement.

18. Successors. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any person who acquires title to the Project through the Lender by a foreclosure of the Mortgage or deed in lieu thereof.

19. Severability. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

20. Governing Law. This Agreement is made and shall be construed in accordance with the laws of the State of Iowa.

IN WITNESS WHERE, the parties hereto have executed this Agreement as of the day and year first above written.

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CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Diane Rauh, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Thomas G. Fisher Jr.
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2017, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. 17-_____ of the City Council on the ___ day of _____, 2017, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____

LENDER:

LINCOLN SAVINGS BANK, an Iowa state
banking corporation

By: _____
Aaron J. Patterson
Its Vice President

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017,
by Aaron J. Patterson, Vice President of Lincoln Savings Bank, an Iowa state banking
corporation, for and on behalf of the state banking corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:
Winthrop & Weinstine, P.A. (HAS)
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402

EXHIBIT A

(Legal Description)