



Roll Call Number

20-1248

Agenda Item Number

38 I

Date: August 5, 2020 reconvened from August 3, 2020

**RESOLUTION APPROVING URBAN RENEWAL DEVELOPMENT AGREEMENT WITH
REAGAN PARTNERS, LLC (TIM RYPMA, PAUL COWNIE AND JEREMY CORTRIGHT),
AND APPROVING CONCEPTUAL DEVELOPMENT PLAN, FOR THE
HISTORIC RENOVATION OF THREE MULTIFAMILY APARTMENT BUILDINGS
LOCATED AT 2801 GRAND AVENUE**

WHEREAS, Reagan Partners, LLC (“Developer”), represented by Tim Rypma, Paul Cownie and Jeremy Cortright, Development Members, proposes to undertake a historic renovation of three existing multifamily apartment buildings located at 2801 Grand Avenue (“Property”), which is expected to contain a mix of approximately 47 efficiency and one-bedroom apartment units (“Improvements”), at an estimated total project cost of \$8,300,000.00, subject to receipt of the financial assistance identified below and State and Federal Historic Tax Credits being sought by the Developer; and

WHEREAS, the existing buildings were originally constructed in 1917, 1920 and 1921, and the Developer is working with the State Historic Preservation Office (SHPO) on design requirements and intends to undertake the renovation consistent with the Secretary of the Interior’s Standards and Guidelines for Historic Rehabilitation; and

WHEREAS, construction of the Improvements is anticipated to commence in fall 2020; and

WHEREAS, on March 23, 2020, pursuant to Roll Call No. 20-0532, the City Council directed the City Manager to proceed with negotiation of a development agreement with Reagan Partners, LLC, for said Project; and

WHEREAS, the City Manager has negotiated an Urban Renewal Development Agreement (the “Development Agreement”) preliminary terms of an Urban Renewal Development Agreement with the Developer, whereby the Developer has agreed to construct the Project, in accordance with a Conceptual Development Plan, which proposed Development Agreement and Conceptual Development Plan related thereto are on file and available for inspection in the office of the City Clerk and on the City of Des Moines website in relation to Urban Design Review Board review; and

WHEREAS, the proposed Development Agreement provides that in consideration of the Developer’s commencement and completion of the Improvements and use of the Property in accordance with affordability requirements, the City will provide economic development assistance in the form of a forgivable loan, in a total amount not to exceed \$1,395,000.00 (cash basis; \$994,627.00 on a net present value basis at a four percent (4%) discount rate), to be advanced in biannual installments in project years 1-13 from the tax increment generated by the Ingersoll Grand Commercial Urban Renewal Area and to be used for the affordable (low-moderate income) housing units included in the Improvements; and

WHEREAS, the Developer has agreed to preserve fifty percent, or at least 24, of the apartment units at a variety of affordable rates for at least 20 years, including a minimum of ten percent of the



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units (5 units) to be capped at the fifty percent HOME rent limits and restricted to households earning fifty percent or less of the area median income, and a minimum of forty percent of the units (19 units) to be capped at the sixty-five percent HOME rent limits and restricted to households earning eighty percent or less of the area median income, in addition to participation in and compliance with MidAmerican Energy's Commercial New Construction Energy Efficiency Program, the installation of a minimum of two electric vehicle charging stations on site, and accommodation of persons displaced from the Property by Developer's completion of the Improvements, all as more fully described in the Development Agreement; and

WHEREAS, at its meeting on June 16, 2020, the Urban Design Review Board voted 7-0 to recommend approval of final design of the Project as proposed by the Developer and set forth in the Conceptual Development Plan attached to the Development Agreement, and approval of financial assistance as set forth above and in said Agreement.

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

1. The City Council hereby makes the following findings in support of the proposed Development Agreement with Reagan Partners, LLC ("Developer"):
 - a. Developer's obligations under the Development Agreement to construct the Project further the goals and objectives of the Ingersoll-Grand Commercial Urban Renewal Plan to encourage development with the following attributes: (1) place-making with development that respects the neighborhood's character and human-scale, design and historic features while creating attractive live/work/play environments; and (2) livability to provide an attractive and appealing physical environment for residents.
 - b. The economic development incentives for the development of the Project are provided by the City pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under the Agreement to construct the Improvements, will generate the above-stated public gains and benefits.
 - c. The construction of the Project is a speculative venture and the construction and the construction and resulting benefits would not occur without the economic incentives provided by the Development Agreement, subject to receipt of the financial assistance identified below and State and Federal Historic Tax Credits being sought by the Developer.
 - d. The redevelopment of the Property pursuant to the Development Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Project has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.
2. The Urban Renewal Development Agreement between the City and Reagan Partners, LLC, and the Conceptual Development Plan attached thereto, both as on file in the office of the City Clerk,



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are hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Des Moines.

3. The Development Services Director (Office of Economic Development) or her designee are directed to submit a copy of the fully executed Development Agreement to the Finance Department for purposes of required Electronic Municipal Market Access disclosure filings.

4. Upon requisition by the City Manager or the City Manager's designee, the Finance Department shall advance the installments on the Economic Development Assistance pursuant to Article 4 of the Development Agreement.

5. The City Manager or his designees are hereby authorized and directed to administer the Development Agreement on behalf of the City, and to monitor compliance by the Developer with the terms and conditions of the Agreement. The City Manager is further authorized and directed to approve and administer minor amendments to the Agreement, and to submit any substantive amendments to the Agreement to City Council for consideration.

(Council Comm. No. 20-345)

MOVED BY Mandelbaum TO ADOPT.

APPROVED AS TO FORM:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

* Mayor Cownie abstains from voting based on an appearance of a

conflict of interest.

CERTIFICATE

I, P. KAY CMELIK, 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.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN	✓			
* COWNIE				
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			

MOTION CARRIED

APPROVED

J. M. Frank Mayor

P. Kay Cmelik City Clerk

Prepared by: Glenna K. Frank, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 515/283-4530
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Urban Renewal Development Agreement
Grantor's Name: Reagan Partners, LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: The Property located at 2801 Grand Avenue, Des Moines, Iowa, more specifically described in Exhibit "A" at page 21.

URBAN RENEWAL DEVELOPMENT AGREEMENT

INGERSOLL-GRAND COMMERCIAL URBAN RENEWAL AREA

By and Between
CITY OF DES MOINES, IOWA
and
REAGAN PARTNERS, LLC

Approved by City Council:
Date: 8-5, 2020
Roll Call No. 20- 1248

Exhibits:

- "A" – Legal Description of the Property
- "B" – Conceptual Development Plan (On file in office of the City Clerk)
- "C" – Declaration of Covenants (Recorded separately)
- "D" – Promissory Note (Forgivable)
- "E" – Forgivable Mortgage (Recorded separately)

RECORDING NOTE: Only Exhibits "A" and "D" are intended to be recorded with this Agreement. Exhibits "C" and "E" will be recorded separately. This Agreement and all the exhibits will be on file and available for public viewing in the office of the City Clerk.

This **URBAN RENEWAL DEVELOPMENT AGREEMENT**, including Exhibits, each of which is attached hereto and by this reference made a part hereof (the Agreement and Exhibits are together hereinafter called the "Agreement"), is made as of _____, 2020 (the "Effective Date"), by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation (the "City"), acting pursuant to Chapter 403 of the Code of Iowa (the "Urban Renewal Law"), and **REAGAN PARTNERS, LLC**, an Iowa limited liability company (the "Developer").

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken a program to alleviate and prevent conditions of unemployment and shortage of housing; to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of the State of Iowa and the City; to provide for the construction of housing for low and moderate income families; and to encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to the city and its residents; and in this connection, for these essential public purposes, is engaged in carrying out an urban renewal project known as the Ingersoll-Grand Commercial Urban Renewal Project (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City of Des Moines; and

WHEREAS, as of the date of this Agreement there has been prepared and approved by City a plan for the Project, consisting of the Urban Renewal Plan and amendments thereto indicated in the following table, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as indicated in the following table:

<u>Action</u>	<u>Date Adopted</u>	<u>Roll Call</u>	<u>Book-Page</u>
Plan Adopted	07-09-2012	12-1113	14,361-930
1st Amendment	11-23-2015	15-1999	15,827-721
2nd Amendment	07-24-2017	17-1297	16,612-100
3rd Amendment	09-10-2018	18-1547	17,088-242
4th Amendment	05-06-2019	19-0753	17,327-299
5th Amendment	11-04-2019	19-1763	17,585-335
6th Amendment	04-20-2020	20-0654	17,810-878

(which Plan, as so amended is hereinafter called the "Urban Renewal Plan"); and

WHEREAS, the Developer is purchasing the real estate locally known as 2801 Grand Avenue, Des Moines, Iowa, more specifically described in Exhibit "A" hereto and hereinafter referred to as the "Property", consisting of three historic multi-household residential buildings; and

WHEREAS, the City believes that restoring and reusing the existing buildings on the Property in accordance with the terms of the Agreement contributes to the character of the Project Area and extends the commercial vitality of the Project Area, as well as contributes to affordable housing in the Project Area; and

WHEREAS, Developer has agreed to redevelop the Property by reuse and historic renovation of the three existing buildings containing 47 apartment units including efficiency and one-bedroom units, a portion of which shall be subject to affordability requirements, with an estimated total project cost of \$8,300,000.00, and has agreed to make certain accommodations for persons in the existing building displaced by said project; and

WHEREAS, the Developer's obligations under this Agreement to redevelop the Property for continued multi-household residential use furthers the goals and objectives of the Urban Renewal Plan to encourage development with the following attributes: (1) place-making with development that respects the neighborhood's character and human-scale, design and historic features while creating attractive live/work/play environments; and (2) livability to provide an attractive and appealing physical environment for residents; and

WHEREAS, the economic development incentives are provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa, and Developer's obligations under this Agreement to construct the Improvements (defined below) will generate the above-stated public gains and benefits; and

WHEREAS, the construction of the Improvements is a speculative venture and the construction and resulting benefits would not occur without the economic incentives and other City covenants provided by this Agreement, and funding and support through federal and State historic tax credits; and

WHEREAS, City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the Project has been undertaken, and warrant the provision of the economic assistance set forth in this Agreement.

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

ARTICLE 1. CONSTRUCTION OF IMPROVEMENTS

Sec. 1.1. Duty to Construct Improvements. A. Developer, subject to the terms of this Agreement, shall undertake the following restoration (the "Improvements") of the Property:

1. Historical restoration of the three existing multi-household residential buildings located on the Property in accordance with State Historic Preservation Office review and requirements.
2. Exterior work including: rehabilitation of historic windows, replacement of incompatible windows on rear elevations, roof replacement, and masonry repair as needed.
3. Undergrounding of utilities located within the Property, as may be required by any applicable City-approved site plan.
4. Installation of landscaping improvements on the Property and streetscape elements as required by any applicable City-approved site plan.
5. Renovation of the existing buildings shall include retention of approximately 47 efficiency and one-bedroom apartment units subject to affordability requirements as described in Section 3.4.
6. Installation of a minimum of two electric vehicle charging stations on the Property.
7. Compliance with the applicable Energy Code requirements and Mid-American Energy's Commercial New Construction program.

B. The Improvements shall be constructed in substantial compliance with the approved Conceptual Development Plan attached hereto as Exhibit "B" and with such future amendments thereto as may be approved by City as provided in Article 2. The Improvements shall also comply with the terms of this Agreement; with all applicable State and local laws and regulations, including but not limited to site plan review and City-approved site plan, and all applicable zoning, planning and design, and building codes; and the Commercial Construction and Sustainability Design Standards set forth in Appendix A-1 to the Third Restated Urban Revitalization Plan for the City-wide Urban Revitalization Area.¹

Sec. 1.2. Time for Completion of Improvements. This Agreement is contingent on Developer closing on the purchase of the Property by September 15, 2020, as evidenced by submitting to the City a copy of recorded deed transferring said Property to Developer. Subject to Section 5.4 of this Agreement, Developer shall commence construction of the Improvements by November 2, 2020, and thereafter shall diligently pursue the completion of the Improvements subject to Section 5.4 of this Agreement. Subject to Sections 5.2 and 5.4 of this Agreement, the Improvements shall be substantially completed by March 31, 2022², so as to qualify for the issuance of the Certificate of Completion under Section 2.4 of this Agreement.

Sec. 1.3. Progress Reports. From commencement of construction until construction of the Improvements has been substantially completed, Developer shall make reports, in such detail and at such times as may reasonably be requested by City, as to the actual progress of Developer with respect to such construction.

Sec. 1.4. Access to Property. During construction of any of the Improvements and prior to expiration of the Urban Renewal Covenants, as defined in Article 3, Developer shall permit City's representatives access to the Improvements at all reasonable times which City reasonably deems necessary for the purposes of this Agreement, such access to be subject to advance notice of at least 24 hours and accompaniment by Developer or any agent of Developer. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

Sec. 1.5. Prohibition Against Transfer. A. Prior to issuance of the Certificate of Completion for the Improvements pursuant to Section 2.4, Developer shall not without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein, or any agreement to do any of the same, except leases made in the ordinary course of business, and easements or other encumbrances necessary for the Improvements.

B. City shall be entitled to require as a condition to any such approval that:

1. Any proposed transferee shall have the qualifications and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations undertaken in this

¹ Compliance with the Commercial Construction and Sustainability Design Standards is required for the receipt of tax abatement under the Third Restated City-wide Urban Revitalization Plan, as amended. A copy of the Plan containing the Commercial Construction and Sustainability Design Standards is available for inspection in the office of the City Clerk at City Hall, and is filed with Roll Call No. 15-1816 passed October 26, 2015.

² See Section 5.2 for special remedy for a delay in timely qualifying for issuance of the Certificate of Completion.

Agreement by Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);

2. Any proposed transferee, by an instrument in writing satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part); and
3. All instruments and other legal documents involved in effecting transfer be submitted to City for review prior to the transfer.

C. In the absence of specific written agreement by City to the contrary, no such approved transfer by City shall be deemed to relieve Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

D. Following issuance of Certificate of Completion pursuant to Section 2.4 of the Agreement, Developer may transfer the Property without consent of the City, except (i) Developer agrees to provide City with written notice in the event of any transfer of the Property, of rights thereto, or of maintenance or operational obligations therein, and (ii) Developer acknowledges and agrees that any transfer of the Property, of rights thereto, or of maintenance or operational obligations therein, which results in non-compliance with the affordability requirements for the duration of the Affordability Period as described in Section 3.4, constitutes a default of this Agreement and of the Exhibits hereto subject to remedies set forth in Article 5 and in said Exhibits.

Sec. 1.6. Limitation Upon Encumbrance of Property. A. Prior to issuance of the Certificate of Completion pursuant to Section 2.4, Developer shall not engage in any transaction imposing any encumbrance or lien upon the Property, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.

B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only for the purpose of obtaining loans to (i) purchase the Property, (ii) construct the Improvements, (iii) pay the installments of property taxes and special assessments that are due, but not delinquent, and (iv) refinance the amounts allowed in subsection (i) and (ii) of this Section 1.6(B). Any mortgage securing the loans permitted in this Section 1.6(B) shall be referred to herein as the "First Mortgage." Developer shall use its best efforts to cause to be included in any mortgage on the Property a provision requiring that whenever the mortgagee shall deliver any notice or demand to Developer with respect to any breach or default by Developer in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Section 6.5 hereof.

C. Developer shall not be required to remove any encumbrance or lien required to be removed under paragraph A, above, so long as Developer shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right

of Developer to settle any such contest), and Developer shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, interest, costs and expenses thereon or in connection therewith. Developer shall give City prompt written notice of any such contest and of the final outcome thereof.

ARTICLE 2. CONCEPTUAL DEVELOPMENT PLAN

Sec. 2.1. Site Plan Review Pre-application Conference. The Developer shall undertake the pre-application conference for the Improvements pursuant to the Site Plan Review process as required by City of Des Moines Municipal Code Chapter 135, Article 9. The review required by the Planning and Design Ordinance, Des Moines Municipal Code Chapter 135, is a separate review process from the review of the Conceptual Development Plan provided for in this Agreement. Approval of a plan or an amendment thereto pursuant to one does not constitute approval for purposes of the other.

Sec. 2.2. Conceptual Development Plan. A. The approved Conceptual Development Plan for the Improvements is attached hereto as Exhibit "B". Any amendment to the Conceptual Development Plan by Developer is subject to approval by the City in the manner hereafter required.

B. All changes to the approved Conceptual Development Plan must be submitted by Developer to City and are subject to City approval, which approval shall not be unreasonably withheld or delayed. City shall endeavor to promptly review the Conceptual Development Plan and any amendments thereto within the applicable limits of the agenda deadlines and public notice requirements. If City rejects an amendment to the Conceptual Development Plan, in whole or in part, it will set forth in writing the reasons for such rejection. Any proposed change which is determined by the City Manager of City to be a minor or unsubstantial change may be administratively approved by the City Manager or by the Director of the Office of Economic Development.

C. The Conceptual Development Plan as amended shall include a conceptual site plan, detailed building elevations for each building face, floor plans for each story, and a streetscape and signage plan for the Property, and otherwise satisfy the following criteria:

1. The Conceptual Development Plan must comply with the requirements of this Agreement and must satisfy the land use requirements of the Urban Renewal Plan.
2. The Improvements must comply with the applicable site plan requirements, including but not limited to the landscape regulations, the Secretary of Interior Building and Rehabilitation Standards, and all applicable zoning, planning and design, building, and similar local codes.
3. The durability, appearance and quality of the exterior materials must be substantially equivalent to, or better than, that provided by the original Conceptual Development Plan attached hereto as Exhibit "B".
4. The Conceptual Development Plan must contain sufficient detail to demonstrate that the Improvements comply with the Commercial Construction and Sustainability Design Standards set forth in Appendix A-1 to the Third Restated Urban Revitalization Plan for the Citywide Urban Revitalization Area (the "Revitalization Plan").³

³ See footnote (1).

5. The Plan must comply with the recommendations of the Urban Design Review Board as adopted or amended by the Director of the Office of Economic Development, unless such recommendations are waived or amended by City Council resolution.

Sec. 2.3. Building Permits/Construction Permits. All construction and construction plans submitted by Developer must comply with City zoning, planning and design, and building code requirements. In addition, Developer is responsible for assuring that both the construction and the construction plans are in substantial compliance with the approved Conceptual Development Plan and amendments thereto. City may withhold approval of building permits if the construction plans do not substantially comply with the approved Conceptual Development Plan and amendments thereto. However, approval or issuance of building permit is not an acknowledgment that the construction and construction plans are in substantial compliance of the obligations of this Agreement and the approved Conceptual Development Plan and amendments thereto⁴. If there is any reason to question whether the construction or the construction plans substantially conform with the Conceptual Development Plan or amendments thereto, Developer shall immediately contact the City of Des Moines Office of Economic Development.

Sec. 2.4. Certificate of Completion. A. Developer shall request a "Certificate of Completion" for the Improvements by notifying City in writing that it has completed the Improvements in substantial compliance with the approved Conceptual Development Plan and construction plans, and furnishing City with an architect's certificate or reasonable equivalent to that effect.

B. Promptly upon receipt of Developer's notification of completion of the Improvements, City shall inspect the Improvements. If City determines that Developer has completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan and construction plans, as may be amended in accordance with this Agreement, City shall issue a "Certificate of Completion." Issuance of the Certificate of Completion shall not be unreasonably withheld or delayed by City. If City determines that Developer has not completed the Improvements in substantial compliance with the provisions of this Agreement and the approved Conceptual Development Plan and construction plans, as may be amended in accordance with this Agreement, City shall, within thirty (30) days of receiving Developer's notification of completion, provide Developer with a written statement of the basis for City's determination which specifies the actions to be performed by Developer in order to obtain the Certificate of Completion.

C. The City may withhold issuance of the Certificate of Completion until Developer has satisfied the following conditions precedent, and is otherwise in compliance with the terms of this Agreement:

1. Developer has executed and recorded a Declaration of Covenants in the form attached hereto as Exhibit "C".
2. Developer has supplied to City a title opinion from an independent attorney based upon an abstract which identifies that the Declaration of Covenants has been properly executed and recorded in the land records in the Polk County Recorder, and has priority over all other liens and encumbrances as if such document had been filed prior in time, unless

⁴ The Permit & Development Staff responsible for the administration of building permits are NOT responsible for verifying that an application for a building permit conforms with the requirements of this Agreement.

otherwise subordinated due to recording date and/or pursuant to City Council resolution or City Manager approval as applicable.

3. Developer has demonstrated by providing a certificate of compliance with its requirement to accommodate any persons displaced from the Property by completion of the Improvements in accordance with Section 3.6.

D. The determination by City regarding completion of the Improvements is independent of any determination by City regarding the issuance of an Occupancy Permit pursuant to the Building Code of City. The issuance of an Occupancy Permit for any portion of the Property shall not serve as a substitute for the Certificate of Completion referenced in this Section.

Sec. 2.5. Effect of Issuance. A. Upon issuance of the Certificate of Completion, the obligations and covenants contained in this Agreement with respect to the construction of the Improvements and the dates for the beginning and completion thereof, shall be satisfied and terminated. However, all other obligations and covenants contained in this Agreement shall remain in full force for the remaining term of this Agreement, including but not limited to the affordability restrictions set forth herein and in the Declaration of Covenants and the terms of the Promissory Note and Forgivable Mortgage which shall remain enforceable for the duration of the Affordability Period (described below). Developer may utilize the Certificate of Completion only as evidence of compliance with or satisfaction of Developer's construction obligations under this Agreement.

B. The Certificate of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office.

ARTICLE 3. URBAN RENEWAL COVENANTS

Sec. 3.1. Duration. The Urban Renewal Covenants imposed pursuant to this Article shall apply to the Property and shall run with the land upon which the Property is located for a term (the "Restricted Term") commencing upon the date of recording of this Agreement and continuing until November 1, 2043, unless earlier terminated in accordance with, or otherwise limited by, this Agreement.

Sec. 3.2. Representations as to Redevelopment. Developer recognizes and acknowledges:

1. The importance of the redevelopment of the Property to the general welfare of the community as a whole;
2. The substantial public aid that has been made available by City for the purpose of making such redevelopment possible; and
3. The qualifications and identity of Developer are of particular concern to the community and City and are an important element in City's decision to enter into this Agreement.

Sec. 3.3. Legal Status/Authorization to Sign. The officers signing this agreement on behalf of Developer represent and warrant that they have the authorization of Developer to enter into this Agreement.

Sec. 3.4. Affordability Duration and Requirements. A. Developer agrees to meet the affordability requirements set forth in this Agreement and in the Declaration of Covenants, to be recorded separately by City as a lien and encumbrance against the Property. The duration of affordability

requirements (also referred to as “Affordability Period”) will begin upon first payment by the City to Developer pursuant to the Forgivable Loan described in Article 4, and shall remain enforceable for a period of twenty (20) calendar years.⁵

B. The Project will contain a minimum of 24 efficiency and one-bedroom apartment units with affordability requirements as follows: 5 units shall be rented at no more than fifty percent (50%) HOME rent limits⁶ and restricted to households earning fifty (50%) or less of the area median income; 19 units shall be rented at no more than sixty-five percent (65%) HOME rent limits and restricted to households earning eighty percent (80%) or less of the area median income. Collectively, this number and proportion of units constitute the “affordability requirements” as referenced in this Agreement. The affordable units may be floating throughout the Property. As determined by the City, the Developer must maintain the affordability requirements and unit mix throughout the Affordability Period, and restore compliance with said requirements and unit mix if tenant income changes based on the annual reports obtained by Developer from the tenant. Tenant income requirements shall be reviewed by the Developer at least annually on the basis of the current income of the tenant.

Sec. 3.5. Declaration of Covenants. Upon or immediately following the Developer’s closing on the purchase of the Property, City shall record, at Developer’s cost, a Declaration of Covenants fully executed by Developer in the form of Exhibit “C” attached hereto.

Sec. 3.6. Accommodation of Displaced Persons. Developer covenants and agrees to undertake, at Developer’s sole cost, the accommodation of any and all persons displaced from the Property by Developer’s completion of the Improvements in accordance with Section 3.6 of this Agreement. Although Developer may undertake additional measures, City agrees that this requirement to accommodate displaced persons shall be satisfied if Developer, prior to issuance of Certificate of Completion pursuant to Section 2.4, (i) waives rent for all existing tenants for the month of September 2020; and (ii) refunds to all existing tenants one-hundred percent (100%) of their previously paid security deposits. Developer may evidence compliance with this provision by certification to the City which may include, at City’s request, copies of notices to the tenants waiving the rent and returning security deposits as provided herein. Provided Developer extends the above accommodations to each existing tenant, nothing in this Agreement precludes Developer from vacating tenancy in the Property in accordance with Iowa law, which process may include eviction of tenants by judicial process.

ARTICLE 4. ECONOMIC DEVELOPMENT ASSISTANCE

Sec. 4.1. Consideration for Agreement. In consideration of Developer's obligation to construct and operate the Improvements in accordance with this Agreement and in consideration of the economic development and affordable housing opportunities that are anticipated to be retained and created in and around the Property and Project Area as a result of such undertaking, City shall cause to be provided the economic incentives identified in this Article.

⁵ Section 4.2 provides that the first advance under the Forgivable Loan is estimated to be paid on November 1, 2023.

⁶ For purposes of this Agreement and its Exhibits, “HOME rent limits” means the federal rent limits published by the U.S. Department of Housing and Urban Development (HUD) for the Home Investment Partnerships (HOME) Program under HOME Program Rents for Des Moines-West Des Moines, IA MSA.

Sec. 4.2. Economic Development Forgivable Loan. A. Subject to the terms of this Article and Agreement, City shall advance an economic development forgivable loan (herein referred to as the “Forgivable Loan”) to Developer in the total amount of One-Million Three-Hundred Ninety-Five Thousand U.S. Dollars (\$1,395,000.00) for sole use to reimburse Developer for the cost of renovation of the affordable apartment units required by this Agreement and the Declaration of Covenants. The Forgivable Loan shall be advanced to Developer from Tax Increment Financing (TIF) allocated to the Ingersoll-Grand Commercial Urban Renewal Area, in 26 installments, commencing November 1, 2023, and ending May 1, 2036, except as may be modified in the event of minor delay under Section 5.2(A), according to the following schedule:

1-Nov-23	\$	25,000
1-May-24	\$	25,000
1-Nov-24	\$	25,000
1-May-25	\$	25,000
1-Nov-25	\$	25,000
1-May-26	\$	25,000
1-Nov-26	\$	37,500
1-May-27	\$	37,500
1-Nov-27	\$	37,500
1-May-28	\$	37,500
1-Nov-28	\$	37,500
1-May-29	\$	37,500
1-Nov-29	\$	37,500
1-May-30	\$	37,500
1-Nov-30	\$	50,000
1-May-31	\$	50,000
1-Nov-31	\$	50,000
1-May-32	\$	50,000
1-Nov-32	\$	55,000
1-May-33	\$	55,000
1-Nov-33	\$	100,000
1-May-34	\$	100,000
1-Nov-34	\$	105,000
1-May-35	\$	105,000
1-Nov-35	\$	112,500
1-May-36	\$	112,500
Total	\$	1,395,000

B. The Forgivable Loan shall be forgiven on a prorated annual basis concurrently with November payments from City to Developer under the Forgivable Loan, and shall be forgiven in full, if Developer complies with the affordability requirements for the duration of the Affordability Period, as set forth herein and in the Declaration of Covenants. Proration of annual loan forgiveness when applicable shall equal ten percent (10%) per calendar year commencing on November 1, 2033 until November 1, 2043.

C. The Forgivable Loan and its additional terms are set forth in the Promissory Note and Forgivable Mortgage attached hereto as Exhibits “D” and “E”. The Forgivable Loan shall be secured by the Forgivable Mortgage. Notwithstanding anything to the contrary in this Agreement, the City reserves the right to enforce the terms of the Promissory Note and Forgivable Mortgage and demand repayment of the Forgivable Loan, including pursuing legal remedies to effect such repayment, in the event of default of this Agreement by Developer in accordance with Article V, including but not limited to failure by Developer to meet affordability requirements within the Affordability Period, or transfer of the Property, or rights thereto, or of maintenance or operational obligations, that results in non-compliance with the affordability requirements for the duration of the Affordability Period as described in Section 3.4; provided that in no event shall City be entitled to seek recovery of any portion of the Forgivable Loan that has been forgiven in accordance with this Agreement.

D. Due to the affordability requirements set forth in this Agreement, the City agrees that the Forgivable Mortgage shall at all times, regardless of recording date or other rules of priority, be junior and inferior to the First Mortgage, subject to a maximum aggregate principal amount of any indebtedness secured by the First Mortgage not to exceed \$6,000,000.00 and subject to City approval of a subordination agreement. City agrees upon written request from Developer to execute any instruments reasonably requested by Developer’s lender to subordinate the Forgivable Mortgage to the First Mortgage, subject to City review and approval of said instruments, and subject to a maximum aggregate principal amount of any indebtedness secured by the First Mortgage not to exceed \$6,000,000.00.

Sec. 4.3. Conditions Precedent. City shall have no obligation to advance the first installment and any future installment on the Forgivable Loan unless:

1. Developer has substantially completed the Improvements and has qualified for issuance of the Certificate of Completion pursuant to Section 2.4.
2. Developer has demonstrated ownership of the Property pursuant to recorded Deed conveying title to Developer, a copy of which shall be provided by Developer to City.
3. Developer has executed, and City has recorded at Developer’s cost, a Declaration of Covenants in the form attached hereto as Exhibit “C”.
4. Developer is not in breach of any of the Urban Renewal Covenants or other provisions of the Agreement, and any default has been cured within the period allowed by Section 5.1 and/or 5.2 as applicable.
5. Developer is not delinquent in the payment of any property taxes levied upon the Property and Improvements.
6. Developer has provided a final program verification report from MidAmerican Energy or other non-affiliated third-party showing full compliance of the Improvements with the applicable Energy Code requirements and Mid-American Energy’s Commercial New Construction Energy Efficiency program.
7. Developer demonstrates compliance with the affordability requirements set forth in this Agreement in accordance with Section 4.4(2).

Sec. 4.4. Reporting. Commencing on October 1, 2023, and continuing on each October 1st thereafter until all installments on the Forgivable Loan have been paid to Developer, Developer shall cause an Annual Report to be prepared and delivered to the City containing the following:

1. *Conditions precedent*. Written confirmation of compliance with the conditions precedent stated above in Section 4.3 for the duration of the applicable Development Grant installment period.
2. *Affordability requirements*. Written records indicating (i) the annual income of each tenant within the affordable unit mix; (ii) a report detailing rent charged to the affordable unit tenants, which must not exceed the affordability requirements; and (iii) identification of any unit substitution and filling of vacancies to ensure compliance with the required affordable unit mix.
3. *Cost statement*. An itemized statement detailing costs of renovation of the affordable units that have been designated at rates required in Section 4.7 (*such statement required only with first annual reporting*).
4. *Verification*. A statement signed by the President, Chief Executive Officer, Treasurer, Secretary, Managing Member, or Chairman of the Board of Directors of the reporting business, verifying that the information contained in the Annual Report is true and accurate to best of knowledge of the person making the statement.

Sec. 4.5. Source of Funding. A. The Forgivable Loan shall be paid by City solely from the special fund financed by the division of revenue pursuant to Iowa Code Section 403.19(2) from taxes levied on the Project Area. The obligations of City under this Agreement shall not constitute a general obligation of the City.

B. The City represents, warrants and agrees that for so long as Developer is not in default under this Agreement and the City is obligated to pay future installments on the Forgivable Loan in accordance with the terms of this Agreement:

1. City shall not repeal the designation of the Property or any part thereof as being within an urban renewal area pursuant to Iowa Code Section 403.5.
2. City shall not repeal nor amend any ordinance in any manner that impairs the City's ability to pay the installments on the Forgivable Loan as contemplated by this Agreement.
3. City will timely certify to Polk County the estimated amount each installment on the Forgivable Loan for payment from the special fund for the Project in accordance with Iowa Code Section 403.19(6).

Sec. 4.6. Non-appropriation. A. Notwithstanding anything in this Agreement to the contrary, the obligation of the City to pay or advance any portion or installment of the Forgivable Loan shall be an obligation limited to currently budgeted funds, and not a general obligation or other indebtedness of the City or a pledge of its full faith and credit under the meaning of any constitutional or statutory debt limitation, and shall be subject in all respects to the right of non-appropriation reserved by the City Council as provided in this Section. City may exercise its right of non-appropriation as to the amount of the installment to be paid during any fiscal year during the term of this Agreement without causing a termination of this Agreement. The right of non-appropriation shall

be exercised only by resolution affirmatively declaring the City's election to non-appropriate funds otherwise required to be paid to Developer in the next fiscal year under this Agreement.

B. In the event the City Council of City elects to not appropriate sufficient funds in the budget for any future fiscal year for the payment in full of the installment on the Forgivable Loan due and payable in that fiscal year, then the City shall have no further obligation to Developer for the payment of any portion of the installment due in the next fiscal year which cannot be paid with the funds then appropriated for that purpose.

C. 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 pay future installments on the Forgivable Loan 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 to create, cause, or result in the creation of, such a legal indebtedness of the City, the application and enforcement of any such provision(s) shall be deemed suspended as of the date of such determination, 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 shall be deemed to have occurred as a result of the suspension of any such provision(s). If any provision of this Agreement is so suspended, the suspension shall not affect other provisions or application of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

D. The Urban Renewal Covenants in Article 3 of this Agreement shall not be applicable to conduct by the Developer and its successors and assigns in ownership or possession of the Property during any fiscal year in which the annual installment portion of the Forgivable Loan will not be paid in full due to the City's exercise of the right of non-appropriation under this Article. However, any conduct in violation of the Urban Renewal Covenants shall be promptly remedied in any subsequent fiscal year in which the City appropriates sufficient funds to fully pay the estimated amount of the annual installment on the Forgivable Loan due in that fiscal year.

Sec. 4.7. Limitation on Use of Funds. The Forgivable Loan may be used solely for reimbursement of renovation and rehabilitation/remodeling of the affordable apartment units, used by Developer to meet the affordability requirements, that are contained within the privately-owned Improvements. Developer agrees and acknowledges that Developer may not fund any renovation related to the market-rate apartment units, or any public portion of the Improvements, from any or all proceeds of such Loan, and that such usage may violate public bidding requirements and/or urban renewal law requirements as well as constitute a breach of this Agreement.

ARTICLE 5. REMEDIES.

Sec. 5.1. In General. A. Except as otherwise specifically provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party shall, by written Notice of Default to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within forty-five (45) days (or such other time as may be specifically provided herein) after receipt of such notice. Any default on an obligation to pay money shall be cured within twenty (20) business days after receipt of such notice. Notwithstanding the foregoing, if any non-monetary default reasonably requires more than forty-five (45) days to cure,

including without limitation any default on the affordability requirements, such default shall not constitute a breach of this Agreement if the defaulting party commences to cure the default promptly upon receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion, which completion shall occur no more than one-hundred (100) days after receipt of such notice, or one-hundred eighty (180) days in the event of any uncured default on the affordability requirements.

B. In the event that a Notice of Default is given as provided above and action to cure or remedy the default is not promptly taken or not diligently pursued, or the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute proceedings for damages for breach of contract, including but not limited to proceedings to compel specific performance by the party in breach. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party for any breach of this Agreement.

Sec. 5.2. Special Remedies. A. *Delay in the Completion of the Improvements.* Developer acknowledges and agrees that if the Improvements are not timely constructed it will cause the City to incur damages resulting from the delay in the generation of incremental property tax revenues and in the generation of the economic development and employment opportunities that are expected to be retained and created. This Section is intended to establish appropriate remedies for delays in the construction of the Improvements.

1. *Minor Delay in the Completion of the Improvements to the Property.* If construction of Improvements is not substantially completed so as to qualify for issuance of the Certificate of Completion by the deadline set forth in Section 1.2, and such nonconformity with the requirements of this Agreement is remedied within six months after such applicable deadline, then such delay in completing the Improvements shall not be considered a default under this Agreement.
2. *Major Delay in Completion of the Improvements to the Property.* If construction of the Improvements is not substantially completed so as to qualify for issuance of the Certificate of Completion by the date set forth in Section 1.2, and such nonconformity with the requirements of this Agreement is not remedied within six months after such applicable deadline, then it shall be considered a major default of this Agreement and City may elect to give Notice of Default pursuant to Section 5.1. In the event such default is not remedied as allowed by Section 5.1, City may elect to terminate this Agreement, in which event:
 - i) The City shall have no obligation under Article 4 of this Agreement to pay or advance the Forgivable Loan;
 - ii) Developer shall have no obligation under this Agreement to construct or maintain Improvements to the Property; and
 - iii) The City shall file a Termination Certificate as provided in Section 6.7.

B. *Future Use of Improvements.* Developer acknowledges and agrees that the affordability requirements and provision of affordable multi-household residential units, for the duration of the Affordability Period, were major factors in the City's financial assistance to Developer for renovation and redevelopment of the Property, and that any failure by Developer to cause said Improvements to

be constructed and thereafter continually operated as such will constitute a significant and substantial default under this Agreement. City shall have no obligation to pay any installment on the Forgivable Loan or to forgive any prorated amount of the Forgivable Loan until such default is remedied. If such default is not remedied after notice and opportunity to cure as identified in Section 5.1, City may elect to declare Developer in breach of this Agreement whereupon the City shall have no obligation to pay any further installments on the Forgivable Loan, may collect payment in full on the Forgivable Loan in accordance with the terms thereof, may pursue any and all legal remedies available to the City, and/or may record a Termination Certificate pursuant to Section 6.7.

E. *Failure to Close.* In the event that Developer fails to close on acquisition of the Property by the date set forth in Section 1.2 above, or such date as may be allowed by amendment in accordance with Section 6.8, the City may send written notice to Developer terminating this Agreement effective upon date of said notice.

F. *Failure to Accommodate Existing Tenants.* In the event that Developer fails to accommodate persons displaced from the Property due to completion of the Improvements in accordance with Section 3.6 above, the City may send written notice to Developer and terminate this Agreement in accordance with Section 5.1.

Sec. 5.3. Other Rights and Remedies, No Waiver by Delay. City and Developer shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this Article. Provided, that any delay by City or Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive either City or Developer of or limit such rights in any way; it being the intent of this provision that City and Developer should not be constrained to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or Developer with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Developer with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Developer.

Sec. 5.4. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Developer shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including redevelopment, or the beginning and completion of construction of the Improvements, in the event of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, temporary injunctions, acts of God, acts of the public enemy, acts of government (provided City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Developer, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this Article shall, within twenty (20) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay; and further provided, that this Section shall not apply to Developer's obligation to (1) close on the

purchase of the Property in accordance with Section 1.2; or (2) to meet affordability requirements for the duration of the Affordability Period in accordance with Section 3.4 and the Declaration of Covenants.

Sec. 5.5. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either party shall be deemed a waiver in any respect in regard to any other rights of the party making the waiver or of any other obligations of the other party.

ARTICLE 6. MISCELLANEOUS.

Sec. 6.1. Representatives Not Individually Liable. No member, official, or employee of City or Developer shall be personally liable in the event of any default or breach by either party under this Agreement, or for any amount which may become due or on any obligations under the terms of this Agreement.

Sec. 6.2. City Not a Guarantor, Surety or Partner. City is not a guarantor or surety for the redevelopment nor for any indebtedness incurred by Developer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners between the parties hereto, or as constituting Developer as a contractor, agent or representative of City for any purpose or in any manner whatsoever.

Sec. 6.3. Interpretation of Contract. A. *Documents to be Considered Together.* The approved Conceptual Development Plan and any approved changes or modifications thereto shall be incorporated into this Agreement effective as of the date of such approvals. Any interpretation of the provisions of this Agreement shall be made by construing this Agreement and all Exhibits hereto together with the approved Conceptual Development Plan and any approved amendments thereto. Copies of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

B. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.

C. *Timing.* Time is of the essence in the performance of this Agreement.

D. *Non-working Days.* In the event the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

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

F. *Successors and Assigns.* This Agreement shall inure to the benefit of and shall be binding upon successors and assigns of the parties.

G. *Construction*. Headings are included for convenience only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. All section references, unless otherwise clearly indicated, are to sections in this Agreement. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context. This Agreement is not to be construed more strictly against a party hereto merely because it may have been drafted or prepared by such party or its counsel, this Agreement being the product of negotiation.

Sec. 6.4. Waiver of Jury Trial. City and Developer each hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

Sec. 6.5. Notices. A notice, demand, or other communication 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; delivered personally; or sent by overnight courier service, as follows:

- (a) in the case of Developer, addressed to:

c/o Tim Rypma
512 ½ East Grand Avenue
Des Moines, Iowa 50309

- (b) in the case of City, addressed to:

Attn: City Manager
c/o Office of Economic Development
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa 50309

or to such other address, Department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this Section.

Sec. 6.6. Recordation. City shall cause this Agreement (exclusive of Exhibit "B") and Exhibit "C" and "E" hereto to be promptly and separately recorded at the Developer's expense with the Polk County Recorder. A copy of this Agreement, including all the Exhibits shall be maintained and available for public inspection in the office of the City Clerk of City.


Sec. 6.7. Termination Certificate. Upon the termination of this Agreement as provided herein or upon satisfaction by the parties of all their obligations under this Agreement (including payment on the Forgivable Loan), and request by Developer, City shall issue to Developer a Termination Certificate certifying that Developer has satisfied all its obligations under this Agreement. Such Termination Certificate shall be in recordable form to permit it to be recorded in the records of the Polk County Recorder. Developer may utilize the Termination Certificate as evidence of its compliance with and satisfaction of all its obligations under this Agreement. In the event that a Termination Certificate is filed due to default and failure to cure under Sections 5.1 and/or 5.2 of this Agreement, the City may record a Termination Certificate which shall not be used to demonstrate or certify that the defaulting party's obligations hereunder have been fulfilled.

Sec. 6.8. Amendment. No amendment of this Agreement is binding unless set forth in writing, duly signed by the parties hereto.

Sec. 6.9. Urban Renewal Amendment. City shall diligently proceed with all necessary actions to promptly consider adoption, in conformance with applicable law, of an amendment to the Urban Renewal Plan for the Project Area to include the construction of the Improvements as an urban renewal project under Iowa Code Section 403.5(5)(b). Notwithstanding anything in this Agreement to the contrary, this Agreement, and Developer's obligations hereunder, shall be of no force or effect unless and until the City adopts such an amendment. If for any reason the City has not adopted such an amendment by December 1, 2020, Developer may, any time thereafter and prior to adoption of such an amendment, and notwithstanding any cure period provided under this Agreement, unilaterally and upon notice to City terminate this Agreement, with each party hereto thereafter relieved of further obligation or liability that does not expressly survive termination of this Agreement.

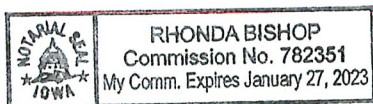
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the Effective Date.


REAGAN PARTNERS, LLC
an Iowa limited liability company


By: Tim Rypma
Its: MEMBER

STATE OF IOWA }
COUNTY OF POLK } ss:

This instrument was acknowledged before me on 7-30, 2020, by Tim Rypma as MEMBER of Reagan Partners, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.




Notary Public in the State of Iowa
My commission expires: 1-27-23

CITY OF DES MOINES, IOWA

ATTEST:

By: 
P. Kay Cmelik, City Clerk

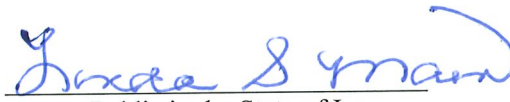
By: 
T.M. Franklin Cownie, Mayor

STATE OF IOWA

SS:

COUNTY OF POLK

On this 14 day of August, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, 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 City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20-1248 of City Council on the 5th day of August, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK 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

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney



EXHIBIT A

Legal Description for 2801 Grand Avenue, Des Moines, Iowa (“Property”):

Lots 15, 16, and 17 in Sears Place, an Official Plat, City of Des Moines, Polk County, Iowa

Exhibit B

Conceptual Development Plan

(Not Attached to Filed Document)

Exhibit C
To Development Agreement

Prepared by: Glenna K Frank, Assistant City Attorney, 400 Robert D. Ray Dr., Des Moines, IA 50309 Phone: 515/283-4130
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: Reagan Partners, LLC
Title of Document: Declaration of Covenants
Grantor's Name: Reagan Partners, LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: The Property located at 2801 Grand Avenue, Des Moines, Iowa, more specifically described as:
Lots 15, 16, and 17 in Sears Place, an Official Plat, City of Des Moines, Polk County, Iowa
(Herein "Property")

DECLARATION OF COVENANTS

Reagan Partners, LLC, an Iowa limited liability company (hereinafter "Developer"), in consideration of the mutual obligations undertaken by Developer and the **City of Des Moines, Iowa**, a municipal corporation (hereinafter "City"), in the **Development Agreement** dated as of _____, 2020 (hereinafter the "Agreement"), does hereby CONVEY unto the said City the beneficiary interest of the covenants set forth below, in and to the real estate in the City of Des Moines, Polk County, Iowa, identified as the Property in said Agreement, and more specifically described above.

Sec. 1. Agreement / Conceptual Development Plan. The Agreement is recorded in Book _____, Page _____ in the office of the Polk County Recorder and available for public inspection in the office of the City Clerk, at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. This Declaration of Covenants is executed and filed by Developer in performance of its obligations under Article 3 of the Agreement. All references herein to the approved Conceptual Development Plan are intended to refer to the Conceptual Development Plan attached as Exhibit "B" to the Agreement as the same may be amended from time to time by Developer in accordance with the terms of the Agreement.

Sec. 2. Duration. The Property shall be subject to the covenants set forth herein for a term (the "Restricted Term" or "Affordability Period") commencing upon the recording of this Declaration of Covenants and continuing until the earlier of November 1, 2043, or the recording of a Termination Certificate by City which certifies that Developer has satisfied all of its

obligations under the Agreement or that the Agreement has otherwise terminated. However, such obligations and covenants shall be binding on the Developer itself, each successor in interest to the Property and any improvements thereon, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the Property or any improvements thereon or part thereof.

Sec. 3. Covenants. During the Restricted Term, the Property and each portion thereof shall be subject to the following covenants, limitations and restrictions regarding its future use and development (herein referred to as the "Covenants"):

1. Development. Developer shall undertake the development of the Property by constructing the Improvements thereon in accordance with the terms of the Agreement, including the approved Conceptual Development Plan, and any City-approved Site Plan, and all applicable State and City permits, laws and regulations.
2. Residential Use and Affordability Requirements. The Improvements shall be devoted, maintained and used for multi-household residential use, in conformity with the approved Conceptual Development Plan. Such use includes the following affordability requirements:
 - (a) A minimum of 24 efficiency and one-bedroom apartment units as follows: 5 units shall be rented at no more than fifty percent (50%) HOME rent limits¹ and restricted to households earning fifty (50%) or less of the area median income; 19 units shall be rented at no more than sixty-five percent (65%) HOME rent limits² and restricted to households earning eighty percent (80%) or less of the area median income (herein collectively "affordability requirements"). The affordable units may be floating throughout the Property.
 - (b) As determined by the City, the Developer must maintain the affordability requirements and unit mix throughout the duration of these Covenants ("Affordability Period"), and restore compliance with said requirements and unit mix if tenant income changes. Tenant income requirements shall be reviewed by the Developer at least annually on the basis of the current income of the tenant.
3. Prohibition Against Discrimination in Sale or Leasing. Developer, its successors and assigns shall not, in violation of any applicable law, discriminate against or segregate any person or group of persons on account of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability, familial status, or source of income in the sale, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property or the Improvements erected thereon, and not establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, sub-tenants or vendees in the Property or the Improvements erected thereon, in violation of any applicable law.³

¹As defined in the Agreement.

²As defined in the Agreement.

³Source of income as defined in Section 62-1 of the Des Moines Municipal Code means money, funds, income, and support, payable directly or indirectly to or on behalf of a renter or buyer of housing, derived

4. Prohibition Against Discrimination in Employment. In the employment of persons upon the Property, Developer, its successors and assigns shall comply with all federal, State of Iowa and local laws prohibiting discrimination.
5. Maintenance. The Improvements constructed upon the Property pursuant to the Agreement shall be maintained in good condition and repair in substantial conformance with the approved Conceptual Development Plan and Construction Plans. In the event of fire or other casualty loss to the Improvements, repairs to restore the Improvements to their former condition in substantial conformance with the approved Conceptual Development Plan and Construction Plans shall be commenced within one hundred twenty (120) days and diligently pursued to completion, subject, however, to Section 5.4 of the Agreement.
6. Situs for Taxation. Developer shall pay when due all taxes and assessments, general or special, levied upon or assessed against any part of the Property. Developer, its successors and assigns, and every successor in interest to the Property and the Improvements thereon, or any part thereof, shall not cause or voluntarily permit any part of the Property and the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated as located within the City of Des Moines in its entirety, or apply for a deferral of property tax on the Property pursuant to any present or future statute or ordinance other than tax abatement pursuant to the City's urban revitalization plan as applicable.

Sec. 4. Required Terms in any Conveyance. During the Restricted Term, Developer shall endeavor to include in every deed, lease, sublease and other instrument conveying all or any part of Developer's interest in any portion of the Property, a provision identifying the terms, conditions, restrictions and requirements of this Declaration and acknowledging that the City may enforce the terms, conditions, restrictions and requirements of this Declaration against Developer's successors and assigns to the same extent as against Developer. Developer shall cooperate in good faith in the City's enforcement of the requirements of this Declaration of Covenants against Developer's successors and assigns to any interest in the Property.

Sec. 5. Covenants; Binding Upon Successors in Interest. It is intended that the terms of this Declaration of Covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be binding, only to the extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against Developer, its successors and assigns and every successor in interest to any portion of the Property and the Improvements erected thereon, or any part thereof or any interest therein, and any party in possession or occupancy of any of such Property, or any part thereof.

from any pension, annuity, child support, or alimony, or any tax supported Federal, State or local funds, including but not limited to, social security, supplemental security income, temporary assistance for needy families, family investment program, general relief, food stamps, unemployment compensation, housing choice voucher rent subsidies, and similar rent subsidy programs.

Sec. 6. City's Rights To Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in this Declaration, both for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Sec. 7. Warranty of Title. Developer does hereby covenant with City that Developer holds legal and equitable title to the Property.

SIGNED this ____ day of _____, 2020.

REAGAN PARTNERS, LLC

By: Tim Rypina
Its: MEMBER

STATE OF IOWA

ss:

COUNTY OF POLK

This instrument was acknowledged before me on 7-30, 2020, by Tim Rypina as MEMBER of Reagan Partners, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

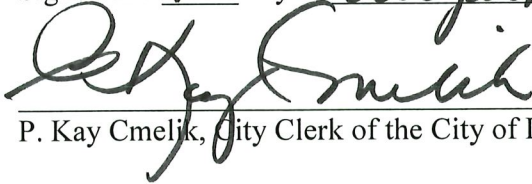


[Signature]
Notary Public in the State of Iowa
My commission expires: 1-27-2023

ACCEPTANCE:

I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, do hereby certify that the within and foregoing Declaration of Covenants was duly approved and accepted by the City Council of said City of Des Moines by Resolution and Roll Call No. 20- 1248, passed on the 5th day of August, 2020, and this certificate is made pursuant to authority contained in said Resolution.

Signed this 14th day of August, 2020.



P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa

**Exhibit D
To Development Agreement**

**- Promissory Note -
(Forgivable)
CITY OF DES MOINES, IOWA**

BORROWER/PROMISSOR: Reagan Partners, LLC ("Borrower")
Agreement: Urban Renewal Development Agreement between City of Des Moines,
Iowa and Reagan Partners, LLC dated _____.
Place Executed: Des Moines, IA
Date Executed: 2020
Loan amount: \$1,395,000.00

For value received, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the City of Des Moines, Iowa (hereafter referred to as the "City"), a municipal corporation, 400 Robert D. Ray Drive, Des Moines, Iowa 50309, or its successors and assigns (herein collectively called the "Lender"), the principal sum of One-Million Three-Hundred Ninety-Five Thousand Dollars (\$1,395,000.00), in lawful money of the United States, or so much thereof as may be advanced hereunder, such principal to be paid in the following manner:

Lender shall make disbursements on the Note in accordance with the terms of Article IV of the above-referenced Agreement (the "Development Agreement").

The principal sum shall be paid by Borrower or otherwise forgiven as hereinafter provided, with the outstanding balance due and payable on November 1, 2043. Payments shall be made payable to the City of Des Moines and delivered to the City's Development Services Department, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, Iowa 50309-1891.

Except as provided in the following paragraph, the payment of the principal sum of this promissory note by Borrower to City (1) shall be deferred for each month during which Borrower is compliant with the terms of the City of Des Moines, Iowa Development Agreement; (2) shall be forgiven in the amount of ten percent (10%) of the total loan amount, equaling \$139,500.00 U.S. Dollars (10% of \$1,395,000.00), each November 1st commencing on November 1, 2033 until November 1, 2043 for so long as Borrower is compliant; and (3) upon completion of the Affordability Period pursuant to Section 3.4 of said Agreement, the then-unforgiven principal balance of this promissory note shall be forgiven and discharged in full by the Lender.

If the Borrower defaults under the Development Agreement and City declares default thereunder, and such default is not cured as provided in the Development Agreement, then any deferment or forgiveness granted pursuant to the above paragraph after the date upon which the City sent written notice of such default to the Developer shall be voided retroactively to the date upon which the City sent written notice of such default to the Developer, and the entire unpaid and unforgiven principal amount of this Note shall become due and payable, together with interest thereon at the rate of four percent (4%) per annum from the date of initial loan disbursement, within one-hundred (100) calendar days from the date of such uncured default or declaration thereof, as applicable, and no portion of the remaining, unforgiven principal balance shall be discharged or forgiven.

Failure of the Lender to exercise such option shall not constitute a waiver of such default. If Lender exercises its option to declare the entire unforgiven amount of Borrower's loan immediately due and payable as provided above, Borrower hereby agrees to pay Lender's costs and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment,

Exhibit D
To Development Agreement

the judgment shall bear interest at the maximum rate permissible on such judgment in the State of Iowa, or if there is no such maximum, at the rate of fifteen percent (15%) per annum.

If any monthly installment or any part of such installment remains unpaid for a period of fifteen (15) days from its due date, the Borrower hereby agrees to pay to Lender a Late Charge of four percent (4%) of the unpaid amount of such installment.

All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

In Witness whereof, this Note has been duly executed by the undersigned Borrower(s), as of the date shown above.

BORROWER/PROMISSOR
REAGAN PARTNERS, LLC

By: _____
Its: _____

Tim Rypina
MEMBER

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on 7-30, 2020, by Tim Rypina as MEMBER of Reagan Partners, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Iowa

My commission expires: 1-27-2023



SPACE ABOVE THIS LINE FOR RECORDER

Prepared by: Glenna K. Frank, Legal Department, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309, 515-283-4130

Return to: SAME

DEVELOPMENT AGREEMENT
- MORTGAGE -

This Mortgage made on this _____ day of _____ 2020 between Reagan Partners, LLC, hereinafter called BORROWER or MORTGAGOR (or if more than one party "Mortgagor"), and the City of Des Moines, Iowa, hereinafter "Lender" or "Mortgagee," pursuant to the Urban Renewal Development Agreement between the parties dated _____, 2020 (the "Development Agreement") and recorded on _____, 2020, in Book _____, at Page _____.

WITNESSETH, that to secure the payment of an indebtedness in the principal amount of One-Million Three-Hundred Ninety-Five Thousand and No/100 Dollars (\$1,395,000.00), with interest thereon, which shall be payable in accordance with a certain forgivable promissory note bearing even date herewith, and all other indebtedness which the Mortgagor is obliged to pay to the Mortgagee pursuant to the provisions of the Note and this Mortgage, the Mortgagor hereby grants, sells, conveys and mortgages to the Mortgagee the following described real estate situated in the County of Polk, State of Iowa:

Lots 15, 16, and 17 in Sears Place, an Official Plat, City of Des Moines, Polk County, Iowa

LOCALLY KNOWN AS: 2801 Grand Avenue, Des Moines, Iowa

TOGETHER, with all appurtenances thereto and all the estate and rights of the Mortgagor in and to such property or in anywise appertaining thereto; all buildings and other structures now or hereafter thereon erected or installed, and all fixtures and articles of personal property now or hereafter to, or used in, or in the operations of, any such land, buildings or structures which are necessary to the complete use and occupancy of such buildings or structures for the purpose for which they were or are to be erected or installed, including, but not limited to all heating, plumbing, bathroom, lighting, cooking, laundry, ventilating, refrigerating, incinerating, and air-conditioning equipment and fixtures and all replacements thereof and additions thereto; whether or not the same are or shall be attached to such land, buildings or structures in a manner.

Exhibit E
to Development Agreement

TOGETHER, with any and all awards now or hereafter made for the taking of the property mortgaged hereby, or any part thereof (including any easement), by the exercise of the power of eminent domain, including any award for change of the grade of any street or other roadway, which awards are hereby assigned to the Mortgagee and are deemed a part of the property mortgaged hereby, and the Mortgagee is hereby authorized to collect and receive the proceeds of such awards, to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness secured by this Mortgage, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning each such award to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and

TOGETHER, with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining the above described land (all the above described land, buildings, other structures, fixtures, articles of personal property, awards, and other rights and interests being hereinafter collectively call the "mortgaged property").

TO HAVE AND TO HOLD the mortgaged property and every part thereof unto the Mortgagee, its successors and assigns forever for the purposes and uses herein set forth.

AND, the Mortgagor further covenants and agrees with the Mortgagee as follows;

1. The Mortgagor will promptly pay the principal and interest on the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times in the manner provided in the Note and in this Mortgage.
2. The Mortgagor will pay when due, as hereinafter provided, all ground rents, if any, and all taxes and assessments, water rates and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the mortgaged property, or any part thereof, and will pay when due, every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.
3. No building or other structure or improvement, fixture or personal property mortgaged hereby shall be removed or demolished without the prior written consent of the Mortgagee unless the same is replaced with like property, subject to the lien and security interest of this Mortgage, of at least equal value and utility. The Mortgagor will not make, permit or suffer any alteration of or installed upon the mortgaged property, or any part thereof, except the Improvements required to be made pursuant to the Development Agreement, nor will the Mortgagor use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written constant of the Mortgagee. The Mortgagor will maintain the mortgaged property in good condition and state of repair and will not suffer or permit any waste to any part thereon, and will promptly comply with all the requirements of Federal, state and local governments, or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.
4. Other than the First Mortgage (as defined in the Development Agreement) to which this Mortgage is subordinate, the Mortgagor will not voluntarily create, or permit or suffer to be created or to exist on or against the mortgaged property, or any part thereof, any lien superior to the lien of this mortgage, and will keep and maintain the same free from the claims of all parties supplying labor or materials which will enter into the construction or installation of the improvements.

Exhibit E
to Development Agreement

5. (a) The Mortgagor will keep all buildings, other structures and improvements, including equipment, now existing or which may hereafter be erected or installed on the land mortgaged hereby, insured against loss by fire and other hazards, casualties and contingencies, in such amounts and manner, and for such periods, all as may be required from time to time by the Mortgagee. Unless otherwise required by the Mortgagee, all such insurance shall be effected by Standard Fire and Extended Coverage insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached thereto loss payable clauses in favor of the Mortgagee and any other parties as shall be satisfactory to the Mortgagee. All such policies and attachments thereto shall be delivered promptly to the Mortgagee, unless they are required to be delivered to the holder of a lien or mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to the Mortgagee, shall be delivered promptly to the Mortgagee. The Mortgagor will pay promptly when due, as hereinafter provided, any and all premiums on such insurance, and in every case in which payment thereof is not made from the deposits therefor required by this Mortgage, promptly submit to the Mortgagee for examination, receipts or other evidence of such payment as shall be satisfactory to the Mortgagee. The Mortgagee may obtain and pay the premium on (but shall be under no obligation to do so) every kind of insurance required hereby if the amount of such premium has not been deposited as required by this Mortgage, in which event the mortgagor will pay to the Mortgagee every premium so paid by the Mortgagee.
- (b) In the event of loss or damage to the mortgaged property, the Mortgagor will give to the Mortgagee immediate notice thereof by mail, and the Mortgagee may make and file proof of loss if not made otherwise promptly by or on behalf of the Mortgagor. Each insurance company issuing any such policy is hereby authorized and directed to make payment hereunder for such loss directly to the Mortgagee, instead of to the Mortgagor and the Mortgagee jointly payable, unless the amount of loss is payable first to the holder of a lien under the First Mortgage or any other mortgage or similar instrument to which this Mortgage is expressly subordinate; and the insurance proceeds or any part thereof received by the Mortgagee may be applied by the Mortgagee, at its option, either in reduction of the indebtedness of foreclosure of the Mortgage, or of the transfer of title to the mortgaged property in every such insurance policy then in force, subject to the rights in interest of the holder of any such prior lien, shall pass to the grantee acquiring title to the mortgaged property together with such policy and appropriate assignment of such right, title and interest which shall be made by the Mortgagor.
6. (a) In order to more fully protect the security of this Mortgage, the Mortgagor shall provide annually to the Mortgagee, until the Note is paid or forgiven in full, proof of payment of the following:
- (i) ground rents, if any, next becoming due,
 - (ii) the premiums next becoming due on the policies of fire and all other hazard insurance required by this Mortgage with respect to the mortgaged property,
 - (iii) taxes, assessments, water rates and other governmental charges next becoming due on the mortgaged property (all the foregoing amounts as estimated by the Mortgagee as

Exhibit E
to Development Agreement

set forth in a written notice of such estimate by the Mortgagee to the Mortgagor from time to time).

(b) Following written notice from Mortgagee to Mortgagor, the Mortgagee may require that the Mortgagor deposit with the Mortgagee, together with and in addition to the payment of principal and interest in accordance with the Note secured hereby, until the Note is paid in full or forgiven as applicable, an amount of money equal to the total amount referred to in clauses (i) through (iii) above less all amounts that may already have been paid therefor, divided by the number of calendar months to elapse before one calendar month prior to the date when such ground rents, premiums, taxes, assessments, water rights and other governmental charges, respectively, will become due and payable. If any amount referred to in clauses (i) through (iii) hereof is required to be deposited by the Mortgagor under a mortgage or similar instrument having priority over the lien of this Mortgage, the Mortgagor shall make the deposits required by this Paragraph 6 only in the event of the termination of such obligation under the prior mortgage or similar instrument. The Mortgagor shall give prompt notice in writing to the Mortgagee of the occurrence of the last-mentioned event. All such amounts so deposited with the Mortgagee shall be held by the Mortgagee, or any agent designated by it, in trust to be used only for the payment of such ground rents, premiums, taxes, assessments, water rates and other governmental charges. No interest shall be payable by the Mortgagee on any sum so deposited.

(c) All amounts required to be deposited with the Mortgagee monthly in accordance with Paragraph 6(b) hereof, and the amount of principal and interest to be paid each month on account of the Note, shall be added together, and the aggregate amount thereof shall be paid by the Mortgagor to the Mortgagee in a single payment to be applied by the Mortgagee on account of the indebtedness of the mortgagor pursuant to the Note and this Mortgage (to the extent that monies are available from the amount so deposited), in the order, any provision of the Note to the contrary notwithstanding, as follows:

FIRST	to the amount of such ground rents, if any, fire and other hazard insurance premiums, taxes, assessments, water rights and other governmental charges required to be paid under the provisions of this Mortgage, in whatever sequence the Mortgagee may exclusively determine;
SECOND	to the interest due on the Note;
THIRD	to the principal due on the note; and
FOURTH	the remainder, to the late charges, if any, referred to in the Note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless paid by the Mortgagor prior to the due date of the next such deposit payable, constitute an event of default under this Mortgage.

(d) Any excess funds that may be accumulated by reason of the deposits required under Paragraph 6(b) hereof, remaining after payment of the amounts described in clauses (i), (ii), and (iii) thereof, shall be credited to subsequent respective monthly amounts of the same nature required to be paid thereunder. If any such amount shall exceed the estimate therefor, the Mortgagor shall forthwith pay to the Mortgagee the amount of such deficiency upon written notice by the Mortgagee of the amount thereof. Failure to do so before the due date of such amount shall be an event of default under this Mortgage. If the mortgaged property is sold under foreclosure or is otherwise acquired by the Mortgagee, after default by the Mortgagor, any remaining balance of accumulations under Paragraph 6(b) hereof, shall be credited to the principal amount owing on the

Exhibit E
to Development Agreement

Note as of the date of commencement of foreclosure proceedings for the mortgaged property, or as of the date the mortgaged property is otherwise so acquired.

7. Intentionally deleted.

8. The Improvements and all plans and specifications therefor shall comply with all applicable municipal ordinances, regulations, and rules made or promulgated by lawful authority, and upon their completion shall comply therewith, and with the rules of the Board of Fire Underwriters having jurisdiction.

9. Upon any failure by the Mortgagor to comply with or perform any of the terms, covenants or conditions of this Mortgage requiring the payment of any amount of money by the Mortgagor, other than the principal amount of the loan evidenced by the Note, interest and other charges, as provided in the Note, the Mortgagee may at its option make such payment. Every payment so made by the Mortgagee (including reasonable attorney's fees incurred thereby), with interest thereon from the date of such payment, at a rate not to exceed fifteen percent (15%) per annum, except any payment for which a different rate of interest is specified herein, shall be payable by the Mortgagor to the Mortgagee on demand and shall be secured by this Mortgage. This Mortgage with respect to any such amount and the interest thereon, shall constitute a lien on the mortgaged property prior to any other lien attaching or accruing subsequent to the lien of this Mortgage.

10. The Mortgagee, by any of its agents or representatives, shall have the right to inspect the mortgaged property from time to time at any reasonable hour of the day. Should the mortgaged property, or any part thereof, at any time require inspection, repair, care or attention of any kind or nature not provided by this Mortgage as determined by the Mortgagee in its sole discretion, the Mortgagee may, after notice to the Mortgagor, enter or cause entry to be made upon, the mortgaged property, and inspect, repair, protect, care for or maintain such property, as the Mortgagee may in its sole discretion deem necessary, and may pay all amounts of money therefor, as the Mortgagee may in its sole discretion deem necessary.

11. The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing by the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, shall immediately become due and payable without notice or demand upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the mortgagor or any of the property of the Mortgagor, or upon the filing of a petition by or against the Mortgagor under the provisions of any State insolvency law, or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Mortgagor of an assignment for the benefit of the Mortgagor's creditors. The Mortgagee is authorized to declare, at its option, all or any part of such indebtedness immediately due and payable upon the happening of any of the following events:

(a) Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;

(b) Nonperformance by the Mortgagor of any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in subdivision (a) hereof) or of any other agreement heretofore, herewith, or hereafter made by the Mortgagor with the Mortgagee in connection with such indebtedness, after the Mortgagor has been given due notice and opportunity to cure by the Mortgagee of such nonperformance;

Exhibit E
to Development Agreement

(c) After applicable notice and cure period, failure of the mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property, or any part thereof, which shall have priority over the lien of this Mortgage;

(d) The Mortgagee's discovery of the Mortgagor's failure in any application of the Mortgagor to the Mortgagee to disclose any fact deemed by the Mortgagee to be material, or of the making therein or in any of the agreements entered into by the Mortgagor with the Mortgagee (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of, the Mortgagor;

(e) The sale, lease, or other transfer of any kind of nature of the mortgaged property, or any part thereof, in violation of or constituting default under the Development Agreement;

(f) The cessation of occupancy of the mortgaged property, or any part thereof, by the Mortgagor, if the Mortgagor represented the mortgaged property as an owner-occupied property and as the principal place of occupancy by the Mortgagor, without the prior written consent of the Mortgagee;

The Mortgagee's failure to exercise any of its rights hereunder shall not constitute a waiver thereof. All the events in this Paragraph enumerated upon the happening of any of which the Note shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "events of default".

12. The Mortgagee may from time to time cure each default under any covenant or agreement in any instrument creating a lien upon the mortgaged property, or any part thereof, which shall have priority over the lien of this Mortgage, to such extent as the Mortgagee may exclusively determine, and each amount paid (if any) by the Mortgagee to cure any such default shall be paid by the Mortgagor to the Mortgagee; and the Mortgagee may also become subrogated to whatever rights the holder of the prior lien might have under such instrument.

13. (a) After the happening of any default hereunder, the Mortgagor shall upon demand of the Mortgagee surrender possession of the mortgaged property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all the rents therefrom which are due to be become due, and apply the same, after payment of all charges and expenses, on account of the indebtedness hereby secured, and all such rents and all leases existing at the time of such default are hereby assigned to the Mortgagee as further security for the payment of the indebtedness secured hereby; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.

(b) In the event that the Mortgagor occupies the mortgaged property, or any part thereof, the Mortgagor agrees to surrender possession of such property to the Mortgagee immediately after any such default hereunder, and if the Mortgagor remains in possession after such default, such possession shall be as a tenant of the Mortgagee, and the Mortgagor shall pay in advance, upon demand by the Mortgagee, as a reasonable monthly rental for the premises occupies by the Mortgagor, an amount at least equivalent to one-twelfth (1/12) of the aggregate of the twelve monthly installments payable in the current calendar year, plus the actual amount of the annual ground rent, if any, taxes, assessments, water rates, other governmental charges and insurance premiums payable in connection with the

Exhibit E
to Development Agreement

mortgaged property during such year, and upon the failure of the Mortgagor to pay such monthly rental, the Mortgagor may also be dispossessed by the usual summary proceedings applicable to tenants. This covenant shall become effective immediately upon the happening of any such default, as determined in the sole discretion of the Mortgagee, who shall give notice of such determination to the Mortgagor; and in the case of foreclosure and the appointment of a receiver of the rents, the within covenant shall inure to the benefit of such receiver.

14. The Mortgagee, in any action to foreclose this Mortgage, shall be entitled to the appointment of a receiver without notice as a matter of right without regard to the value of the mortgaged property, or the solvency or insolvency of the Mortgagor or other party liable for the payment of the Note and other indebtedness secured by this Mortgage.

15. It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provision of Chapters 654 and 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after the sale such right of redemption shall be exclusive to the Debtor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) the real estate is less than ten (10) acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Section 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapters 654 and 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapters 654 and 628 of the Iowa Code.

16. The Mortgagee, within ten (10) days upon request in person or within twenty (20) days upon request by mail, will furnish promptly a written statement in form satisfactory to the Mortgagor, signed by the Mortgagee and duly acknowledged, of the amount then owing on the Note secured by this Mortgage.

17. The Mortgagor will give immediate notice by registered or certified mail to the Mortgagee of any fire, damage or other casualty affecting the mortgaged property in excess of \$20,000, or of any conveyance, transfer of change in ownership of such property, or any part thereof.

18. Notice and demand or request may be made in writing and may be served in person or by mail.

19. In case of a foreclosure sale of the mortgaged property, it may be sold in one parcel.

Exhibit E
to Development Agreement

20. The Mortgagor will not assign the rents, if any, in whole or in part, from the mortgaged property, or any part thereof, without the prior written consent of the Mortgagee.

21. The Mortgagor is lawfully seized of the mortgaged property and has good right, full power and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to the Mortgagee forever against the lawful claims and demands of any and all parties whatsoever, except the First Mortgage (as defined in the Development Agreement).

22. In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable, as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

23. EACH OF THE UNDERSIGNED HEREBY RELINQUISHES ALL RIGHTS OF DOWER, HOMESTEAD AND DISTRIBUTIVE SHARE IN AND TO THE MORTGAGED PROPERTY AND WAIVES ALL RIGHTS OF EXEMPTION AS TO ANY OF THE MORTGAGED PROPERTY.

24. This Mortgage and all the covenants, agreements, terms and conditions herein contained shall be binding upon and inure to the benefit of the Mortgagor and the heirs, legal representatives and assigns of the Mortgagor, and, to the extent permitted by law, every subsequent owner of the mortgaged property; and shall be binding upon and inure to the benefit of the Mortgagee and its assigns. If the Mortgagor, as defined herein, consists of two or more parties, the Mortgage shall constitute a grant and mortgage by all of them jointly and severally, and they shall be obligated jointly and severally under all the provisions hereof and under the Note. The word "Mortgagee" shall include any person, corporation or other party who may from time to time be the holder of this Mortgage. Whenever used herein the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.

25. Mortgagor hereby acknowledges the receipt of a copy of the Mortgage together with a copy of the Note secured hereby.

26. Mortgagee agrees to record with the Polk County, Iowa Recorder a full release of this Mortgage upon the earlier of the repayment or forgiveness in full of the Note that is secured by this Mortgage.

(REST OF THIS PAGE INTENTIONALLY LEFT BLANK)

Exhibit E
to Development Agreement

IN WITNESS WHEREOF this Mortgage has been duly signed and sealed by the Mortgagor on or as of the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 2020.

MORTGAGOR: REAGAN PARTNERS, LLC

By: Tim Ryman
Its: MEMBER

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on 7-30, 2020, by Tim Ryman as MEMBER of Reagan Partners, LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.



[Signature]
Notary Public in the State of Iowa
My commission expires: 1-27-2023