

FIRST AMENDMENT TO CONTRACT FOR PRIVATE DEVELOPMENT

THIS FIRST AMENDMENT TO CONTRACT FOR PRIVATE DEVELOPMENT ("Amendment") is entered into as of February 27, 2023, by and between **Edina Housing and Redevelopment Authority**, a public body corporate and politic under the laws of the State of Minnesota (the "HRA"), and **Jester Concepts LLC**, a Minnesota limited liability company ("Developer").

RECITALS

A. Developer and the HRA are parties to that certain Contract for Private Development dated effective June 2, 2022 (the "**Purchase Agreement**") with respect to real property located in the City of Edina, Minnesota, as more particularly described in the Purchase Agreement.

B. Developer and the HRA now desire to amend the Purchase Agreement in the manner set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the HRA and Developer agree as follows:

1. **Title of Project Changed.** The parties agree that the title of the Contract shall be changed to "Contract for Private Development – Restaurant / Hospitality Facility at 5146 Eden Avenue". Developer agrees to not use the names "Grandview Yard" or "Grandview Yards" in its naming of the Project or in future references to the Project.
2. **Extension of the Due Diligence Period.** Developer and the HRA hereby acknowledge and agree that the Due Diligence Period as identified in Sections 3.4(b) and 3.4(i) of the purchase Agreement is hereby extended to August 31, 2023.
3. **Extension to Closing Date.** Developer and the HRA acknowledge and agree that the Closing Date as identified in Section 3.6 of the Purchase Agreement is hereby amended to occur on or before one hundred eighty (180) days after Closing on the sale of the Senior Cooperative Lot, as defined in the Purchase Agreement but no later than December 31, 2024.
4. **Extension to Final Zoning Approval.** Developer and HRA acknowledge and agree that the final zoning and site plan approvals, including the Site Plan Performance Agreement (SPPA) shall be secured no later than March 31, 2024. The developer agrees to prepare and submit documents as typically required by the City of Edina to secure such approvals.
5. **Additional Extension.** If necessary to complete the transaction and overall redevelopment of the Property and adjacent Senior Housing Property, the Executive

Director of the HRA is authorized to approve additional extensions up to an additional cumulative length of 180 days.

6. **Site Improvement Agreement and Cost Share Agreements.** Section 3.4(c)(1) of the Purchase Agreement is hereby amended to add new subsections (f), (g) and (h) to read as follows:

(f) Developer and the HRA acknowledge that Section 3.4(c)(1) is hereby amended to require that during the Due Diligence Period, the parties will work to finalize a site improvement performance agreement by and between the City of Edina, Minnesota, a Minnesota municipal corporation (the “**City**”) and Developer, if and as required by the City (the “**SIPA**”), which agreement shall address those matters set forth in Section 3.4(c)(1)(a)-(d). The Site Improvement Agreement shall also address, among other matters: (i) construction, maintenance and use of the shared access driveway by and between Developer and Senior Cooperative Developer;

(g) A cost share agreement or shared easement agreement between the Developer and the Senior Cooperative Developer addressing the following: (i) construction, maintenance and use of the shared access driveway by and between Developer and Senior Cooperative Developer; (ii) repair and maintenance responsibilities, significant improvement responsibilities, and cost-sharing of each, (iii) defaults and rights and remedies upon default; and

(h) A cost share agreement or shared easement agreement between the Developer, Senior Cooperative Developer and the HRA for a shared stormwater system benefitting the Property, Senior Cooperative Lot and Park Lot addressing (i) construction costs of system; (ii) repair and maintenance responsibilities, significant improvement responsibilities, and cost-sharing of each, and (iii) defaults and rights and remedies upon default.

7. **Finalize Easements during Due Diligence Period.** Developer and the HRA acknowledge and agree that Section 3.4(c)(2) of the Purchase Agreement is hereby amended and restated in its entirety to provide as follows:

“(2) Finalize terms of any easements and/or agreements determined by the parties necessary for their intended uses of their respective lots within the Plat, specifically, without limitation:

- (a) That certain Grant of Permanent Public Access Easement for sidewalk on the Property;
- (b) That certain Temporary Construction Easement on the Park Lot to serve the property for staging grounds for the construction of the improvements on the Property;
- (c) That certain Declaration of Easements, Covenants and Restrictions for the Property pursuant to Section 3.13 of the Purchase Agreement;

- (d) The form of an Easement and Maintenance Agreement for Restroom Facility on and Access to the Property, subject to revisions based on the final site plan for the Property prior to Closing;
- (e) A cost share agreement and easement between Developer and the Senior Cooperative Developer for the proposed private road serving the lots within the Plat and operation and maintenance of the private road;
- (f) An easement for access over the westerly 10 feet of the Property and the Senior Cooperative Lot for the benefit of the Senior Cooperative Lot and Park Lot;
- (g) That certain Temporary Construction Easement over the Property to serve the Senior Cooperative Lot for staging grounds for the construction of the improvements on the Senior Cooperative Lot;
- (h) That certain Temporary Construction Easement over the Property to serve the Park Lot for staging grounds for the construction of the improvements on the Senior Cooperative Lot; and
- (i) The cost share agreement and easement between the Developer, Senior Cooperative Developer and the HRA for the shared stormwater facility.”

8. **Finalize Agreements during Due Diligence Period.** Developer and the HRA acknowledge and agree that Section 3.4(c)(3) is hereby amended and restated in its entirety to provide as follows:

- “(3) Developer and the City finalizing the following agreements to be delivered at Closing:
- (a) An agreement related to Developer’s use of the Park Lot for restaurant services pursuant to that certain Memorandum of Understanding by and between the City and Developer, yet to be executed, regarding Developer’s use of the Park Lot (the “Park Lot Use Agreement”);
 - (b) City authorization for non-exclusive parking on Brookside Avenue for the general public;
 - (c) An agreement related to temporary exclusive use of portions of Brookside Avenue and/or Grandview Parking Facility for valet parking (the “Valet Agreement”); and

- (d) An agreement related to sidewalk maintenance and access in and abutting the Park Lot, regarding sidewalk maintenance responsibilities and providing access from parking facilities to the Property (the “Sidewalk Access and Maintenance Agreement”).”

9. **HRA Closing Documents.** Developer and the HRA acknowledge and agree that following language is hereby added immediately following Section 3.7(a)(xi) of the Purchase Agreement:

- “(xii) That certain Grant of Easements for sidewalk and use of green space on the Property;
- (xiii) That certain Temporary Construction Easement on the Park Lot to serve as staging grounds for the Property;
- (xiv) That certain Grant of Permanent Access and Temporary Construction Easement over the Property;
- (xv) That certain Easement and Maintenance Agreement for Restroom Facility on and Access to the Property;
- (xvi) The Park Lot Use Agreement;
- (xvii) If determined applicable, the Valet Agreement with the City;
- (xviii) If determined applicable, the Sidewalk Access and Maintenance Agreement over the Park Lot;
- (xix) An easement for access over the westerly 10 feet of the Property and the Senior Cooperative Lot for the benefit of the Senior Cooperative Lot and Park Lot; and
- (xxi) The cost share agreement and easement for shared stormwater utility facilities between the HRA, Senior Cooperative Developer and the Developer.”

10. **Developer Closing Documents.** Developer and the HRA acknowledge and agree that following language is hereby added immediately following Section 3.7(b)(vi) of the Purchase Agreement:

- “(vii) That certain Grant of Easements for sidewalk and use of green space on the Property;
- (viii) That certain Temporary Construction Easement on the Park Lot to serve as staging grounds for the Property;

- (ix) That certain Easement and Maintenance Agreement for Restroom Facility on and Access to the Property;
- (x) The Park Lot Use Agreement;
- (xi) If determined applicable, the Valet Agreement;
- (xii) If determined applicable, the Sidewalk Access and Maintenance Agreement;
- (xiii) The cost share agreement and easement between the Developer and Senior Cooperative Developer for the proposed private road serving the Property and Senior Cooperative Lot within the Plat and construction, operation and maintenance of the private road;
- (xiv) An easement for access over the westerly 10 feet of the Property and the Senior Cooperative Lot for the benefit of the Senior Cooperative Lot and Park Lot;
- (xv) That certain Temporary Construction Easement over the Property to serve the Senior Cooperative Lot for staging grounds for the construction of the improvements on the Senior Cooperative Lot; and
- (xvi) The cost share agreement and easement for shared stormwater utility facilities between the HRA, Senior Cooperative Developer and the Developer.

11. **Miscellaneous.** All capitalized terms contained herein which are not defined shall have the meanings ascribed to them in the Purchase Agreement. The Recitals set forth above are incorporated herein as if fully restated. This Amendment may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The exchange of signature pages by facsimile or Portable Document Format ("PDF") transmission shall constitute effective delivery of such signature pages. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. In case of any inconsistency between this Amendment and the Purchase Agreement, the terms of this Amendment shall control. The Purchase Agreement, together with this Amendment, embody the entire understanding between HRA and Developer with respect to its subject matter and can be changed only by an instrument in writing signed by HRA and Developer. Except as modified by this Amendment, the Purchase Agreement is ratified, affirmed, in full force and effect, and incorporated herein by reference.

[balance of this page intentionally left blank; signatures set forth on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

HRA:

Edina Housing and Redevelopment Authority,
a public body corporate and politic under the laws
of the State of Minnesota

By: _____
James B. Hovland
Its: President

By: _____
James Pierce
Its: Secretary

Attested By: _____
Scott Neal
Its: Executive Director

SIGNATURE PAGE TO FIRST AMENDMENT TO
CONTRACT FOR PRIVATE DEVELOPMENT

DEVELOPER:

Jester Concepts LLC,
a Minnesota limited liability company

By: _____

Brent Frederick

Its: Chief Manager