

SECOND AMENDMENT TO CONTRACT FOR PRIVATE DEVELOPMENT

THIS SECOND AMENDMENT TO CONTRACT FOR PRIVATE DEVELOPMENT ("**Second Amendment**") is entered into as of the _____ day of August, 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 "**Original Contract**") with respect to real property located in the City of Edina, Minnesota, as more particularly described in the Original Contract.

B. Developer and the HRA entered into a First Amendment to Contract for Private Development, dated February 27, 2023, to provide for an extension of time for due diligence, identification of additional due diligence work, and extension of the closing on the sale of the property ("**First Amendment**").

B. Developer and the HRA now desire to amend the First Amendment and Original Contract to further extend the time period for due diligence, further clarify due diligence work and extend the time period for closing 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. Paragraph 2 of the First Amendment is amended to read as follows:
 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 Original Contract is hereby extended to May 3, 2024, except as otherwise provided under Paragraph 5 of the First Amendment.
2. Paragraph 3 of the First Amendment is amended to read as follows:
 3. **Extension to Closing Date.** Developer and the HRA acknowledge and agree that the Closing Date as identified in Section 3.6 of the Original Contract is hereby amended to occur on or before three hundred sixty (360) days after Closing on the sale of the Senior Cooperative Lot, as defined in the Purchase Agreement but no later than May 1, 2025.
3. Paragraph 4 of the First Amendment is amended to read as follows:

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 September 30, 2024. The Developer agrees to prepare and submit documents as typically required by the City of Edina to secure such approvals.
4. Paragraph 6, new subsections (g) and (h), of the First Amendment are hereby deleted.
5. Paragraph 7 of the First Amendment is hereby amended to read as follows:
 7. **Finalize Easements during Due Diligence Period.** Developer and the HRA acknowledge and agree that Section 3.4(c)(2) of the Original Contract 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) The form of an access easement over the Senior Cooperative Property benefitting the Property for the proposed private driveway serving the Senior Cooperative Lot and the Property, which easement addresses the following: (i) that all responsibilities and costs for construction, maintenance, repair and significant improvement responsibilities of the driveway shall be borne by the Senior Cooperative Developer; (ii) use of the shared access driveway by and between Developer and Senior Cooperative Developer; and (iii) defaults and rights and remedies upon default. 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) The form of an access easement for truck turnaround over the portion of the private driveway on the Property benefitting the Senior Cooperative Property which easement addresses the following: (i) that all responsibilities and costs for construction, maintenance, repair and significant improvement responsibilities of the driveway shall be borne by the owner of the Property; (ii) use of the shared access driveway by and between owner of the Property and Senior Cooperative Developer; and (iii) defaults and rights and remedies upon default.
- (g) An easement for access over the westerly 10 feet of the Property for the benefit of the Senior Cooperative Lot and Park Lot;
- (h) 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;
- (i) That certain Temporary Construction Easement over the Park Lot to serve the Property for the construction of the improvements on the Property;
- (j) If necessary, the cost share agreement and easement between the Developer, and the HRA for the shared stormwater facility benefitting the Property 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;
- (k) A retaining wall easement over the Senior Cooperative Property benefitting the Property which easement addresses the following: (i) that all responsibilities and costs for construction shall be borne by the Senior Cooperative Developer and construction will be consistent with the retaining wall identified in Grading Plan C3-1 for the Senior Cooperative Lot as shown in Exhibit A attached hereto and completed on or before construction of the proposed parking lot on the Property; (ii) responsibilities for the costs of maintenance, repair and significant improvement; and (iii) defaults and remedies upon default.

For all agreements and easements related to the Senior Cooperative Property, Developer agrees to provide written approval of the final proposed agreements prior to the expiration of the Second Due Diligence period provided under the Contract

for Private Development between the HRA and United Properties Residential LLC for the Senior Cooperative Lot, as amended (“Senior Cooperative Contract”). Developer acknowledges that such agreements and easements will be recorded with the closing on the Senior Cooperative Contract.

6. Paragraph 9 of the First Amendment is amended to revise Section 3.7(a)(xix) of the Original Contract to read as follows:

(xix) The access easement for truck turnaround over the Property benefitting the Senior Cooperative Property abutting the westerly portion of the private driveway.

7. Paragraph 9 of the First Amendment is amended to revise Section 3.7(a)(xxi) of the Original Contract to read as follows:

(xxi) The cost share agreement and easement for shared stormwater utility facilities between the HRA and the Developer.

8. Paragraph 10 of the First Amendment is amended to revise Section 3.7(b)(xiii) of the Original Contract to read as follows:

(xiii) The access easement for truck turnaround over the Property benefitting the Senior Cooperative Property abutting the westerly portion of the private driveway.

9. Paragraph 10 of the First Amendment is amended to delete Sections 3.7(b)(xiv) and (xv) of the Original Contract are hereby deleted.

10. Paragraph 10 of the First Amendment is amended to revise Section 3.7(b)(xvi) of the Original Contract to read as follows:

(xvi) The cost share agreement and easement for shared stormwater utility facilities between the HRA and Developer.

11. All references to “Purchase Agreement” within the First Amendment are hereby revised to read “Original Contract.”

12. All references to a “private road” within the First Amendment and Original Contract are hereby revised to read “private driveway.”

13. **Miscellaneous.** All capitalized terms contained herein which are not defined shall have the meanings ascribed to them in the Original 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 Original Contract, the terms of this Amendment shall control. The Original Contract, together with the First Amendment as amended by this Second 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 Second Amendment, the Original Contract and First Amendment are 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 SECOND AMENDMENT TO
CONTRACT FOR PRIVATE DEVELOPMENT

DEVELOPER:

Jester Concepts LLC,
a Minnesota limited liability company

By: _____

Brent Frederick

Its: Chief Manager

SIGNATURE PAGE TO SECOND AMENDMENT TO
CONTRACT FOR PRIVATE DEVELOPMENT

Received 20 July 2020; accepted 10 September 2020; published online 15 September 2020

