AMENDMENT NO. 1

TO THE

AMENDED AND RESTATED
AGREEMENT FOR PRIVATE DEVELOPMENT

BY AND BETWEEN

CITY OF COUNCIL BLUFFS, IOWA

AND

ARGENT BAXTER JV – COUNCIL BLUFFS, LLC

Original Agreement – March 2017
Amended and Restated Agreement – December 2019
Amendment No. 1 to Amended and Restated Agreement – ~~————————~~February 2021

THIS AMENDMENT NO. 1 (hereafter called "Amendment") to that AMENDED AND RESTATED AGREEMENT FOR PRIVATE DEVELOPMENT dated December 16, 2019 (hereinafter called "Agreement" or "Amended and Restated Agreement") by and between the CITY OF COUNCIL BLUFFS, IOWA, a municipality (the "City") and ARGENT BAXTER JV-COUNCIL BLUFFS, LLC, an Iowa limited liability company (the "Developer") is entered into on or as of the _____ day of _____, 2021. The City and the Developer are the Parties to this Amendment.

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of a blighted area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Playland Park Urban Renewal Area (the "Area" or "Urban Renewal Area"), pursuant to the Playland Park Urban Renewal Plan (the "Plan" or "Urban Renewal Plan") as approved by Resolution No. 03-138 on June 23, 2003, and amended by Amendment No. 1 in 2005, Amendment No. 2 in 2009, Amendment No. 3 in 2014, Amendment No. 4 in 2016, and Amendment No. 5 adopted in 2019; and

WHEREAS, a copy of the foregoing Urban Renewal Plan, as amended, has been recorded among the land records in the office of the Recorder of Pottawattamie County, Iowa; and

WHEREAS, the City previously entered into an Agreement for Private Development with Argent Development Group, L.L.C. ("Former Developer") dated March 28, 2017 ("Original

Agreement"), pursuant to which the Former Developer was to acquire certain real property located in the Urban Renewal Area and as more particularly described as:

Block 1, River's Edge Subdivision, Council Bluffs, Iowa
Pottawattamie County Parcel Number 7544-28-356-001

(which property as so described is hereinafter referred to as the "Development Property") and build certain improvements thereon, and a Memorandum of Agreement related to the Original Agreement was recorded with the Recorder of Pottawattamie County, Iowa at Book 2017, Page 07730; and

WHEREAS, the Former Developer subsequently assigned all of its rights and obligations under the Original Agreement to the Developer and consented to the City and Developer entering into the Amended and Restated Agreement with respect to the development of the Development Property, which Amended and Restated Agreement was recorded with the Recorder of Pottawattamie County, Iowa at Book 2019, Page 16312; and

WHEREAS, contemporaneous with the execution of the Amended and Restated Agreement, the City and the Developer entered into an Amended and Restated Minimum Assessment Agreement (the "Amended and Restated Minimum Assessment Agreement") concerning the Development Property, which was recorded with the Recorder of Pottawattamie County, Iowa at Book 2020, Page 02151; and

WHEREAS, the Parties desire to amend certain terms in the timeline for the Project described in the Agreement ~~and to,~~ authorize an assignment of the Agreement, as amended, to MOSELLE CB, LLC~~-~~, a limited liability company to be formed in Delaware, pursuant to the terms of this Amendment, and update the description of the Minimum Improvements; and

WHEREAS, the City believes that the development of the Development Property pursuant to the Agreement, as amended hereby, and the fulfillment generally of the amended Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

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

Section 1. Definitions. All capitalized words used herein and not specifically defined shall have the same definitions as in the Agreement.

Section 2. Assignment. The Developer anticipates assigning all of its all of its right, title, and interest in the Agreement, as amended, to MOSELLE CB, LLC~~-~~, a limited liability company to be formed in Delaware ("Assignee~~")~~"), on or before June 30, 2021. The City hereby consents to such assignment provided that all of the following conditions are satisfied:

A. Assignee is duly formed under the laws of Delaware, is registered to do business in the State of Iowa~~.~~, and proof of both is provided to the City in writing prior to the assignment.

B. Assignee assumes in writing ("Assignment") all of the obligations of Developer under the Agreement, as amended, and agrees to be bound by all of the terms and conditions of the Agreement, as amended, including but not limited to the Amended and Restated Minimum Assessment Agreement.

C. The Assignment is fully executed by Developer and the Assignee on or before June 30, 2021.

D. Developer provides the City with a copy of the Assignment within ten (10) days of its execution by both Developer and the Assignee.

Section 3. Project Timeline Changes. The parties agree to change the following terms regarding the timeline for the Project:

A. The parties agree that the Minimum Improvements shall be initiated by ~~May~~June 7, 2021 and completed by April 30, 2023. Accordingly, in Section 2.2(k), Section 3.4, and Exhibit B of the Agreement, the dates July 1, 2020 or September 30, 2020 shall hereby be replaced with ~~May~~June 7, 2021, and the dates February 1, 2022 or March 31, 2022 shall hereby be replaced with April 30, 2023. Notwithstanding the foregoing, the parties agree that the Minimum Improvements shall be substantially complete so as to support the full assessment set forth in the Amended and Restated Minimum Assessment Agreement by January 1, 2023. Accordingly, Section 8.1 of the Agreement is hereby replaced in its entirety with the following:

> Section 8.1 Grants. For and in consideration of the obligations being assumed by Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Developer being and remaining in compliance with the terms of this Agreement, to make up to eighteen (18) consecutive annual payments of Grants to Developer, up to an aggregate total amount not to exceed Twenty Three Million ~~dollars~~Dollars ($23,000,000), under the formula and schedule set forth below.
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> Assuming substantial completion of the Minimum Improvements and full assessment thereof on January 1, 2023 consistent with the Amended and Restated Minimum Assessment Agreement, full completion of the Minimum Improvements by April 30, 2023, and debt certification to the Auditor by the City prior to December 1, 2023, the Grants shall commence on June 1, 2025, and end on June 1, 2042, pursuant to Section 403.19 of the Urban Renewal Act under the following formula:
>
> June 1, 2025 75% of Tax Increments for Fiscal Year 24-25
> June 1, 2026 75% of Tax Increments for Fiscal Year 25-26
> June 1, 2027 75% of Tax Increments for Fiscal Year 26-27
> June 1, 2028 75% of Tax Increments for Fiscal Year 27-28
> June 1, 2029 75% of Tax Increments for Fiscal Year 28-29

June 1, 2030 75% of Tax Increments for Fiscal Year 29-30
June 1, 2031 75% of Tax Increments for Fiscal Year 30-31
June 1, 2032 75% of Tax Increments for Fiscal Year 31-32
June 1, 2033 75% of Tax Increments for Fiscal Year 32-33
June 1, 2034 75% of Tax Increments for Fiscal Year 33-34
June 1, 2035 75% of Tax Increments for Fiscal Year 34-35
June 1, 2036 75% of Tax Increments for Fiscal Year 35-36
June 1, 2037 75% of Tax Increments for Fiscal Year 36-37
June 1, 2038 75% of Tax Increments for Fiscal Year 37-38
June 1, 2039 75% of Tax Increments for Fiscal Year 38-39
June 1, 2040 75% of Tax Increments for Fiscal Year 39-40
June 1, 2041 75% of Tax Increments for Fiscal Year 40-41
June 1, 2042 75% of Tax Increments for Fiscal Year 41-42

Each annual payment shall be equal in amount to the above percentages of the Tax Increments collected by the City with respect to the Minimum Improvements and the Development Property under the terms of the Ordinance and deposited into the Argent Baxter JV-Council Bluffs, LLC TIF Account (without regard to any averaging that may otherwise be utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve (12) month period, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the "Grants").

The Grants are only for the Minimum Improvements described in this Agreement and not any future expansions which, to be eligible for Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

B. The parties agree to amend Section 3.1 of the Agreement to reflect that the Developer shall provide a scalable site plan and landscape plan to the City within 60 days from the date of this Amendment. Accordingly, Section 3.1 of the Agreement is hereby replaced in its entirety with the following:

Section 3.1. Site Plans. Within 60 days after execution of Amendment No. 1 to the Agreement, Developer shall provide to the City: a scalable site plan and a landscape plan for the Development Property; and floor plates, elevation drawings, and exterior material descriptions for all Minimum Improvements consistent with the Playland Park Master Plan dated October 2014 (collectively "Site Plans"). Within ~~60~~15 days after receipt of the Site Plans, the City shall, in its discretion, approve the Site Plans (in which case the Site Plans shall be attached hereto as Exhibit B-1), or reject said Site Plans and either allow the Developer an opportunity to revise and resubmit the Site Plans or the City may terminate this Agreement, and in the latter event neither party shall have any further obligation to the other. Once the plans referenced in Sections 3.1 through 3.3 of this Agreement have been approved by the City they shall be marked and identified as exhibits to this Agreement and by this reference, made a part of the Agreement.

C. The parties hereby agree to delete Section 4.3 of the Agreement, regarding the Due Diligence Period, in its entirety.

D. Because the Due Diligence Period is no longer included in the Project timeline, the parties hereby agree to amend Section 4.7 to remove the reference to the Due Diligence Period. Accordingly, Section 4.7 is hereby replaced in its entirety with the following:

> Section 4.7. Condition of the Property; Care and Maintenance. As of Closing, Developer agrees to take the Development Property "As Is." The City makes no warranties or representations as to the condition of the Development Property. Developer waives all claims against the City as to the condition of the Development Property.

E. Because the Due Diligence Period is no longer included in the Project timeline, the parties hereby agree to amend Section 4.8 to reflect that the Closing Date shall be scheduled for a date no later than ~~May~~June 1, 2021. Accordingly, Section 4.8 is hereby replaced in its entirety with the following:

> Section 4.8. Possession/Closing. Upon the obligations of both parties hereunder being met, including the execution of all documents required hereunder, Closing shall take place on a date no later than ~~May~~June 1, 2021, at a time to be agreed to by the parties (the "Closing Date"). This purchase shall be considered "Closed" upon the delivery to the City of the Purchase Price by Developer and delivery to Developer by the City of a duly executed deed without warranty in the form of deed attached as Exhibit H ("Deed"). All parties and individual signatories hereto further agree to make, execute, and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 4. Exhibit B Update. To account for revisions to the anticipated Minimum Improvements, Exhibit B attached to the Agreement is replaced in its entirety with the attached Amended Exhibit B. For all purposes under the Agreement and the Amended and Restated Minimum Assessment Agreement, the term Minimum Improvements shall mean the Minimum Improvements as described in the Amended Exhibit B.

Section 5. No Further Modifications. Except as modified by this Amendment, all covenants, agreements, terms, and conditions of the Agreement, as previously amended and restated, shall remain in full force and effect and are hereby in all respects ratified and affirmed.

Section 6. Counterparts. This Amendment may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

IN WITNESS WHEREOF, the City has caused this Amendment to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk;

and Developer has caused this Amendment to be duly executed in its name and behalf by its authorized representative, respectively, all on or as of the day first above written.

~~*[Remainder of page intentionally left blank; Signature pages follow]*~~

[Signatures on following pages]

(SEAL) **CITY OF COUNCIL BLUFFS, IOWA**

By: _____
Matthew J. Walsh, Mayor

ATTEST:

By: _____
Jodi Quackenbush, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 20__, before me a Notary Public in and for said State, personally appeared Matthew J. Walsh and Jodi Quackenbush, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

[City's Signature Page to Amendment]

ARGENT BAXTER JV–COUNCIL BLUFFS, LLC, an Iowa limited liability company

By: _____
Mark Matthews, Chairman

STATE OF_____)
) SS
COUNTY OF_____)

On this _____ day of _____, 20__, before me the undersigned, a Notary Public in and for said State, personally appeared Mark Matthews, to me personally known, who, being by me duly sworn, did say that he is the Chairman of Argent Baxter JV-Council Bluffs, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Mark Matthews as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

_____
Notary Public in and for said state

[Developer's Signature Page to Amendment]

AMENDED EXHIBIT B
MINIMUM IMPROVEMENTS

Minimum Improvements shall mean the construction of a single residential tower (the "Tower"). The Tower shall consist of at least 210 rental units ranging in size between 700 and 1,300 square feet ("Apartments"), and 24 units with an approximate size of 1,000 square feet ("Condo Units"), with amenities consistent with other projects developed by Developer (outdoor amenity deck, fitness center, game room, etc.). The Minimum Improvements shall be in substantial conformance with the diagrams set forth in Exhibit B-1.

The proposed Project is estimated to require an investment of at least $60,000,000. The construction of the Minimum Improvements is required under the terms of the Agreement to be fully completed by April 30, 2023, subject to Unavoidable Delays.

The assessed value after substantial completion of the Minimum Improvements for the purpose of this Agreement is required to be at least $45,000,000 by January 1, 2023, pursuant to the Amended and Restated Minimum Assessment Agreement entered into by and among the City, Developer and the Pottawattamie County Assessor.

Developer recognizes the City goal of long-term home ownership within the Project and will make efforts to gauge and respond to the interest in the condominium market without negative impact to the financing of the Project.

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