

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF DUBUQUE, IOWA,  
AND  
KRETSCHMER, LLC**

THIS DEVELOPMENT AGREEMENT (the Agreement) dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2020 is made and entered into by and between the City of Dubuque, Iowa (City) and Kretschmer, LLC (Developer).

WHEREAS, Developer is the owner of the following described real estate (the Property):

**LOTS 418 AND 419, AND LOT 1 OF CITY LOT 417, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND THE RECORDED PLAT THEREOF;**

**CITY LOT 417A, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF; AND**

**THE EAST 55 FEET OF IN LOT 399, AND THE EAST 55 FEET OF THE NORTH ONE-HALF OF LOT 400, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND RECORDED PLAT THEREOF**

locally known as 220 East 9<sup>th</sup> Street (the Property); and

WHEREAS, the Property is located in the Greater Downtown Urban Renewal District (the District) which has been so designated by City Council Resolution 154-20 as a slum and blighted area (the Project Area) defined by Iowa Code Chapter 403 (the Urban Renewal Law); and

WHEREAS, Developer will undertake the redevelopment of a vacant building located on the Property and will be operating the same during the term of this Agreement; and

WHEREAS, Developer will make a capital investment in building improvements, equipment, furniture and fixtures in the Property (the Project); and

WHEREAS, the Property is historically significant, and it is in the City's best interest to preserve the Property; and

WHEREAS, pursuant to Iowa Code Section 403.6(1), and in conformance with the Urban Renewal Plan for the Project Area adopted on May 18, 1967 and last amended on

May 18, 2020, City has the authority to enter into contracts and agreements to implement the Urban Renewal Plan, as amended; and

WHEREAS, the Dubuque City Council believes it is in the best interests of the City to encourage Developer in the development of the Property by providing certain incentives as set forth herein.

NOW, THEREFORE, the parties to this Development Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

## **SECTION 1. REPRESENTATIONS AND WARRANTIES**

1.1 Representations and Warranties of City. In order to induce Developer to enter into this Agreement, City hereby represents and warrants to Developer that to the best of City's knowledge:

(1) City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and that it has full power and authority to execute, deliver and perform its obligations under this Agreement. City's attorney shall issue a legal opinion to Developer at time of closing confirming the representation contained herein, in the form attached hereto as Exhibit A.

(2) City shall exercise its best efforts to cooperate with Developer in the development process.

(3) City shall exercise its best efforts to resolve any disputes arising during the development process in a reasonable and prompt fashion.

(4) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the charter of City, any evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.

(5) There are no actions, suits or proceedings pending or threatened against or affecting City in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the financial position or operations of City or which affects the validity of the Agreement or City's ability to perform its obligations under this Agreement.

(6) No ordinance or hearing is now before any local governmental body that either contemplates or authorizes any public improvements or special tax levies,

the cost of which may be assessed against the Property. To the best of City's knowledge, there are no plans or efforts by any government agency to widen, modify, or re-align any street or highway providing access to the Property and there are no pending or intended public improvements or special assessments affecting the Property which will result in any charge or lien be levied or assessed against the Property.

(7) The representations and warranties contained in this article shall be correct in all respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

(8) As of the date of this Agreement there has been prepared and approved by City an Urban Renewal Plan for the Project Area consisting of the Urban Renewal Plan for the Greater Downtown Urban Renewal Plan, most recently approved by City Council of City on May 18, 2020, and as subsequently amended through and including the date hereof, attached as Exhibit E (the Urban Renewal Plan). A copy of the Urban Renewal Plan, as constituted on the date of this Agreement and in the form attached hereto, is on file records in the office of the City Clerk and has been recorded among the land records of the Dubuque County Recorder.

1.2 Representations and Warranties of Developer. The Developer makes the following representations and warranties:

(1) Developer is an Iowa limited liability company duly organized and validly existing under the laws of the State of Iowa and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

(2) This Agreement has been duly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally. Developer's counsel shall issue an opinion to the City, at time of closing, confirming the representations contained herein, in the form attached hereto as Exhibit B.

(3) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the articles of incorporation or the bylaws of Developer or any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it or its property is bound, or constitute a

default under any of the foregoing.

(4) There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business, financial position or result of operations of Developer or which affects the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

(5) Developer will perform its obligations under this Agreement in accordance with the material terms of this Agreement, the Urban Renewal Plan and all local, State and federal laws and regulations.

(6) Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all material requirements of all applicable local, state, and federal laws and regulations which must be obtained or met.

(7) Developer has firm commitments for permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the requirements of this Agreement and shall provide evidence thereof to City prior to the Closing Date.

1.3 Closing. The closing shall take place on the Closing Date which shall be the 22<sup>nd</sup> day of July, 2020, or such other date as the parties shall agree in writing but in no event shall the Closing Date be later than the 31<sup>st</sup> day of October, 2020. Consummation of the closing shall be deemed an agreement of the parties to this Agreement that the conditions of closing shall have been satisfied or waived.

1.4 Conditions to Closing. The closing of the transaction contemplated by this Agreement and all the obligations of Developer under this Agreement are subject to fulfillment, on or before the Closing Date, of the following conditions:

(1) The representations and warranties made by City in Section 1.1 shall be correct as of the Closing Date with the same force and effect as if such representations were made at such time. At the closing, City shall deliver a certificate to that effect in the form of Exhibit C.

(2) Developer shall have the right to terminate this Agreement at any time prior to the consummation of the closing on the Closing Date if Developer determines in its sole discretion that conditions necessary for the successful completion of the Project contemplated herein have not been satisfied in Developer's sole discretion. Upon the giving of notice of termination by Developer to City, this Agreement shall be deemed null and void.

(3) Developer and City shall be in material compliance with all the terms and provisions of this Agreement.

(4) Developer shall have furnished City with evidence, in a form satisfactory to City (such as a letter of commitment from a bank or other lending institution), that Developer has firm financial commitments in an amount sufficient, together with equity commitments, to complete the Minimum Improvements (as defined herein) in conformance with the Construction Plans (as defined herein), or City shall have received such other evidence of Developer's financial ability as the reasonable judgment of the City requires.

(5) Developer's counsel shall issue an opinion to the City confirming the representations contained herein in the form attached hereto as Exhibit B.

1.5 City's Obligations at Closing. At or prior to the Closing Date, City shall deliver to Developer such other documents as may be required by this Agreement, all in a form satisfactory to Developer.

## **SECTION 2. DEVELOPMENT ACTIVITIES**

2.1 Required Minimum Improvements. Developer will make a capital investment of approximately Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) to acquire and improve the Property (the Minimum Improvements). The Minimum Improvements shall consist of the creation of Forty-Eight (48) apartments.

2.2 The Minimum Improvements shall conform to the U.S. Secretary of the Interior's Standards for Rehabilitation. However, if the Project is not awarded Historic Tax Credits by December 30, 2021, the U.S. Secretary of the Interior's Standards for Rehabilitation will be interpreted by City, in its sole discretion, to apply only to the Exterior Improvements.

2.3 Plans for Construction of Minimum Improvements. Plans and specifications with respect to the development of the Property and the construction of the Minimum Improvements thereon (the Construction Plans) shall be in conformity with Urban Renewal Plan, this Agreement, and all applicable state and local laws and regulations, including but not limited to any covenants, conditions, restrictions, reservations, easements, liens and charges, recorded in the records of Dubuque County, Iowa. Developer shall submit to City, for approval by City, plans, drawings, specifications, and related documents with respect to the improvements to be constructed by Developer on the Property. All work with respect to the Minimum Improvements shall be in substantial conformity with the Construction Plans approved by City.

2.4 Timing of Improvements. Developer hereby agrees that construction of the Minimum Improvements on the Property shall be commenced within thirty (30) days after the Closing Date and shall be substantially completed by October 31, 2021. The time frames for the performance of these obligations shall be suspended due to unavoidable delays meaning delays, outside the control of the party claiming its occurrence in good faith, which are the direct result of strikes, other labor troubles, unusual shortages of materials or labor, unusually severe or prolonged bad weather, acts of God, fire or other

casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion directly results in delays, or acts of any federal, state or local government which directly result in extraordinary delays. The time for performance of such obligations shall be extended only for the period of such delay.

2.5 Certificate of Completion. Promptly following the request of Developer upon completion of the Minimum Improvements, City shall furnish Developer with an appropriate instrument so certifying in the form attached as Exhibit F. Such certification (the Certificate of Completion) shall be in recordable form and shall be a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement.

### **SECTION 3. CITY PARTICIPATION**

#### 3.1 Downtown Housing Incentive Grant.

(1) City agrees to provide to Developer, on the terms and conditions set forth herein, a grant in the amount of Four Hundred Eighty Thousand Dollars (\$480,000.00).

(2) The grant shall be paid in Ten Thousand Dollar (\$10,000.00) payments for each apartment that receives a Certificate of Occupancy up to a maximum of forty-eight (48) apartments.

3.2. Planning and Design Grant. City agrees to provide a matching (1:1) grant not to exceed Ten Thousand Dollars (\$10,000) to reimburse Developer for documented predevelopment costs, architectural and engineering fees and other authorized soft costs associated with the rehabilitation of the Property on the terms and conditions set forth in Exhibit G.

3.3. Façade Grant. City agrees to provide a matching (1:1) grant not to exceed Ten Thousand Dollars (\$10,000) for documented costs that improve the overall appearance of the Development Property, provided the Project as completed meets the criteria on the terms and conditions set forth in Exhibit H.

3.4. Financial Consultant Grant. City agrees to provide a matching (1:1) grant not to exceed Fifteen Thousand Dollars (\$15,000) to reimburse Developer for documented costs related to hiring a financial consultant to evaluate the Project's feasibility on the terms and conditions set forth in Exhibit I.

3.5. Payment of the Grants. The grants shall be payable as follows:

(1) Any and all portions of a grant shall be funded solely and only from available Downtown Incentive Program funds;

(2) Prior to the release of any grant funds, (i) Developer shall have submitted documentation of its eligible expenses under the corresponding grant program, and (ii) City shall have issued a Certificate of Completion; and

(3) The grant funds shall be disbursed directly to Developer.

3.6. Written requests for payment of grant funds must be submitted to the Economic Development Department together with all required documentation.

#### **SECTION 4. COVENANTS OF DEVELOPER**

4.1 Subject to Section 2.2, the Minimum Improvements shall conform to the U.S. Secretary of the Interior's Standards for Rehabilitation.

4.2 Operation of Development Property; Housing Vouchers. For and in consideration of the grant offered under this Agreement, during the operation of the Property as a rental residential property, Developer shall accept, or cause to be accepted, applications from prospective tenants with housing vouchers issued under the U.S. HUD's Section 8 voucher program or a similar program who are otherwise qualified prospective tenants. This Section 4.2 shall survive the termination of this Agreement.

4.3 Books and Records. During the term of this Agreement, Developer shall keep at all times and make available to City upon reasonable request proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer in accordance with generally accepted accounting principles consistently applied throughout the period involved, and Developer shall provide reasonable protection against loss or damage to such books of record and account.

4.4 Real Property Taxes. Developer shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Property unless Developer's obligations have been assumed by another person pursuant to the provisions of this Agreement.

4.5 No Other Exemptions. During the term of this Agreement, Developer agrees that Developer shall not, without City's consent which shall not be unreasonably withheld, apply for any state or local property tax exemptions which are available with respect to the Development Property or the Minimum Improvements located thereon that may now be, or hereafter become, available under state law or city ordinance during the term of this Agreement, including those that arise under Iowa Code Chapters 404 and 427, as amended.

4.6 Insurance Requirements.

(1) Developer shall provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and at its sole cost

and expense builder's risk insurance, written on a Completed Value Form in an amount equal to one hundred percent (100%) of the building (including Minimum Improvements) replacement value when construction is completed, naming City as loss payee. Coverage shall include the "special perils" form and developer shall furnish City with proof of insurance in the form of a certificate of insurance.

(2) Upon completion of construction of the Minimum Improvements and up to the Termination Date, Developer shall maintain, or cause to be maintained, at its cost and expense property insurance against loss and/or damage to the building (including the Minimum Improvements) under an insurance policy written with the "special perils" form and in an amount not less than the full insurable replacement value of the building (including the Minimum Improvements), naming City as loss payee. Developer shall furnish to City proof of insurance in the form of a certificate of insurance.

(3) The term "replacement value" shall mean the actual replacement cost of the building with Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment, and shall be reasonably determined from time to time at the request of City, but not more frequently than once every three (3) years.

(4) Developer shall notify City immediately in the case of damage exceeding \$50,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net proceeds of any such insurance (Net Proceeds), shall be paid directly to Developer as its interests may appear, and Developer shall forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer shall apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof, subject, however, to the terms of any mortgage encumbering title to the Property (as its interests may appear). Developer shall complete the repair, reconstruction and restoration of Minimum Improvements whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

#### 4.7 Release and Indemnification Covenants.

(1) Developer releases City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Section, the Indemnified Parties) from and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.



(2) Except for any gross negligence, willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (1) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer against City based on an alleged breach of any representation, warranty or covenant of City under this Agreement and/or to enforce its rights under this Agreement); or (2) the acquisition, construction, installation, ownership, and operation of the Minimum Improvements or (3) the condition of the Property and any hazardous substance or environmental contamination located in or on the Property, caused and occurring after Developer takes possession of the Property.

(3) The Indemnified Parties shall not be liable to Developer for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be on, in or about the Minimum Improvements due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

(4) All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City, and not of any governing body member, officer, agent, servant or employee of City in their individual capacity thereof.

(5) The provisions of this Section shall survive the termination of this Agreement.

4.8 Preservation of Property. During the term of this Agreement, Developer shall maintain, preserve and keep, or cause others to maintain, preserve and keep, the Minimum Improvements in good repair and working order, ordinary wear and tear accepted, and from time to time shall make all necessary repairs, replacements, renewals and additions.

4.9 Non-Discrimination. In carrying out the project, Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age or disability.

4.10 Conflict of Interest. Developer agrees that no member, officer or employee of City, or its designees or agents, nor any consultant or member of the governing body of City, and no other public official of City who exercises or has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the project, shall have any interest, direct or indirect, in any contract or subcontract, or the

proceeds thereof, for work to be performed in connection with the project, or in any activity, or benefit therefrom, which is part of this project at any time during or after such person's tenure. In connection with this obligation, Developer shall have the right to rely upon the representations of any party with whom it does business and shall not be obligated to perform any further examination into such party's background.

4.11 Non-Transferability. During the Term of this Agreement, this Agreement may not be assigned by Developer nor may any portion of the Property be sold or otherwise transferred by Developer without the prior written consent of City in City's sole discretion. City has no obligation to consent to any assignment or sale, however City's consent shall not be unreasonably withheld

4.12 No change in Tax Classification. Developer agrees that it will not take any action to change, or otherwise allow, the classification of the Property for property tax purposes to become other than residential property and to be taxed as such under Iowa law.

4.13 Restrictions on Use. Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property or any part thereof that they, and their respective successors and assigns, shall:

(1) Devote the Property to, and only to and in accordance with, the uses specified in the Urban Renewal Plan (and City represents and agrees that use of the Property as a residential housing condominium association, is in full compliance with the Urban Renewal Plan) (however, Developer shall not have any liability to City to the extent that a successor in interest shall breach this covenant and City shall seek enforcement of this covenant directly against the party in breach of same); and

(2) Not discriminate upon the basis of race, religion, color, sex, sexual orientation, gender identity, national origin, age or disability in the sale, lease, rental, use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof; however, Developer shall not have any liability to City to the extent that a successor in interest shall breach this covenant and City shall seek enforcement of this covenant directly against the party in breach of same.

4.14 Compliance with Laws. Developer shall comply with all laws, rules and regulations relating to its businesses, other than laws, rules and regulations the failure to comply with or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, financial or otherwise, of Developer.

## **SECTION 5. EVENTS OF DEFAULT AND REMEDIES.**

5.1 Events of Default Defined. The following shall be Events of Default under this Agreement and the term Event of Default shall mean, whenever it is used in this Agreement, any one or more of the following events:

(1) Failure by Developer to pay or cause to be paid, before delinquency, all real property taxes assessed with respect to the Minimum Improvements and the Property.

(2) Failure by Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Transfer of any interest by Developer of the Minimum Improvements in violation of the provisions of this Agreement prior to the issuance of the final Certificate of Completion.

(4) Failure by Developer or City to substantially observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

5.2. Remedies on Default by Developer. Whenever any Event of Default referred to in Section 5.1 of this Agreement occurs and is continuing, City, as specified below, may take any one or more of the following actions after the giving of written notice by City to Developer (and the holder of any mortgage encumbering any interest in the Property of which City has been notified of in writing) of the Event of Default, but only if the Event of Default has not been cured within sixty (60) days following such notice, or if the Event of Default cannot be cured within sixty (60) days and Developer does not provide assurances to City that the Event of Default will be cured as soon as reasonably possible thereafter:

(1) City may suspend its performance under this Agreement until it receives assurances from Developer deemed adequate by City, that the Developer will cure its default and continue its performance under this Agreement;

(2) Until the Closing Date, City may cancel and rescind this Agreement;

(3) Developer shall repay to City the amount of all grants paid to Developer and shall reimburse City for any costs incurred by City in making such grants, and City may take any action, including any legal action it deems necessary, to recover such amounts from the Developer.

(4) City may withhold the Certificate of Completion; or

(5) City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

5.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

5.5 Agreement to Pay Attorneys' Fees and Expenses. If any action at law or in equity, including an action for declaratory relief or arbitration, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of litigation from the other party. Such fees and costs of litigation may be set by the court in the trial of such action or by the arbitrator, as the case may be, or may be enforced in a separate action brought for that purpose. Such fees and costs of litigation shall be in addition to any other relief that may be awarded.

5.6 Remedies on Default by City. If City defaults in the performance of this Agreement, Developer may take any action, including legal, equitable or administrative action that may appear necessary or desirable to collect any payments due under this Agreement, to recover expenses of Developer, or to enforce performance and observance of any obligation, agreement, or covenant of City under this Agreement. Developer may suspend its performance under this Agreement until it receives assurances from City, deemed adequate by Developer, that City will cure its default and continue its performance under this Agreement.

## **SECTION 6. GENERAL TERMS AND PROVISIONS.**

6.1 Notices and Demands. Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be deemed to have been properly given if and when delivered in person or three (3) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

**If to Developer:** Kretschmer, LLC  
Timothy J Conlon, Manager  
1100 Rockdale Road  
Dubuque, IA 52003

**With copy to:** Mark Wilging  
Fuerste, Carew, Juergens & Sudmeier, PC  
890 Main Street. Suite 200

Dubuque, IA 52001

**If to City:** City Manager  
50 W. 13th Street  
Dubuque, Iowa 52001  
Phone: (563) 589-4110  
Fax: (563) 589-4149

**With copy to:** City Attorney  
City Hall  
50 W. 13<sup>th</sup> Street  
Dubuque IA 52001

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

6.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and Developer and their respective successors and assigns.

6.3 Termination Date. This Agreement shall terminate and be of no further force or effect upon issuance of the Certificate of Completion, unless the Agreement is terminated earlier by the other terms of this Agreement (the Termination Date).

6.4. Execution by Facsimile. The parties agree that this Agreement may be transmitted between them by facsimile machine or electronic transmission. The parties intend that the faxed or electronic transmission signatures constitute original signatures and that a faxed or electronically transmitted Agreement containing the signatures (original, faxed or electronically transmitted) of all the parties is binding on the parties.

6.5 Memorandum of Development Agreement. City shall promptly record a Memorandum of Development Agreement in the form attached hereto as Exhibit D in the office of the Recorder of Dubuque County, Iowa. Developer shall pay the costs for so recording.

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and attested to by its City Clerk and Developer has caused this Agreement to be duly executed on or as of the first above written.

**CITY OF DUBUQUE, IOWA**

**KRETSCHMER, LLC**

By \_\_\_\_\_  
Roy D. Buol, Mayor

By   
\_\_\_\_\_  
Timothy J Conlon, Manager

Attest:

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Kevin S. Firnstahl, City Clerk

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## **LIST OF EXHIBITS**

- EXHIBIT A City Attorney Certificate
- EXHIBIT B Opinion of Developer Counsel
- EXHIBIT C City Certificate
- EXHIBIT D Memorandum of Development Agreement
- EXHIBIT E Urban Renewal Plan
- EXHIBIT F Certificate of Completion
- EXHIBIT G Planning and Design Grant Program
- EXHIBIT H Façade Grant Program
- EXHIBIT I Financial Consultant Grant Program

**EXHIBIT A  
CITY ATTORNEY'S CERTIFICATE**



**Barry A. Lindahl, Esq.**  
Senior Counsel  
Suite 330, Harbor View Place  
300 Main Street  
Dubuque, Iowa 52001-6944  
(563) 583-4113 office  
(563) 583-1040 fax  
[balesq@cityofdubuque.org](mailto:balesq@cityofdubuque.org)  
Office Hours: 8:00 AM – 5:00 PM, T-W-Th  
8:00 AM – 12:00 PM, F



(DATE)

**RE:**

Dear \_\_\_\_\_:

I have acted as counsel for the City of Dubuque, Iowa, in connection with the execution and delivery of a certain Development Agreement between \_\_\_\_\_ (Developer) and the City of Dubuque, Iowa (City) dated for reference purposes the \_\_\_ day of \_\_\_\_\_, 20\_\_.

The City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and has full power and authority to execute, deliver and perform its obligations under this Agreement, and to the best of my knowledge, the representations of the City Manager in his letter dated the \_\_\_ day of \_\_\_\_\_, 20\_\_, are correct.

Very sincerely,

Barry A. Lindahl, Esq.  
Senior Counsel

BAL:tls

**EXHIBIT B**  
**OPINION OF DEVELOPER'S COUNSEL**

Mayor and City Councilmembers  
City Hall  
13<sup>th</sup> and Central Avenue  
Dubuque IA 52001

Re: Development Agreement Between the City of Dubuque, Iowa and  
Kretschmer, LLC

Dear Mayor and City Councilmembers:

We have acted as counsel for Kretschmer, LLC, (Developer) in connection with the execution and delivery of a certain Development Agreement (Development Agreement) between Developer and the City of Dubuque, Iowa ("City") dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the Development Agreement and such other documents and records as we have deemed relevant and necessary as a basis for the statements set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, to our knowledge as of the date of this letter:

1. Developer is a limited liability company organized and existing under the laws of the State of Iowa and has full power and authority to execute, deliver and perform in full Development Agreement. The Development Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by City, is in full force and effect and is valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The execution, delivery and performance by Developer of the Development Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of incorporation and bylaws of Developer, any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Developer is a party or by which Developer's property is bound or subject.

3. There are no actions, suits or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform Developer's obligations thereunder.

Very truly yours,

**EXHIBIT C  
CITY CERTIFICATE**



City Manager's Office  
City Hall  
50 West 13<sup>th</sup> Street  
Dubuque, Iowa 52001-4864  
(563) 589-4110 office  
(563) 589-4149 fax  
ctymgr@cityofdubuque.org

(DATE)

Dear \_\_\_\_\_:

I am the City Manager of the City of Dubuque, Iowa and have acted in that capacity in connection with the execution and delivery of a certain Development Agreement between \_\_\_\_\_ (Developer) and the City of Dubuque, Iowa (City) dated for reference purposes the \_\_\_ day of \_\_\_\_\_, 20\_\_.

On behalf of the City of Dubuque, I hereby represent and warrant to Developer that:

- (1) City has duly obtained all necessary approvals and consents for its execution, delivery and performance of this Agreement and that it has full power and authority to execute, deliver and perform its obligations under this Agreement. City's attorney shall issue a legal opinion to Developer at time of closing confirming the representation contained herein, in the form attached hereto as Exhibit A.
- (2) City shall exercise its best efforts to cooperate with Developer in the development process.
- (3) City shall exercise its best efforts to resolve any disputes arising during the development process in a reasonable and prompt fashion.
- (4) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the charter of City, any evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it or its property is bound, or constitute a default under any of the foregoing.
- (5) There are no actions, suits or proceedings pending or threatened against or affecting City in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the financial position or operations of City or which affects the validity of the Agreement or City's ability to perform its obligations under

this Agreement.

(6) No ordinance or hearing is now or before any local governmental body that either contemplates or authorizes any public improvements or special tax levies, the cost of which may be assessed against the Property. To the best of City's knowledge, there are no plans or efforts by any government agency to widen, modify, or re-align any street or highway providing access to the Property and there are no pending or intended public improvements or special assessments affecting the Property which will result in any charge or lien be levied or assessed against the Property.

(7) The representations and warranties contained in this article shall be correct in all respects on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

Sincerely,

Michael C. Van Milligen  
City Manager

MCVM:jh

**EXHIBIT D**  
**MEMORANDUM OF DEVELOPMENT AGREEMENT**

Prepared by: Barry A. Lindahl 300 Main Street Suite 330 Dubuque IA 52001 563 583-4113  
Return to: Barry A. Lindahl 300 Main Street Suite 330 Dubuque IA 52001 563 583-4113

### **MEMORANDUM OF DEVELOPMENT AGREEMENT**

A Development Agreement by and among the City of Dubuque, Iowa, an Iowa Municipal Corporation, of Dubuque, Iowa, and Kretschmer, LLC was made regarding the following described premises:

**LOTS 418 AND 419, AND LOT 1 OF CITY LOT 417, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND THE RECORDED PLAT THEREOF;**

**CITY LOT 417A, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF; AND**

**THE EAST 55 FEET OF IN LOT 399, AND THE EAST 55 FEET OF THE NORTH ONE-HALF OF LOT 400, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND RECORDED PLAT THEREOF**

locally known as 220 East 9<sup>th</sup> Street (the Development Property).

The Development Agreement is dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2020, and contains covenants, conditions, and restrictions concerning the sale and use of the Development Property.

This Memorandum of Development Agreement is recorded for the purpose of constructive notice. In the event of any conflict between the provisions of this Memorandum and the Development Agreement itself, executed by the parties, the terms and provisions of the Development Agreement shall prevail. A complete counterpart of the Development Agreement, together with any amendments thereto, is in the possession of the City of Dubuque and may be examined at its offices as above provided.



Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF DUBUQUE, IOWA**

**KRETSCHMER, LLC**

By \_\_\_\_\_  
Roy D. Buol  
Mayor

By \_\_\_\_\_  
Timothy J Conlon  
Manager

Attest:

\_\_\_\_\_  
Kevin S. Firnstahl  
City Clerk

STATE OF IOWA                    )  
  )     SS  
COUNTY OF DUBUQUE         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Iowa, in and for said county, personally appeared Roy D. Buol and Kevin S. Firnstahl, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk, respectively of the City of Dubuque, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to said instrument is the seal of said Municipal Corporation and that said instrument was signed and sealed on behalf of said Municipal corporation 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 Municipal Corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public, State of Iowa

STATE OF \_\_\_\_\_                    )  
  )     SS  
COUNTY OF \_\_\_\_\_         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Timothy J Conlon, to me

personally known, who, being by me duly sworn, did say that he is a Manager of Kretschmer, LLC the Iowa limited liability company executing the instrument to which this is attached and that as said Manager of Kretschmer, LLC acknowledges the execution of said instrument to be the voluntary act and deed of said company, by it and by him, an individual, voluntarily executed.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**EXHIBIT E**  
**URBAN RENEWAL PLAN**

On file at the Office of the City Clerk, City Hall, 50 West 13<sup>th</sup> Street, Dubuque, Iowa

**EXHIBIT F**  
**CERTIFICATE OF COMPLETION**

## CERTIFICATE OF COMPLETION

WHEREAS, the City of Dubuque, Iowa, a municipal corporation (the "Grantor"), has granted incentives to Kretschmer, LLC (the "Grantee"), in accordance with a Development Agreement dated as of [Date] (the "Agreement"), certain real property located within the Greater Downtown Urban Renewal District of the Grantor and as more particularly described as follows:

**LOTS 418 AND 419, AND LOT 1 OF CITY LOT 417, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND THE RECORDED PLAT THEREOF;**

**CITY LOT 417A, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF; AND**

**THE EAST 55 FEET OF IN LOT 399, AND THE EAST 55 FEET OF THE NORTH ONE-HALF OF LOT 400, IN THE CITY OF DUBUQUE, IOWA, ACCORDING TO THE UNITED STATES COMMISSIONERS' MAP OF THE SURVEY OF THE TOWN OF DUBUQUE, IOWA, AND RECORDED PLAT THEREOF**

locally known as 220 East 9<sup>th</sup> Street, (the Development Property); and

WHEREAS, said Agreement incorporated and contained certain covenants and conditions with respect to the rehabilitation of the Development Property, and obligated the Grantee to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, the Grantee has to the present date performed said covenants and conditions insofar as they relate to the construction of the Minimum Improvements in a manner deemed sufficient by the Grantor to permit the execution and recording of this certification; and

NOW, THEREFORE, pursuant to Section 2.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of the Grantee, and its successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by the Grantee to the satisfaction of the Grantor and such covenants and conditions are hereby satisfied.

The County Recorder of Dubuque County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions as set forth in said Agreement, and that the Agreement shall otherwise remain in full force and effect.

(SEAL)

**CITY OF DUBUQUE, IOWA**

By: \_\_\_\_\_  
Mike Van Milligen, City Manager

STATE OF IOWA            )  
  ) SS  
COUNTY OF DUBUQUE )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ and acknowledged said execution of the instrument to be his/her voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for  
Dubuque County, Iowa

**EXHIBIT G**  
**PLANNING AND DESIGN GRANT PROGRAM**

# PLANNING & DESIGN GRANT INFORMATION

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This program provides grants in the Greater Downtown Urban Renewal District for hiring architects, engineers or other professional services used prior to construction.

**Amount of Grant:** 1:1 matching grant not to exceed ten thousand dollars (\$10,000) be awarded by the City to qualifying projects to offset the actual pre-development costs. (Example: \$8,500 in eligible project costs would receive \$4,250 grant matched by \$4,250 in private contribution; \$20,000 or greater eligible project costs would receive the maximum \$10,000 grant.)

**Grant Specific Conditions:**

- Reimbursement is for architectural and engineering fees, feasibility studies, environmental assessments or other related soft costs.
- Reimbursable expenditures must be documented.
- Owner / developer fees are not permitted as reimbursable expenditures.
- The grant shall not exceed ten percent (10%) of total project costs.
- Grants will be disbursed upon completion of the project at a rate of \$0.50 for each \$1.00 of qualified costs.

**Approval Process:**

1. Design review by the City Planning Department and/or the Historical Preservation Commission is required for exterior work on the project.
2. Grant applications will be reviewed by City staff Review Committee and approved by the City Manager.
3. Funding will be disbursed upon staff review of documented expenditures and inspection of a completed project.



**EXHIBIT H**  
**FAÇADE GRANT PROGRAM**

# FAÇADE GRANT INFORMATION

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This program provides grants in the Greater Downtown Urban Renewal District for front or rear façade renovation to restore the façade to its historic appearance or improve the overall appearance.

**Amount of Grant:** 1:1 matching grant not to exceed ten thousand dollars (\$10,000) shall be awarded by the City to qualifying projects based on total eligible project costs. (Example: \$8,500 in eligible project costs would receive a \$4,250 grant matched by \$4,250 in private contribution; \$20,000 or greater eligible project costs would receive the maximum \$10,000 grant.)

**Grant Specific Conditions:**

- Reimbursement is for labor and material costs associated with façade improvements, including but not limited to, rehabilitating or improving windows, paint, signage, or awnings to enhance overall appearance.
- Landscaping or screening with fencing or retaining walls may be a reimbursable expense if a determination is made that property is improved adjacent to public right-of-way.
- In order to receive reimbursement for repointing, a mortar analysis sample may be requested for each façade that will be repointed. The applicant must adhere to the results of that analysis in their rehabilitation work as part of their approved project plan. The City may request verification that the new mortar matches the results of the mortar analysis.
- Language from the National Park Service Technical Preservation Services Briefs may be attached as a condition for a building permit if the applicant chooses to perform repointing on the project.
- Reimbursable expenditures must be documented.
- Grants will be disbursed upon completion of work at a rate of \$.50 for each \$1.00 of qualified costs.

**Approval Process:**

1. Design review by the City Planning Department and/or the Historical Preservation Commission is required for exterior work on the project.
2. Grant applications will be reviewed by City staff Review Committee and approved by the City Manager.
3. Funding will be disbursed upon staff review of documented expenditures and inspection of a completed project.

**EXHIBIT I**  
**FINANCIAL CONSULTANT GRANT PROGRAM**

# FINANCIAL CONSULTANT GRANT INFORMATION

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This program provides grants in the Greater Downtown Urban Renewal District for hiring a financial consultant to analyze the feasibility of projects.

**Amount of Grant:** 1:1 matching grant not to exceed fifteen thousand dollars (\$15,000) shall be awarded to qualifying projects based on total eligible project costs. (Example: \$8,500 in eligible project costs would receive a \$4,250 grant matched by \$4,250 in private contribution; \$30,000 or greater eligible costs would receive the maximum \$15,000 grant.)

**Grant Specific Conditions:**

- Reimbursement is for fees associated with hiring a professional financial consultant.
- Reimbursable expenditures must be documented.
- This grant shall not exceed ten percent (10%) of total project costs.
- The rehabilitation project must be completed for the Financial Consultant Grant to be funded.
- Grants will be disbursed upon completion of work at a rate of \$.50 for each \$1.00 of qualified costs.

**Approval Process:**

1. Design review by the City Planning Department and/or the Historical Preservation Commission is required for exterior work on the project.
2. Grant applications will be reviewed by City staff Review Committee and approved by the City Manager.
3. Funding will be disbursed upon staff review of documented expenditures and inspection of a completed project.