

**C-42691**

**FOURTH AMENDMENT TO  
GRANT OF EXCLUSIVE NEGOTIATING RIGHTS  
(Upper Harbor Terminal)**

**THIS AMENDMENT**, dated and entered into as of the 2nd day of June, 2021, is by and between the CITY OF MINNEAPOLIS (the “City”), CITY OF MINNEAPOLIS acting by and through its PARK AND RECREATION BOARD (“MPRB”) and UNITED PROPERTIES DEVELOPMENT LLC, its successors and assigns (the “Developer”).

**RECITALS**

**WHEREAS**, the parties entered into that certain Grant of Exclusive Negotiating Rights dated August 16, 2017, as amended May 15, 2019, July 29, 2020 and September 23, 2020 (the “Agreement”) related to the City-owned parcel of real estate located adjacent to the Mississippi River commonly known as the Upper Harbor Terminal (the “Site”); and

**WHEREAS**, due to a peacetime emergency declared by the Governor of Minnesota, there have been delays that were both unforeseeable and due to causes outside the control of the parties, with the term of the peacetime emergency declaration being considered an unforeseeable delay under Section 7 of the Agreement (the “Unforeseeable Delay”); and

**WHEREAS**, a draft Coordinated Plan was presented to the Business, Inspections, Housing & Zoning Committee of the City Council on February 16, 2021; and

**WHEREAS**, on May 8, 2021 and June 2, 2021, the City Council and the MPRB respectively, recognizing the impact that the Unforeseeable Delay had on planning and engagement and wanting to allow for sufficient time to complete the environmental review and develop adequate mitigation measures informed by community engagement, approve the Coordinated Plan and negotiate terms for redevelopment, approved an extension of the milestones, timelines and exclusive rights outlined in the Agreement.

**NOW, THEREFORE**, the parties hereto do agree as follows:

1. Section 1.B. of the agreement is revised as follows:
  - B. Subject to early termination or extension as described below, the exclusive rights granted herein shall automatically terminate, expire and become null and void upon the earlier of (i) ~~October 31, 2020~~ December 31, 2021 with such date to be automatically extended by the term of the Unforeseeable Delay plus 30 calendar days, (ii) execution of initial City/Developer redevelopment agreement(s); or (iii) the date the Developer notifies the City and the MPRB in writing that it is no longer interested in pursuing redevelopment of the Site (the “Term”).
2. The October 31, 2020 date in Section 2 is hereby changed to December 31, 2021 with such date to be automatically extended by the term of the Unforeseeable Delay plus 30 calendar days.

3. The parties agree to the following remaining milestones in Section 7 of the Agreement.
  1. Obtain approval of a Coordinated Plan from the City Council and the Developer (and the MPRB with respect to park-related components) by December 31, 2021 with such date to be automatically extended by the term of the Unforeseeable Delay plus 30 calendar days; and
  2. Obtain approval of at least two initial development agreements (one between the City and MPRB and another between the City and a member of the Project Team for a non-park development) and any exclusive rights agreements for later phases by December 31, 2021 with such date to be automatically extended by the term of the Unforeseeable Delay plus 30 calendar days.

(the "Milestones")

Failure of the parties to achieve the Milestones would be a potential basis for termination of this Agreement by the City, MPRB and/or Developer. The process outlined and these Milestones and their timing may be revised with the approval of all of the Contract Managers, provided the overall timeframe for achievement of the Milestones above are not exceeded by more than 120 days. The parties agree that the Milestones will be extended as reasonably necessary to account for any other unforeseeable delays due to causes outside the control of the Developer such as, but not limited to, acts of God, acts of the public enemy, the direct result of strikes, other labor troubles, fire, floods, epidemics, quarantines, unavailability of power, unusual severe weather, litigation commenced by third parties or other similar judicial or governmental action that directly results in delays, provided that the Developer is diligently pursuing achievement of the Milestones given the cause of the delay.

6. Except as specifically amended herein, the Agreement remains in full force and effect.
7. Nothing in the Agreement as amended hereby commits any party to sell or buy any land or to demolish or undertake any improvements. Any such commitments will be made in redevelopment contracts approved and executed by the relevant parties. The parties hereby acknowledge that although all parties remain committed to this important community-centered project, recent and on-going impacts to the City's and MPRB's budget may significantly affect the City's ability to financially support the development to the same extent that may have been previously discussed. All parties agree to proceed in good faith toward a project(s) that reflect community-centered outcomes understanding that new reality.
8. Capitalized terms that are not defined herein shall have the meaning ascribed to them in the Agreement.
9. This Amendment may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original. The electronically delivered signatures of the parties shall be deemed to constitute original signatures and electronic copies hereof shall be deemed to constitute duplicate originals.

**IN FURTHERANCE WHEREOF**, the parties hereto have executed this Agreement as of the date and year first written above.

**CITY OF MINNEAPOLIS**

DocuSigned by:  
*Pam Fernandez*  
By: \_\_\_\_\_  
Finance Officer  
Assistant Director of Procurement  
Procurement Director

Responsible Department

Head Approval:

DocuSigned by:  
*Andrea Brennan*  
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Andrea Brennan, Director CPED

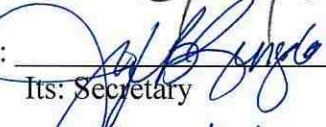
Approved as to form:

DocuSigned by:  
*Shelley A Roe*  
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Assistant City Attorney

**CITY OF MINNEAPOLIS ACTING BY AND  
THROUGH ITS PARK AND  
RECREATION BOARD**

By:  \_\_\_\_\_  
Its: President

Date: 6/7/21 \_\_\_\_\_

By:  \_\_\_\_\_  
Its: Secretary

Date: 6/2/2021 \_\_\_\_\_

Approved as to form:

  
\_\_\_\_\_  
Attorney for the Minneapolis  
Park & Recreation Board

**UNITED PROPERTIES DEVELOPMENT LLC**

DocuSigned by:  
By: Brandon Champeau  
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Its: Senior Vice President

By: \_\_\_\_\_  
Its: \_\_\_\_\_