

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT  
CITY OF DULUTH  
BEN & ADELINE GRAMS  
2309 WEST 8<sup>TH</sup> STREET**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF DULUTH, hereinafter referred to as "City", and BEN GRAMS & ADELINE GRAMS (*nee* Green), married to each other and hereinafter referred to together as "Developer".

WHEREAS, Developer owns certain Property, hereinafter described in Exhibit A, and the buildings located thereon, and has proposed to develop the Project as hereinafter described which includes the demolition of the existing buildings and the construction on said Property of not less than 1 primary housing unit with a minimum of two (2) bedrooms which must be rented to individuals or families having a housing choice voucher and/or making 80% of the area median income or less, as determined by HUD's annual income limits, for a minimum of ten (10) years.

WHEREAS, portions of said Property are deteriorated beyond repair due to a fire incident and the Property has been condemned for human habitation, increasing the cost of the Project or any development at the property; and

WHEREAS, City established a program to support blight mitigation under its local Community Development program using federal Community Development Block Grant funding, with said blight mitigation program providing an amount not to exceed \$30,000 to cause the razing of said Property consistent with blight mitigation program parameters, contingent on the Project proceeding; and

WHEREAS, Developer has requested assistance from City for the demolition of the existing building(s) related to the redevelopment of said Property and the development of said Project as is hereinafter set forth since, without such assistance, the Project would not be economically viable;

WHEREAS, the City has further determined that the interests of the citizens of City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project;

WHEREAS, The City and Developer entered into a development agreement on June 22<sup>nd</sup>, 2021 that was signed electronically due to COVID-19 and is not in recordable form and this agreement is intended to amend and restate the original agreement and be signed in the correct format for recording;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. City means the City of Duluth.
- B. Director means the Director of Planning and Economic Development or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- C. Community Development Block Grant: means that the Community Development Block Grant not to exceed \$30,000 received by The City to assist in funding the demolition of the structure on the Property.
- D. Plans: means the plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project.
- E. Project: means the development on the Property by Developer of not less than 1 primary housing unit with a minimum of two (2) bedrooms which must be rented to individuals or families having an income at or below 80% of the area median income as determined by HUD's annual income limits and/or having been issued a Housing Choice Voucher.
- F. Property: means that Property located in St. Louis County, Minnesota, described on Exhibit A attached hereto and made a part hereof.
- G. Demolition: means the plans, specifications, and contracted work to be completed to remove all structures on the Property.

## **ARTICLE II**

### Structure Demolition

- A. Grant: City has applied for and has been awarded the Community Development Block Grant to fund the anticipated cost of demolishing the condemned structure on the Property identified above. Subject to the acceptance thereof by City, City agrees to use the funds received by it from the Community Development Block Grant to pay the selected demolition contractor for the demolition of the condemned structure.
- B. Hazardous Material Remediation: Hazardous material such as asbestos, lead, and other hazardous materials must be tested for prior to the demolition with costs to be covered by City. If hazardous materials are found to be present, City will cover costs of remediation of the material and it must take place prior to demolition. If testing and remediation work has already occurred on the property, supporting documentation of this work must be provided to City no later than fifteen (15) days prior to City issuing an RFP for demolition.
- C. Demolition work: City agrees to fund the demolition of the condemned structure with funds from the Community Development Block Grant. City will identify the contractor by seeking Request for Quotes from qualified and licensed contractors in the area. City agrees to pay the selected demolition contractor for the full demolition of the condemned structure as well as any outbuildings that reside on the Property. Demolition scope shall be limited to demolition of structure(s) and backfill of the foundation. City will not include in the cost of demolition any extra grading or soil work, utility connection, or any work that will be considered more than demolition and backfill of the current structure.
- D. Timeline: Contract for demolition of condemned structure shall have been awarded and demolition activities started no later than ninety (90) days after the effective date of this agreement. An extension of thirty (30) days may be approved at the sole discretion of the Director if presented in writing and signed by both City and Developer. This extension must be agreed upon prior to the initial ninety (90) day timeline expiring.

### **ARTICLE III**

#### Project Plans and Construction

- A. Project Plans: Site plans for the project shall be submitted for approval by the City of Duluth the Planning and Development Division no later than January 26<sup>th</sup>, 2024. Project plans must conform to all applicable building, zoning, or other codes or ordinances. The Planning and

Development Division shall respond with written comments on the submitted plans no later than fifteen (15) days of receiving the site plans

- B. Construction: Developer will submit all plans to City Construction Services and Inspections Division and will acquire any and all necessary permits required for the construction of the project. Submission of the project to the Construction Services and Inspections Division will occur no later than sixty (60) days after receiving written comments from the Planning and Development Division.
- C. Project Completion: Project must be completed and obtain its certificate of occupancy on or before September 6<sup>th</sup>, 2024. The Project Completion Date can be extended for up to ninety (90) days from the aforementioned date. The request must be submitted to the Director in writing no later than thirty (30) prior to the completion date expiring.
- D. Project Reporting: City retains the right to, on an annual basis, request proof of rents received from future tenants to ensure Developer is adhering to the terms set forth in this Agreement. All units must be rented to an individual or family that makes no more than 80% Area Median Income as set forth by that year's HUD income limits qualifications. Proof of rent may be submitted in the form of a signed affidavit by the tenant(s).
- E. Maintenance and Operation: Developer agrees to maintain and operate all units after construction is completed in a clean and habitable manner as set forth in Chapter 29A of the City of Duluth Municipal Code. The units shall remain in compliance with local building and maintenance codes throughout the duration of this agreement.

## **ARTICLE IV**

### Developer Defaults and Remedies Therefor

- A. Events of Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable. Any Notice of Default shall be submitted to the Developer in writing, by registered mail, and developer shall be allowed thirty (30) days to cure.
  - 1. Developer fails to submit to the Director, after demolition, Project Plans by the date stated in Article II, Paragraph A.

2. Developer shall fail to pay real estate taxes as and when due and payable.
3. Developer shall fail to maintain and operate the units in a safe, clean, and habitable condition that adheres to all maintenance codes as set forth in Chapter 29A of the City of Duluth Municipal Code.
4. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
5. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property in the amount of the cost of demolition

B. Remedies. City shall have the following remedies in the event of a default:

1. Terminate this Agreement.
2. Seek and be entitled to monetary damages for any damages incurred by City as a result of a default in the form of assessing the amount of demolition to the property in the form of a special assessment or in the form of acquiring the Property from the Developer in the form of donation.
3. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver. The waiver by City of any default on the part of Developer or the failure of City to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer under this Agreement. To be effective, any waiver of any default by Developer hereunder must be

in writing by the Director.

- D. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- E. Attorneys' Fees. In the event that Developer is in default of any of the terms and conditions of this Agreement and City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, City shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

## **ARTICLE V**

### Representations by the City

City makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully incorporated city under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of City, threatened against City or any property of City in any court or before any federal, state, municipal or governmental agency which, if decided adversely to City, would have a material adverse effect upon City or any business or property of City and City is not in default with respect to any order of any court or government agency.
- C. City will perform all of its obligations under this Agreement.

## **ARTICLE VI**

### Developer's Representations and Warranties

Developer represents and warrants that:

- A. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this

Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.

- B. No actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.
- C. Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- D. Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- E. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to City or any third party under this Agreement to be true, correct, and complete in all material respects.

## **ARTICLE VII**

### Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

## **ARTICLE VIII**

### Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City:      Room 160 City Hall  
   411 West First Street  
   Duluth, MN 55802  
   Attn: Brett Crecelius

In the case of Developer:    Ben & Adeline Grams  
   5620 West 6<sup>th</sup> Street  
   Duluth, MN 55807

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

## **ARTICLE IX**

### Disclaimer of Relationships

Developer acknowledges that nothing contained in this Agreement nor any act by City or Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between City, Developer and/or any third party.

## **ARTICLE X**

### Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.



## **ARTICLE XI**

### **Judicial Interpretation**

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

## **ARTICLE XII**

### **Authorization to Execute Agreement**

Developer represents to City that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

## **ARTICLE XIII**

### **Title of Articles**

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

## **ARTICLE XIV**

### **Severability**

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

## **ARTICLE XV**

### **Unavoidable Delays**

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

## **ARTICLE XVI**

### **Entire Agreement**

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

## **ARTICLE XVII**

### **Counterparts**

This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

*(The remainder of this page intentionally left blank)*

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date shown below.

**CITY OF DULUTH:**

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

Its Mayor

STATE OF MINNESOTA   )  
  ) SS  
COUNTY OF ST. LOUIS   )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Emily Larson, Mayor of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_

Its:   City Clerk

Date Attested: \_\_\_\_\_, 2023

STATE OF MINNESOTA   )  
  ) SS  
COUNTY OF ST. LOUIS   )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Ian Johnson, City Clerk of the City of Duluth, a municipal corporation organized and existing under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public

**DEVELOPER:**

Ben Grams & Adeline Grams

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

Name: Ben Grams

STATE OF MINNESOTA   )  
  ) SS  
COUNTY OF ST. LOUIS   )

This instrument was acknowledged before me on \_\_\_\_\_, 2023  
by Ben Grams.

\_\_\_\_\_  
Notary Public

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

Name: Adeline Grams

STATE OF MINNESOTA   )  
  ) SS  
COUNTY OF ST. LOUIS   )

This instrument was acknowledged before me on \_\_\_\_\_, 2023  
by Adeline Grams.

\_\_\_\_\_  
Notary Public

This instrument was drafted  
by:  
Assistant Duluth City Attorney  
Room 410  
DEDA Hall  
Duluth, Minnesota 55802  
(218)730-5490

2309 West 8<sup>th</sup> Street

**Exhibit A- Property Description**

Lot Three Hundred Seventy-Three (373), Block One Hundred Seventy-Three (173),  
Duluth Proper Second Division, St. Louis County, Minnesota.