

December 18, 2006
Date

RESOLUTION APPROVING THIRD AMENDMENT
TO URBAN RENEWAL AGREEMENT
(Court Avenue Lofts and 4th Street Condos)

WHEREAS, on November 8, 2004, by Roll Call 04-2446, the City Council approved an Urban Renewal Development Agreement with Court Avenue Partners II, L. P. (now known as Court Avenue Partners II, LLLP) (the "Developer"), whereby the City has agreed to sell the vacant City-owned parcel west and south of the Spaghetti Works Building that has been designated as Disposition Parcel No. 99A-1 of the Metro Centre Urban Renewal Area (the "Property") to Developer and Developer has agreed to construct improvements on the Property, including a building at the Southeast corner of Court Avenue and 4th Street to contain 8,500 square feet of commercial space and common amenities for the apartments on the first floor and 52 units of apartments on the second through fifth floors, forty residential condominium units for sale along the east side of 4th Street, 67 underground parking spaces and 50 surface parking spaces (collectively the "Improvements"), and the City has undertaken to provide certain financial incentives and to provide for the use of up to 25 off-street parking spaces within the area for use exclusively by the tenants residing upon the Property; and,

WHEREAS, on November 7, 2005, by Roll Call No. 05-2679, the City Council approved the First Amendment to Urban Renewal Agreement to redirect payment of a portion of the economic development grant to Court Avenue Investors, Inc. ("CAI"), and to assign CAI primary responsibility for any repayment due the City from excess income and net proceeds of sale or refinancing; and,

WHEREAS, on March 20, 2006, by Roll Call No. 06-537, the City Council approved the Second Amendment to the Urban Renewal Agreement to provide for immediate conveyance of the Property to Developer and to give the Developer additional time to provide evidence of its financing of the Improvements; and,

WHEREAS, on May 8, 2006, by Roll Call No. 06-911, the City Council approved the Conceptual Development Plan for development of the Improvements by Developer; and

WHEREAS, Developer has taken title to the Property, has provided evidence satisfactory to the City Manager that it has the financial commitments to complete development of the Improvements and has commenced construction of the Improvements, including, but not limited to installation of the footings and foundations for the buildings that it is constructing upon the Property, but because of the time it has taken to secure all the financial commitments and the complexity of the project it will require additional time to complete the Improvements and has requested a third amendment to the Urban Renewal Agreement to give the Developer until March 31, 2008 to complete construction of all of the Improvements; and,

(continued)

Date..... December 18, 2006

WHEREAS, US Bancorp Community Investment Corporation, as the tax credit investor limited partner in Developer, only wants to be involved in the apartment portion of the projects that has the low-income housing tax credits, and therefore, Developer proposes to file a Declaration of Submission of the Property to Horizontal Property Regime for the 4th and Court Condominiums and to transfer the commercial condominium unit and the for sale residential condominium units and underground parking garage to Court Avenue Ventures, L.L.P., the general partner of Developer, who will finance and develop the commercial and for sale residential condominium and underground parking garage portions of the Improvements and the consent of the City is required under the Urban Renewal Agreement to this transfer of a portion of the Property prior to completion of the Improvements; and

WHEREAS, the dwelling units in the apartment building will remain in Developer's ownership as a multiple-family dwelling in a single condominium unit and will not be separated into individual dwelling units; and,

WHEREAS, Valley Bank, as the construction and permanent lender to Developer and to Court Avenue Ventures, L.L.P., has requested that the City consent to its placing a first mortgage lien upon the various portions of the Property owned by Developer or Court Avenue Ventures, L.L.P. and to subordinate the City's lien rights under the Urban Renewal Agreement (except for its right to enforce the Urban Renewal Covenants contained in Subsections 52(1), (2), (4), (5), and (8) and its right to consent to any further transfers of any interest in the Property prior to completion of the Improvements contained in Subsection 52(6) of the Urban Renewal Agreement) to the first mortgage lien rights granted by Developer and Court Avenue Ventures, L.L.P. to Valley Bank to finance this development; and

WHEREAS, it was always the intent of the City that a lender financing development of the Improvements would be able to obtain a first mortgage lien upon the Property and that approval of the proposed transfer and subordination agreement requested by Valley Bank is in the best interests of completing this project; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The Third Amendment to the Urban Renewal Agreement by and between the City and Court Avenue Partners II, LLLP, is hereby approved.
2. The Developer is hereby authorized to file the Declaration of Submission of the Property to a Horizontal Property Regime for the 4th and Court Condominiums and to transfer the commercial condominium unit and the residential condominium units and parking garage

(continued)

★ **Roll Call Number**

Agenda Item Number

41

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 Date December 18, 2006

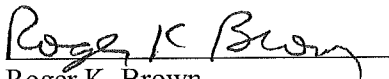
units and their respective undivided fractional interests in the various limited and general common elements appurtenant to each such condominium unit to Court Avenue Ventures, L.L.P.

3. The *Estoppel Certificate and Subordination Agreement* and the *Collateral Assignment of Urban Renewal Agreement* for the project described above is hereby approved, with such minor changes thereto as may hereafter be approved by the City Attorney.
4. The Mayor is authorized and directed to sign the *Third Amendment to the Urban Renewal Agreement*, the *Estoppel Certificate and Subordination Agreement*, and the *Collateral Assignment of Urban Renewal Agreement* on behalf of the City and the City Clerk is authorized and directed to attest to the Mayor's signature on such documents.
5. The City Clerk is further authorized and directed to forward a certified copy of this roll call and the Third Amendment to the Urban Renewal Agreement to the Polk County Recorder's office for recording.

(Council Communication No. 06- 787)

MOVED by _____ to adopt.

FORM APPROVED:



Roger K. Brown
 Assistant City Attorney

C:\Rog\Eco Dev\Court Ave\Court Ave 3\Dev Agr\3rd\RC approve.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ Mayor

_____ City Clerk