



Date April 18, 2022

RESOLUTION APPROVING THIRD AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH MERLE HAY INVESTORS, LLC, FOR REHABILITATION OF EXISTING MERLE HAY MALL PROPERTY AND REPURPOSING THE SEARS SITE

WHEREAS, Merle Hay Investors, LLC ("MH Investors"), represented by Elizabeth Holland, CEO/General Counsel, Abbell Associates, LLC, requested financial assistance from the City to address the fact that two anchors at Merle Hay Mall, namely Sears and Youngers, have closed within 45 days of each other after 59 years of continuous operation; and

WHEREAS, on January 28, 2019, by Roll Call No. 19-0151, the City Council approved preliminary terms of an agreement with MH Investors and directed the City Manager or the City Manager's designee to negotiate a final agreement for consideration by the City Council at a later time; and

WHEREAS, on March 25, 2019, by Roll Call No. 19-0479, the City Council approved the Urban Renewal Development Agreement ("Agreement") with MH Investors, whereby MH Investors agreed to renovate existing spaces within the mall for new tenants (the "Phase A Improvements"), and to acquire and renovate or redevelop the existing Sears building site and portions of the mall parking lots to allow for re-tenanting the Sears site (the "Phase B Improvements"), in exchange for two phases of economic development assistance as set forth in the Agreement; and

WHEREAS, the Agreement further provides that if MH Investors, directly or through a related entity under common ownership and control with MH Investors, does not acquire the Sears site, the City's obligation to advance the installments on the Phase A Economic Development Grant will expire upon payment of the 7th installment, and the City will have no obligation to advance any installments on the Phase B Economic Development Grant; and

WHEREAS, on August 17, 2020, by Roll Call No. 20-1332, the City Council approved the First Amendment to the Agreement, extending the deadline for MH Investors to submit to the City a proposed Master Plan and Conceptual Development Plan for the Phase B Improvements from September 25, 2020 to May 1, 2021, following the developer's request due to the longer-than-anticipated conversations regarding environmental issues and purchase price with the property seller (Sears); and

WHEREAS, on October 19, 2020, by Roll Call No. 20-1662, the City Council approved the Second Amendment to the Agreement, revising the definition of the eligible Phase A and Phase B expenses to include acquisition costs of the Sears parcel in addition to the cost of design and construction of improvements to said parcel to address a financial gap identified by the MH Investors in relation to the purchase of said parcel; and

WHEREAS, the Agreement requires MH Investors to provide a Minimum Assessment Agreement for the Phase B Improvements, and further requires that MH Investors cause at least 75,000 square feet of the ground floor of a building on Parcel 10 to be occupied by one or more tenant(s) on commercially reasonable terms by April 1, 2022 as a condition precedent to receipt of the Phase B Economic Development Grant installment payments from the City; and



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WHEREAS, MH Investors was unable to meet the April 1, 2022 condition precedent deadline related to occupancy of a building on Parcel 10, and may not be able to meet the minimum required amount of 75,000 square feet of occupancy in such building in the future; and

WHEREAS, the City's Economic Development Division has negotiated a Third Amendment to the Agreement with MH Investors, in form on file with the City Clerk, which Amendment extends the condition precedent deadline related to occupancy of a building on Parcel 10 from April 1, 2022 to September 15, 2023, revises the Phase B Economic Development Grant to allow for reduction in semi-annual grant payments made by the City on a prorated basis if MH Investors does not meet the minimum required 75,000 square feet of occupancy in such building by said extended deadline of September 15, 2023, and updates the Minimum Assessment Agreement attached as an exhibit to the Agreement to reflect the sale of a portion of the property by MH Investors to a redeveloper.

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 Merle Hay Investors, LLC, including the amended Minimum Assessment Agreement attached thereto, is hereby approved, and the Mayor is authorized and directed to execute Amendment and Minimum Assessment Agreement on behalf of the City of Des Moines and the City Clerk to attest to his signature.
2. The City Manager and his designees are hereby authorized and directed to administer the Agreement and Minimum Assessment Agreement on behalf of the City and to monitor compliance by MH Investors with the terms and conditions of the Agreement, as amended. The City Manager is further directed to forward to City Council all matters and documents that require further City Council review and approval in accordance with the Agreement, as amended.

(Council Communication No. 22- 178)

MOVED by _____ to approve.

Second by _____.

FORM APPROVED:

/s/ Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, SHEUMAKER, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, P. KAY CMELIK, 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.

City Clerk