



Roll Call Number

20-1129

Agenda Item Number

45

Date July 13, 2020

RESOLUTION APPROVING TERMINATION AGREEMENT WITH ILEX GROUP, INC. FOR DEVELOPMENT IN THE VICINITY OF 4600 NE 14TH STREET

WHEREAS, the City and Northridge Limited Partnership, an Iowa limited partnership and predecessor in ownership to current property owner ILEX Group, Inc. (“Developer”), are parties to a Development Agreement approved by the Des Moines City Council and recorded on January 23, 1987, in Book 5677, Page 157 in the office of the Polk County Recorder, whereby Northridge Limited Partnership agreed to undertake stormwater, sanitary sewer, and right-of-way improvements in connection with a proposed development of a regional shopping center on real property on the west side of N.E. 14th Street north of Broadway Avenue and south of Interstate 35/80 in Polk County, Iowa, in the vicinity of 4600 NE 14th Street (“Property”), as part of an annexation of the Property into the City of Des Moines; and

WHEREAS, the Development Agreement was assigned to Developer’s predecessor by Assignment of Agreements dated December 27, 1999 and recorded on May 25, 2000 in Book 8502, Page 739 in the office of the Polk County Recorder, and thereafter was assigned to Developer; and

WHEREAS, the proposed development did not occur and Developer now intends to undertake a warehouse development on the Property; and

WHEREAS, City Engineering staff have determined that the Developer’s original obligations relating to stormwater, sanitary sewer and right-of-way/traffic improvements as set forth in the Development Agreement are no longer necessary; and

WHEREAS, City staff and Developer have agreed upon a Modification and Partial Termination Agreement to terminate the Developer’s obligations under the Developer Agreement relating to stormwater, sanitary sewer, and right-of-way improvements and allow the Developer to move forward with its new development proposal, while retaining all terms relating directly to the annexation of the Property into the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Modification and Partial Termination Agreement between the City of Des Moines and ILEX Group, Inc., on file in the office of the City Clerk, is hereby approved, terminating the Developer’s original obligations under the Development Agreement relating to stormwater, sanitary sewer, and right-of-way improvements effective immediately, while retaining all terms relating directly to the annexation of the Property into the City.



Roll Call Number

20-1129

Agenda Item Number

45

Date July 13, 2020

(Council Comm. No. 20-312)

MOVED BY Gatto to adopt.

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, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

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.

J. M. Frankin Cownie Mayor

[Signature of P. Kay Cmelik]

City Clerk

Modification and Partial Termination Agreement

Preparer information and return document to

Vantage Law Group, PLLC
Attn: Joseph L. Nuñez, Esq.
125 SE Main Street, Suite 250
Minneapolis, MN 55414

City: City of Des Moines, Iowa a municipal corporation c/o Glenna K. Frank Assistant City Attorney 400 Robert D. Ray Drive Des Moines, IA 50309	Developer: ILEX Group, Inc., a Minnesota corporation 5101 Vernon Avenue South Edina, MN 55436
---	--

Modification and Partial Termination Agreement

This Modification and Partial Termination Agreement is made and entered into on or as of the 10th day of July, 2020, by and between the City of Des Moines, Iowa, a municipal corporation (hereinafter the "**City**") and ILEX Group, Inc. (hereinafter "**Developer**").

WHEREAS, the City and Northridge Limited Partnership, an Iowa limited partnership and predecessor in ownership to Developer, are parties to a Development Agreement approved by the Des Moines City Council and recorded on January 23, 1987, in Book 5677, Pages 157-287 in the office of the Polk County Recorder, whereby Northridge Limited Partnership agreed to undertake stormwater, sanitary sewer, and right-of-way improvements in connection with a proposed development of a regional shopping center on real property on the west side of N.E. 14th Street north of Broadway Avenue and south of Interstate 35/80 in Polk County, Iowa ("**Property**"), as part of an annexation of the Property into the City of Des Moines; and

WHEREAS, the Development Agreement was assigned by Northridge Limited Partnership to Jerry's Enterprises, Inc. by Assignment of Agreements dated December 27, 1999 and recorded on May 25, 2000 in Book 8502, Pages 739-745 in the office of the Polk County Recorder, and Jerry's then conveyed the Property and assigned the Development Agreement to its affiliate, ILEX Group, Inc., by an Assignment and Assumption Agreement effective October 13, 2016 and recorded on July 9, 2020 in Book 17938, Page 857 in the office of the Polk County Recorder; and

WHEREAS, the proposed shopping center development contemplated in the Development Agreement did not occur and Developer or its designee now intends to undertake an industrial/commercial development (which may include warehouse and other light industrial or commercial uses) on the Property in the near future; and

WHEREAS, the City has determined that the Developer's original obligations relating to stormwater, sanitary sewer and right-of-way improvements are no longer necessary; and

WHEREAS, the City and Developer desire to terminate the original developer's obligations under the Developer Agreement relating to stormwater, sanitary sewer, and right-of-way improvements, while retaining all terms relating directly to the annexation of the Property into the City as well as certain other provisions of the Development Agreement, upon the terms set forth below.

NOW, THEREFORE, the City and Developer hereby agree as follows:

1. All rights and obligations of Developer and of City pursuant to Sections 4 and 5 of the Development Agreement (Book 8502, pages 159-165) relating to stormwater, sanitary sewer, right-of-way and traffic improvements, are hereby terminated and released and shall be of no further force or effect. In the event the City requires certain such easements over a portion of the Property, Developer and the City will work together to locate the easement areas so as to minimize any adverse effect to the developable areas of the Property.

2. The terms and conditions relating to the annexation of the Property into the City contained in Sections 1, 2, 3, and 6 of the Development Agreement (Book 8502, Pages 158-159, 165-166) shall remain in full force and effect.

3. Section 15 of the Development Agreement (Book 8502, page 168) remains in full force and effect but hereby modified, as necessary, to reflect the change in use of the Property.

4. The first sentence of Section 9 of the Development Agreement (Book 8502, page 166), but not the second sentence of said Section, remains in full force and effect but hereby modified to reflect the change in use of the Property.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first above written.

ILEX Group, Inc.

By: BCF

Its: VP Finance

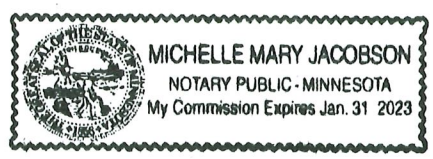
State of Minnesota } ss.
County Hennepin

The foregoing instrument was acknowledged before me under penalty of perjury this 16th day of July, 2020 by Ben Schuites, the VP of Finance of ILEX GROUP, INC., a Minnesota corporation, on behalf of the corporation.

Michelle Jacobson
Notary Public

My Commission Expires: 1/31/2023

SEAL



CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this *13th* day of *July*, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- *1129* of City Council on the *13th* day of *July*, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.



Rachel Mariko Brown
Notary Public in the State of Iowa
My commission expires: *4/5/2023*