

Date September 28, 2009

RESOLUTION GIVING TENTATIVE APPROVAL TO A PROPOSAL TO WAIVE THE LIMITATIONS ON TAX ABATEMENT WITHIN AIRPORT CROSSROADS

WHEREAS, the City-wide Urban Revitalization Plan provides that qualifying improvements to commercial and industrial property located within the Airport Commercial Park sub-area (commonly known as the Airport Commerce Park South and Airport Crossroads) and the Airport Business Park subarea may qualify for tax abatement under the 3-year 100% and the 10-year declining abatement schedules; and,

WHEREAS, the Airport Commercial Park and Airport Business Park sub-areas are subject to Declarations of Covenants recorded in the Office of the Recorder of Polk County, Iowa, as identified below, which operate to contractually restrict the uses eligible for tax abatement, and limit tax abatement to the 3-year 100% abatement schedule:

Within the Airport Commercial Park sub-area

Table with 3 columns: Document, Date Recorded, Book - Page. Rows include Declaration of Covenants (01-27-1997, 7564-257), Supplemental Declaration of Covenants (12-29-1998, 8102-048), 2nd Supplemental Declaration of Covenants (07-30-2001, 8923-128), and Declaration of Covenants (03-07-2005, 10963-518).

Within the Airport Business Park sub-area

Table with 3 columns: Document, Date Recorded, Book - Page. Rows include Declaration of Covenants (05-15-1997, 7634-107), Supplemental Declaration of Covenants (11-01-2002, 9422-546), and Supplemental Declaration of Covenants (11-06-2002, 9434-688).

WHEREAS, the contractual restrictions on the uses eligible for tax abatement imposed by the Declarations of Covenants identified above, are more restrictive than what may be imposed unilaterally by the City under the City-wide Urban Revitalization Plan, and were agreed to by the property owners in consideration of the extension of commercial tax abatement to their properties; and,

WHEREAS, the City required the Declaration of Covenants as a condition to extending tax abatement to these properties to prevent these properties from having an unfair advantage over the balance of the commercial retail property along Fleur Drive in attracting and retaining commercial tenants; and,

WHEREAS, Fleur Properties, L.C., represented by Michael Barnes, officer, has requested that the City Council waive the City's rights under the applicable Declaration of Covenants, and permit tax abatement for improvements to property within portions of Airport Crossroads Subdivision which are proposed to be developed for general retail use; and,

(continued)

★ **Roll Call Number**

Agenda Item Number

30

Date September 28, 2009

-2-

WHEREAS, the City Manager has expressed a concern in the accompanying Council Communication regarding the impact of the proposed request; NOW THEREFORE,

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

1. The City Council hereby declares its intent to consider waiving the City's right under the applicable Declaration of Covenants to limit the uses eligible for tax abatement, and to consider allowing tax abatement for improvements assessed as commercial property within Lot 5, and Lots 7 through 12 of Airport Crossroads Subdivision, subject to the following conditions:

- a) Compliance with the standard qualification requirements for tax abatement under the City-wide Urban Revitalization Plan; and,
- b) City Council approval of a development plan for such lots, to be prepared by Fleur Properties, L.C., and in sufficient detail to demonstrate to the City Council's satisfaction that:
 - (1) The development will be consistent with the overall intent of the Airport Commerce Park subarea and the City's plans for the development of the area;
 - (2) The development will be of a sufficient scale and quality of development to warrant a waiver of the limitation on the uses eligible for tax abatement; and,
 - (3) Adequate provision will be made to assure that once commenced, all phases of the development will be timely completed.

2. The City Council hereby reserves the right, in its sole discretion, to determine the sufficiency of the development plan and whether it resolves the concerns expressed in the accompanying Council Communication.

(Council Communication No. 09-699)

FORM APPROVED:

MOVED by _____ to adopt.

Roger K. Brown, Assistant City Attorney

C:\Rog\Revit\15th Amendment\Amend Cov\RC 09-28-2009 Approve V3.doc

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

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.

City Clerk

MOTION CARRIED

APPROVED

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Mayor