

Date March 20, 2017

RESOLUTION APPROVING *URBAN RENEWAL AGREEMENT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT* WITH 5TH AND WALNUT PARKING LLC FOR THE SALE AND REDEVELOPMENT OF THE FIFTH AND WALNUT PARKING GARAGE AT 422 WALNUT

WHEREAS, on July 13, 2015, by Roll Call No. 15-1207, the City Council received and filed a proposal from Mandelbaum Properties, represented by Justin Mandelbaum, for the purchase and redevelopment of the Fifth and Walnut Parking Garage at 422 Walnut Street (the "Property") and authorized and directed the City Manager to: i) work with Mandelbaum Properties regarding the potential redevelopment of the Property; and ii) initiate a process for selecting a developer and redevelopment proposal with competing proposals to be submitted by September 11, 2015, all as forth in Council Communication No. 15-377; and,

WHEREAS, on September 14, 2015, by Roll Call No. 15-1572, with no competing proposals received, the City Council selected Mandelbaum Properties as the preferred developer and authorized the Office of Economic Development to work with Mandelbaum Properties to refine the project's programming, design, and financial proposals and to present preliminary terms of agreement for consideration by City Council; and

WHEREAS, 5th and Walnut Parking, LLC (hereinafter the "Developer), has been created by Mandelbaum Properties to serve as the development entity for the redevelopment of the Property; and,

WHEREAS, the City's Office of Economic Development has negotiated final terms of agreement with the Developer whereby:

- The Developer has undertaken to purchase the Property for a purchase price of \$4 million, and to redevelop the Property by the construction of the following "Improvements":
  - The construction of a parking garage fronting on 5th Street in the middle of the Property, with approximately 564 parking spaces;
  - The construction of a movie theater fronting on Court Avenue (the "Theater Building") having at least 2 stories; and,
  - The construction of a building (the "Residential Building") anticipated to have 32 stories (but required to have at least 25 stories) fronting on Walnut Street with a hotel having at least 50 lodging rooms on the lower floors and approximately 200 residential dwelling on the upper floors.with the Parking Garage to be constructed first, and either the Theater Building or Residential building to be constructed second.

- The City would undertake to provide the following financial incentives:

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- A Forgivable Economic Development Loan in the amount of \$4 million for the benefit of the Residential Building, to be advanced upon sale of the Property and forgiven upon substantial completion of the Residential Building;
- Urban renewal construction period tax abatement on each phase;
- An economic development loan designated as the "Parking Shortfall Loan" to be advanced in semi-annual installments over 20 years commencing on the substantial completion of the parking garage. The semi-annual advances are equal to the installments required to fully amortize the Developer's first mortgage loan having a principal value of \$39,345,946 at a market rate of interest, reduced by the net operating income from the operation of the parking garage;
- An economic development grant for each phase whereby the City returns 100% of the tax increment generated by that phase for 20 years, provided however that any tax increment generated by the Residential Building and Theater Building after Year 11 for each respective building, above the amount returned in Year 11, shall be applied to reduce the balance of the Parking Shortfall Loan;
- Upon full repayment of the Developer's first mortgage loan, the City shall forgive a portion of the Parking Shortfall Loan equal to \$6,826,779 of the principal, together with the accrued interest that portion;

all as more specifically described in the *Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "Agreement") which is on file in the office of the City Clerk; and,

WHEREAS, the Property referenced in this resolution is more specifically described as follows:

Lots 1 through 6 and the two intervening vacated East/West alley rights-of-way, in Block 21, Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

WHEREAS, on February 13, 2017, by Roll Call No. 17-0233, the City Council accepted the Agreement and authorized publication of notice of intent to enter into the Agreement at a public hearing on March 20, 2017, if no competing proposals were received by the City by March 17, 2017; and

WHEREAS, notice of the public hearing was published in the Des Moines Register on February 14, 2017; and

WHEREAS, the City received no competing proposals for the purchase and redevelopment of the Property.

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

1. Upon due consideration of the facts and statements of interested persons, the objections to the sale and conveyance of the Property to the Developer as set forth in the Agreement are hereby overruled and the hearing is hereby closed.
2. The City Council hereby makes the following findings regarding the proposed sale and conveyance of the Property pursuant to the Agreement:
  - a) It is reasonably anticipated that the construction and operation of the Improvements on the Property will provide a substantial number of employment opportunities.
  - b) The Developer's obligation under the Agreement to construct the Improvements furthers the objectives of the Urban Renewal Plan to preserve and create an environment which will protect the health, safety and general welfare of City residents and maintain taxable values within the Urban Renewal Project Area, to increase employment opportunities, to encourage the development of market-rate housing in decent, safe and sanitary conditions in attractive settings to serve employees and other people who would like to live in the downtown area, and to encourage intensive and coordinated commercial and residential mixed-use development.
  - c) The economic development incentives for the development of the Improvements shall be provided by the City to Developer pursuant to the Urban Renewal Law and Chapter 15A of the Code of Iowa and Developer's obligation under the Agreement to construct the Improvements will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Court Avenue area in accordance with the Urban Renewal Plan, the What's Next, Downtown? plan and the PlanDSM: Creating Our Tomorrow plan; (ii) it will further the City's efforts to create and retain job opportunities within the Project Area which might otherwise be lost; (iii) it will provide a new upscale housing option not presently available in the downtown area; (iv) it will provide convenient access to recreational activities not otherwise available in the downtown area; and, (v) it will encourage further private investment and will attract and retain residents and businesses in the Court Avenue area.
  - d) The construction of the Improvements is a speculative venture and the construction and resulting employment, housing and redevelopment opportunities would not occur without the economic incentives provided by the Agreement; and,
  - e) The fair market value of the Property subject to the terms, conditions, restrictions, requirements, limitations and covenants imposed by the terms of the Agreement is Four Million Dollars (\$4,000,000).

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- f) The redevelopment of the Property pursuant to the Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which the project has been undertaken, and warrant the provision of the economic assistance set forth in the Agreement.
3. The *Urban Renewal Agreement for Sale of Land for Private Redevelopment* between the City and 5th and Walnut Parking LLC, is hereby approved.
4. The Mayor is hereby authorized and directed to execute the Agreement on behalf of the City and the City Clerk is hereby authorized and directed to attest to the Mayor's signature on the Agreement.
5. Upon request by the Office of Economic Development and approval by the City Legal Department, the Mayor and City Clerk are further authorized and directed to sign following documents required in the administration and implementation of the Agreement:
  - a) Special Warranty Deed in the form of Exhibit "A" to the Agreement.
  - b) Skywalk Agreement and the exhibits thereto in the form of Exhibit "F" to the Agreement.
  - c) Partial Subordination of Mortgage to the Developer's Preconstruction Mortgage as provided in Section 2.10(B) of the Agreement
  - d) Partial Subordination of Mortgage to the Developer's Construction Mortgage as provided in Section 4.3 of the Agreement.
  - e) Partial Release of Mortgage on the Theater Parcel as provided in Section 5.3 of the Agreement.
  - f) Partial Release of Mortgage on the Residential Parcel as provided in Section 5.5 of the Agreement.
6. Upon requisition by the City Manager or the City Manager's designee, the Finance Department shall advance the installments on the economic development grants and loans as the same become due and payable pursuant to Article 9 of the Agreement.
7. The City Manager or his designees are hereby authorized and directed to administer the Agreement on behalf of the City and to monitor compliance by the Developer with the terms and conditions of the Agreement. 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.

★ Roll Call Number

Agenda Item Number

604

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( Council Communication No. 17- 285 )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

Roger K Brown

Roger K. Brown, Assistant City Attorney

G:\APPDATA\LEGAL\Urban-Renewal\Metro\Projects\5th & Walnut\2nd Round\RC Select Developer & Approve Agr.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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.

MOTION CARRIED APPROVED

Mayor

City Clerk