

Date July 17, 2017

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

WHEREAS, on April 3, 2017, by Roll Call No. 17-0631, the City Council approved a *Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "Agreement") with 5th and Walnut Parking LLC (the "Developer"), represented by Justin Mandelbaum, whereby the Developer has undertaken to purchase the Fifth and Walnut Parking Garage (the "Property") and to redevelop that 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 or hotel (the "South Building") fronting on Court Avenue; and,
- The construction of a building (the "Residential Building") fronting on Walnut Street and having at least 200 residential dwellings. If the South Building is not a hotel the Residential Building shall also contain a hotel with at least 84 guest rooms; and,

WHEREAS, the Agreement further provides that in consideration of the undertakings by the Developer, the City shall provide the following financial incentives:

- 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 Walnut Parking's first mortgage loan having a principal value (the "Stipulated Price") 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:
 - If the South Building is a hotel instead of a movie theater, the economic development grant for the hotel shall return 90% of the tax increment generated by the hotel for 20 years; and,
 - Any tax increment generated by the Residential Building and by the Theater or Hotel 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;

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- o Upon full repayment of Walnut Parking'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* between the City and Developer; and,

WHEREAS, the Parking Garage will be constructed first after demolition of the existing garage, and is required to be completed by October 31, 2019; and,

WHEREAS, construction of the Residential Building and the South Building are required to be commenced by October 31, 2019, and diligently pursued to completion; and,

WHEREAS, the Office of Economic Development has negotiated a *First Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "First Amendment") with the Developer which amends the Agreement as follows:

- o The Developer is allowed to add 4 floors of office space on top of the movie theater.
- o The size of the garage is increased by 107 parking spaces, to approximately 671 parking spaces.
- o The Stipulated Price for the parking garage backstopped by the Parking Shortfall Loan is increased to \$44,326,475, an increase of \$4,980,529.
- o The City shall provide up to 24 parking spaces in the 4th and Grand Parking Garage at market rate for use by Developer to replace parking spaces in the Kirkwood garage that will be inaccessible during demolition of the Fifth and Walnut Parking Garage and construction of the new parking garage. Upon the completion of the new parking garage, Developer will provide free parking in the new parking garage to replace up to 24 parking spaces in the Kirkwood garage that are inaccessible during the construction of the Residential Building and the South Building. If the provision of free parking in the new parking garage results in a decline in the net operating income of that garage, there will be a corresponding increase in the installments on the Parking Shortfall Loan.
- o Instead of retaining the southern extension of the Skywalk Bridge over Walnut and its connection to the Kirkwood Building, the Developer intends to demolish the southern extension of that Skywalk Bridge and replace the connection to the Kirkwood Building with a temporary pedestrian corridor which will block the north end of the north/south alley adjoining the Property from the start of demolition this summer, until substantial completion of the Residential Building.
- o Prior to the start of construction of the new parking garage, Developer will demonstrate to the satisfaction of the City Manager that Developer has paid an amount exceeding one-half of the Developer Fee for the new parking garage, to unrelated parties for professional services for, or directly related to, the design, pricing and financing of the Residential Building and the South Building, exclusive of the costs for the purchase and clearance of the land.

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WHEREAS, the First Amendment is on file and available for inspection in the office of the City Clerk.

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

1. The proposed *First Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment* with 5th and Walnut Parking LLC is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute the First Amendment on behalf of the City.
3. The City Manager or his designees are hereby authorized and directed to administer the Agreement as amended by the First Amendment on behalf of the City and to monitor compliance by Walnut Parking with the terms and conditions thereof. 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 so amended.

(Council Communication No. 17- 542)

MOVED by _____ to adopt.

FORM APPROVED:

Roger K Brown

Roger K. Brown, Assistant City Attorney

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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