

Date September 23, 2019

RESOLUTION APPROVING FIRST AMENDMENT TO AMENDED AND
RESTATED URBAN RENEWAL AGREEMENT WITH 5TH AND WALNUT
PARKING LLC REGARDING THE REDEVELOPMENT OF 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 agreed to purchase the Fifth and Walnut Parking Garage at 422 Walnut Street (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, on July 17, 2017, by Roll Call No. 17-1202, the City Council approved a *First Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "First Amendment") with the Developer which amended the Agreement to:

- Allow, but not require 4 additional floors of office space to be added on top of the movie theater;
- Increase the size of the garage by 107 parking spaces, to approximately 671 parking spaces; and,
- Increase the Stipulated Price for the parking garage backstopped by the Parking Shortfall Loan to \$44,326,475; and,

WHEREAS, on December 18, 2017, by Roll Call No. 17-2194, the City Council approved a *Second Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "Third Amendment") with the Developer which amended the Agreement to:

- Delay in the completion of the Parking Garage, without changes to any other deadlines, from October 31, 2019 to February 28, 2020;
- Acknowledge that the Parking Garage will contain 690 parking stalls, an increase of 19 parking stalls;
- Increase the "Stipulated Price" for the parking garage by \$884,393 to \$45,210,868; and,
- Allow the property to be divided into the three building sites by a declaration of a horizontal property regime instead of a plat of survey; and,

WHEREAS, on September 10, 2018, by Roll Call No. 18-1545, the City Council approved an *Amended and Restated Urban Renewal Agreement for Sale Of Land for Private Redevelopment* with the Developer which amended and restated the Agreement to:

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- Increase the minimum requirements for the Residential Building by increasing the minimum number of stories from 25 to 39 and increasing the minimum number of required guest rooms in the hotel from 84 to 120;
- Increase the minimum requirements for the South Building, if developed with a theater, to increase the minimum number of floors from 2 to 3, to increase the minimum height from 50 to 70 feet;
- Approve the proposed *Declaration of Submission of Property to Horizontal Property Regime for the 5th and Walnut Condominiums*, and allow the exhibits thereto to constitute an amendment to the previously approved Conceptual Development Plan for the Property;
- Delay in the commencement and completion of the Parking Garage to October 16, 2018, and August 16, 2020, respectively, without changes to any other deadlines;
- Acknowledge that the Parking Garage will contain 751 parking stalls, an increase of 61 parking stalls;
- Increase the “Stipulated Price” for the parking garage by \$2,839,367 to \$48,050,235; and,
- Require Developer to pay a Facility Fee in an amount between a minimum of \$1,000,000, and up to a total of \$2,250,000 if the use of the parking in the Parking Garage does not meet certain minimum standards; and,

WHEREAS, the northern portion of the Property to be redeveloped with the Residential Building has been conveyed to 5th and Walnut Tower LLC as anticipated by the Agreement; and,

WHEREAS, in response to a request by the Developer, the City Manager has negotiated a *First Amendment to Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the “First Amendment”) with the Developer and 5th and Walnut Tower LLC which amends the Agreement to:

- Delay the deadline for commencement of construction of the Residential Building from October 31, 2019, to April 30, 2020, and to delay the deadline for completion of the Residential Building from September 1, 2022 to March 1, 2023.
- Delay the deadline for commencement of construction of the South Building (proposed to contain a movie theater) from October 31, 2019, to October 31, 2020, with an additional delay to October 31, 2021 if construction is timely commenced on the Residential Building. In either event, the construction of the South Building shall be completed within 24 months of the required commencement date if the South Building is a movie theater, or within 30 months of the required commencement date if the South Building is a hotel.
- To allow the elevators in the northwest corner of the Parking Garage to be completed and ready for public use as part of the Residential Building if construction of the Residential Building is timely commenced. Otherwise, one of the elevators in the northwest corner of the Parking Garage and a ground floor lobby to that elevator with access to the adjoining public sidewalk must be completed and ready for public use upon completion of the Parking Garage.

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- To increase the time that theater patrons may park in the Parking Garage without charge from 3 hours to 4 hours.

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

1. The proposed *First Amendment to Amended and Restated Urban Renewal Agreement for Sale of Land for Private Redevelopment* with 5th and Walnut Parking LLC and 5th and Walnut Tower 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 Clerk is further authorized and directed to cause the First Amendment to be promptly recorded.
4. The City Manager or his designees are hereby authorized and directed to administer the Agreement as amended on behalf of the City and to monitor compliance by the Developer 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. 19- **415**)

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				
MANDELBAUM				
BOESEN				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

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