



Date May 9, 2022

RESOLUTION APPROVING THIRD AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH MERLE HAY INVESTORS, LLC, FOR REHABILITATION OF EXISTING MERLE HAY MALL PROPERTY AND REPURPOSING THE SEARS SITE

WHEREAS, Merle Hay Investors, LLC ("MH Investors"), represented by Elizabeth Holland, CEO/General Counsel, Abbell Associates, LLC, requested financial assistance from the City to address the fact that two anchors at Merle Hay Mall, namely Sears and Younkers, have closed within 45 days of each other after 59 years of continuous operation; and

WHEREAS, on January 28, 2019, by Roll Call No. 19-0151, the City Council approved preliminary terms of an agreement with MH Investors and directed the City Manager or the City Manager's designee to negotiate a final agreement for consideration by the City Council at a later time; and

WHEREAS, on March 25, 2019, by Roll Call No. 19-0479, the City Council approved the Urban Renewal Development Agreement ("Agreement") with MH Investors, whereby MH Investors agreed to renovate existing spaces within the mall for new tenants (the "Phase A Improvements"), and to acquire and renovate or redevelop the existing Sears building site and portions of the mall parking lots to allow for re-tenanting the Sears site (the "Phase B Improvements"), in exchange for two phases of economic development assistance as set forth in the Agreement; and

WHEREAS, the Agreement further provides that if MH Investors, directly or through a related entity under common ownership and control with MH Investors, does not acquire the Sears site, the City's obligation to advance the installments on the Phase A Economic Development Grant will expire upon payment of the 7th installment, and the City will have no obligation to advance any installments on the Phase B Economic Development Grant; and

WHEREAS, on August 17, 2020, by Roll Call No. 20-1332, the City Council approved the First Amendment to the Agreement, extending the deadline for MH Investors to submit to the City a proposed Master Plan and Conceptual Development Plan for the Phase B Improvements from September 25, 2020 to May 1, 2021, following the developer's request due to the longer-than-anticipated conversations regarding environmental issues and purchase price with the property seller (Sears); and

WHEREAS, on October 19, 2020, by Roll Call No. 20-1662, the City Council approved the Second Amendment to the Agreement, revising the definition of the eligible Phase A and Phase B expenses to include acquisition costs of the Sears parcel in addition to the cost of design and construction of improvements to said parcel to address a financial gap identified by the MH Investors in relation to the purchase of said parcel; and

WHEREAS, the Agreement requires MH Investors to provide a Minimum Assessment Agreement for the Phase B Improvements, and further requires that MH Investors cause at least 75,000 square feet of the ground floor of a building on Parcel 10 to be occupied by one or more tenant(s) on commercially reasonable terms by April 1, 2022 as a condition precedent to receipt of the Phase B Economic Development Grant installment payments from the City; and



Date May 9, 2022

WHEREAS, MH Investors was unable to meet the April 1, 2022 condition precedent deadline related to occupancy of a building on Parcel 10, and may not be able to meet the minimum required amount of 75,000 square feet of occupancy in such building in the future; and

WHEREAS, the City's Economic Development Division has negotiated a Third Amendment to the Agreement with MH Investors, in form on file with the City Clerk, which Amendment extends the condition precedent deadline related to occupancy of a building on Parcel 10 from April 1, 2022 to September 15, 2023, revises the Phase B Economic Development Grant to allow for reduction in semi-annual grant payments made by the City on a prorated basis if MH Investors does not meet the minimum required 75,000 square feet of occupancy in such building by said extended deadline of September 15, 2023, and updates the Minimum Assessment Agreement attached as an exhibit to the Agreement to reflect the sale of a portion of the property by MH Investors to a redeveloper.

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

- 1. The Third Amendment to the Urban Renewal Agreement by and between the City and Merle Hay Investors, LLC, including the amended Minimum Assessment Agreement attached thereto, is hereby approved, and the Mayor is authorized and directed to execute Amendment and Minimum Assessment Agreement on behalf of the City of Des Moines and the City Clerk to attest to his signature.
2. The City Manager and his designees are hereby authorized and directed to administer the Agreement and Minimum Assessment Agreement on behalf of the City and to monitor compliance by MH Investors with the terms and conditions of the Agreement, as amended. 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 amended.

(Council Communication No. 22- 216)

MOVED by _____ to approve.

Seconded by _____.

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, SHEUMAKER, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL.

MOTION CARRIED APPROVED

Mayor

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.

City Clerk

**THIRD AMENDMENT TO
URBAN RENEWAL DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF
DES MOINES, IOWA AND MERLE HAY INVESTORS, LLC
(MERLE HAY MALL PHASE 3 – MERLE HAY COMMERCIAL AREA
URBAN RENEWAL PROJECT)**

THIS THIRD AMENDMENT to Urban Renewal Development Agreement (Merle Hay Mall Phase 3 – Merle Hay Commercial Area Urban Renewal Project) (hereinafter “Third Amendment”) is entered into this ____ day of _____, 2022, by and between the City of Des Moines, Iowa (“City”) and Merle Hay Investors, LLC (“Owner”).

It is agreed by and between City and the Developer that:

1. The above-referenced Urban Renewal Agreement (herein referred to as “Agreement”), as authorized by the Des Moines City Council on March 25, 2019 by Roll Call No. 19-0479, and as amended by First Amendment thereto on August 17, 2020 by Roll Call No. 20-1332, and further amended by Second Amendment thereto on October 19, 2020 by Roll Call No. 20-1662, is hereby further amended in accordance with the terms set forth in this Third Amendment.

2. Section 2.2, “Approval of a Master Plan and Conceptual Development Plan”, subsection (E)(10), is hereby deleted in its entirety.

3. Section 3.2, “Minimum Assessment Agreement, subsection (A)(2), is hereby deleted in its entirety and replaced with the following:

2) Execute and deliver to the City the Minimum Assessment Agreement (the "**Phase B Minimum Assessment Agreement**") in the form attached hereto as Exhibit "D-2", no later than May 20, 2022. The Phase B Minimum Assessment Agreement shall establish the Minimum Actual Value of the land and improvements in an amount established by mutual agreement of the City and Owner.

The Phase A Minimum Assessment Agreement and Phase B Minimum Assessment Agreement are hereinafter individually referred to as a Minimum Assessment Agreement, and collectively as the Minimum Assessment Agreements.

4. Section 4.4, “Phase B Conditions Precedent”, subsection (5), is hereby deleted in its entirety and replaced with the following:

5) Prior to September 15, 2023, Owner has caused at least 75,000 square feet of the ground floor of a building on Parcel 10 to be occupied by one or more tenant(s) on commercially reasonable terms. In the event that Owner does not satisfy this condition by September 15, 2023, and for each year thereafter for the remaining duration of the Economic Development Grant payments in which Owner meets all conditions of this section excluding this condition and further is in full compliance with this Agreement and all Exhibits hereto, the City shall reduce the amount to be paid to Lender, for the benefit of Owner, of the Phase B Grant on a prorated basis pursuant to the calculation set forth in Section 4.5(B).

5. Section 4.5, “Phase B Economic Development Grant”, is hereby deleted in its entirety and replaced with the following:

Sec. 4.5. Phase B Economic Development Grant. A. Provided Owner has first satisfied the requirements set forth in Section 4.4, then subject to Sections 4.6, 4.7 and 4.8, City shall pay to Lender, for the benefit of Owner, the Phase B Economic Development Grant (the "**Phase B Grant**"), in an amount not to exceed Two Million, Nine Hundred Twenty-Five Thousand Dollars (\$2,925,000), to be advanced in nineteen semi-annual installments on the dates identified in Table 1, above. Subject to prorated reduction under Section 4.5(B) if applicable, the amount of each Phase B Grant installment shall be the lessor of: i) the Phase B Grant Installment Amount set forth in Table 1, above; or ii) the amount of Eligible Phase B Expenses paid to Qualified Providers, as defined and documented in Section 4.9, which have not been previously reimbursed by a prior installment of the Phase A Grant or the Phase B Grant.

B. In the event that Owner does not satisfy the condition precedent set forth in Section 4.4(5), the City shall reduce the amount of each semi-annual installment of the Phase B Grant on a prorated basis pursuant to the following calculation. For purposes of this section, “Amount of Occupied Square Footage” means the actual square footage on the ground floor of a building on Parcel 10 occupied by one or more tenant(s) on commercially reasonable terms.

Step 1: Amount of Occupied Square Footage / (divided by) 75,000 SF = Percentage of Phase B Grant To Be Paid
 Step 2: Percentage of Phase B Grant To Be Paid
 x (multiplied by) amount of applicable semi-annual Phase B Grant installment under Section 4.5(A)
 = Prorated amount of applicable semi-annual Phase B Grant to be paid by City

Example:

- Only 50,000 square feet of the ground floor of a building on Parcel 10 is occupied by tenant(s) on commercially reasonable terms by September 15, 2023.
- For semi-annual Phase B Grant installment due April 1, 2024, the lessor amount under Section 4.5(A) is the amount set forth in Table 1, above, of \$162,500.00.
- The prorated percentage of said semi-annual Phase B Grant installment would equal 0.67 or 67 percent (%):

$$\begin{array}{r} \text{Amount of Occupied Square Footage} \\ \text{Divided by} \end{array} \quad \frac{50,000 \text{ SF}}{75,000 \text{ SF}} = 0.67 \text{ or } 67 \text{ percent (\%)}$$

- The prorated amount of said semi-annual Phase B Grant installment to be paid by the City would equal \$108,875.00:

$$\begin{array}{r} \text{Percentage of Phase B Grant} \\ \text{Multiplied by the amount of the semi-annual Phase B Grant} \\ \text{Equals} \end{array} \quad \begin{array}{r} 0.67 \\ \times \$162,500.00 \\ \$108,875.00 \end{array}$$

6. Exhibit "D-2", Form of Minimum Assessment Agreement for Parcel 10, to the Agreement is hereby amended and replaced with Exhibit "D-2" attached hereto and incorporated herein.

7. All other terms, provisions, and conditions originally set forth in the Agreement, as amended by the First and Second Amendments, including all exhibits thereto, remain effective and binding upon City and the Owner.

8. Owner hereby represents and warrants that Owner owns one hundred percent (100%) of the membership interest in Merle Hay Anchors, LLC, an Iowa limited liability company ("MHA"), and further represents and warrants that MHA is the titleholder of the real estate identified in the Minimum Assessment Agreement for Parcel 10 approved concurrently herewith, and that MHA shall be bound by the terms and conditions set forth in said Minimum Assessment Agreement and the Agreement, and amendments and covenants thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the day of _____, 2022.

MERLE HAY INVESTORS, LLC

By:
Name:
Title:

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2022, by _____ as _____ of **Merle Hay Investors, LLC**, a Delaware limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Illinois
My commission expires: _____

Consented to and Agreed to by:

Merle Hay Anchors, LLC

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2022, by _____ as _____ of **Merle Hay Anchors, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Illinois
My commission expires: _____

CONSENT BY BANKERS TRUST COMPANY

Banker's Trust Company, an Iowa state bank, and the "Lender" as defined in the above-described Urban Renewal Development Agreement by and between the City Of Des Moines, Iowa, and Merle Hay Investors, LLC, does hereby agree and consent to this Third Amendment to said Agreement.

"Lender"

BANKERS TRUST COMPANY
an Iowa banking corporation

By: _____
Jennifer Cooper, CCIM, Vice President &
Manager
Commercial Real Estate, Bankers
Trust 453 7th Street
Des Moines, IA 50309

Exhibit "D-2"

Form of Minimum Assessment Agreement for Parcel 10 (*Amended*)

Prepared by: Glenna K. Frank, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309
Phone: 515/283-4130
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Minimum Assessment Agreement
Grantor's Name: Merle Hay Anchors, LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: See Exhibit "1" attached as page D8.

MINIMUM ASSESSMENT AGREEMENT

This Minimum Assessment Agreement, dated as of this ____ day of _____, 2022, by and among the CITY OF DES MOINES, IOWA (hereinafter "City"), MERLE HAY ANCHORS, LLC, an Iowa limited liability company (hereinafter "Owner"), their successors and assigns, and the COUNTY ASSESSOR FOR POLK COUNTY, IOWA (hereinafter "Assessor").

WITNESSETH:

WHEREAS, on March 25, 2019, City and Merle Hay Investors, LLC, a Delaware limited liability company ("MHI"), and one-hundred percent (100%) owner of Owner, entered into an Urban Renewal Development Agreement whereby MHI, either directly or through Owner, has undertaken to acquire the real estate described in Exhibit "1" attached hereby (hereinafter the "Property") and to improve the Property by renovating the former Sears building for occupancy by tenants for retail, restaurant, entertainment, office and other such uses as may be approved in writing by City, and by making various other exterior renovations to the Property for the purposes of improving the marketability of the tenant space on the Property (hereinafter the "Improvements"); and

WHEREAS, pursuant to Article 2 of the Urban Renewal Development Agreement, the City will issue a Certificate of Completion in recordable form acknowledging the completion of the required Improvements to the Property in substantial compliance such the Urban Renewal Development Agreement; and

WHEREAS, pursuant to Section 403.6 of the Code of Iowa, a copy of which is attached hereto as Exhibit "2", City and Owner desire to establish a minimum actual value for the Property pursuant to the Urban Renewal Development Agreement, which shall be effective as of January 1,

2021, and continuing until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of the Property and Improvements to be completed on the Property; and

WHEREAS, City and the Assessor have reviewed the preliminary plans and specifications for the Improvements contemplated to be erected by Owner on the Property.

NOW THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. Commencing effective January 1, 2021 and continuing until the Termination of this Agreement as set forth herein, the minimum actual taxable value for assessment purposes of the Property, inclusive of the value of the Improvements and the underlying land, shall not be less than Six-Million Seven-Hundred Thousand Dollars (\$6,700,000.00)(the "Minimum Actual Value"), equaling the sum of Four-Million Five-Hundred Ninety-eight Thousand Six-Hundred Seventy-two Dollars (\$4,598,672.00) for Polk County Assessor Parcel 100/09472-004-003, locally known as 4010 Merle Hay Road, Des Moines, Iowa, plus Two-Million One-Hundred One Thousand Three-Hundred Twenty-eight Dollars (\$2,101,328.00) for Polk County Assessor Parcel 100/09472-004-004, locally known as 4000 Merle Hay Road, Des Moines, Iowa.
2. Owner agrees that for the term of this Minimum Assessment Agreement:
 - A) It will not seek administrative or judicial review of the applicability or constitutionality of any real property tax statute determined by any duly authorized public official to be applicable to the Property or to Owner, or raise the inapplicability or unconstitutionality of any such real property tax statute as a defense in any proceedings, including delinquent tax proceedings;
 - B) It will not cause a reduction in the taxable value of the Property below the Minimum Actual Value through:
 - (i) willful destruction of the Improvements to the Property or any part thereof;
 - (ii) a request to the Assessor to reduce the taxable value of the Property below the Minimum Actual Value;
 - (iii) an appeal to the Board of Review to reduce the taxable value of the Property below the Minimum Actual Value;
 - (iv) a petition to the Board of Review or the director of review of the State of Iowa to reduce the taxable value of the Property below the Minimum Actual Value;
 - (v) an action in a District Court of the State of Iowa seeking to reduce the taxable value of the Property below the Minimum Actual Value;
 - (vi) an application to the State of Iowa, Polk County, or City, or to any other public officer or body requesting an abatement of real property taxes upon the Property pursuant to any present or future statute or ordinance, including but not limited to an exemption from taxation pursuant to Iowa Code Chapter 404;
 - (vii) an application to the Assessor to have all or any part of the Improvements to the Property declared to be tax exempt; or

- (viii) any other proceeding, whether administrative, legal or equitable, with any administrative body within City, Polk County, or the State of Iowa or with any court of the State of Iowa or the federal government.
- 3. Prior to any voluntary sale or conveyance of any portion of the Property, Owner shall provide to the City and Assessor a schedule which allocates the Minimum Assessed Value among the various tax parcels upon the Property in a manner determined to be reasonable by the Assessor. The portion of the Minimum Assessed Value allocated to each tax parcel shall constitute the Minimum Assessed Value for that parcel. Owner shall not cause or voluntarily permit any tax parcel to be created that contains any portion of the Property in combination with any real estate not included in the Property.
- 4. Owner shall not cause or voluntarily permit any part of the Property or the Improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated in the same manner as privately owned real estate.
- 5. Nothing herein shall be deemed to waive Owner's rights under Iowa Code Section 403.6(19), as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Owner seek to reduce the actual value assigned below the Minimum Actual Value established herein during the term of this Agreement, or use this Agreement as evidence to limit the assessed value of the Property to the Minimum Actual Value.
- 6. In the event that any portion of the Property is taken through the exercise of the power of eminent domain, the Minimum Actual Value shall be reduced by the same proportion as the value of the portion so taken bears to the value of the Property in its entirety immediately prior to such taking.
- 7. This Minimum Assessment Agreement shall be promptly recorded by City with the Recorder of Polk County, Iowa.
- 8. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Urban Renewal Development Agreement between City and Owner.
- 9. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.
- 10. Except as provided in subparagraphs A, B and C below, this Agreement and the Minimum Actual Value herein established shall terminate on May 1, 2031, and shall thereafter be of no further force and effect.
 - A) In the event the City exercises its right under Section 406 of the Urban Renewal Development Agreement between the City and MHI, dated as of July 14, 2008, to not appropriate sufficient funds to pay in full the installment on the Economic Development Grant due under that agreement in any fiscal year, then this Agreement shall be of no force

or effect in that fiscal year.

- B) In the event the City exercises its right under Section 406 of the Urban Renewal Development Agreement between the City and MHI, dated as of June 24, 2013, to not appropriate sufficient funds to pay in full the installment on the Economic Development Grant due under that agreement in any fiscal year, then this Agreement shall be of no force or effect in that fiscal year.
 - C) In the event the City exercises its right under Section 4.8 of the Urban Renewal Development Agreement between the City and MHI, dated as of March 25, 2019, to not appropriate sufficient funds to pay in full the installment on the Economic Development Grant due under that agreement in any fiscal year, then this Agreement shall be of no force or effect in that fiscal year.
11. Upon Owner's request, City and Assessor agree to revisit this Minimum Assessment Agreement in 2023 in order to re-evaluate the assessed value of the Property, which may require an adjustment of the assessed values set forth in Section 1 herein. Any adjustment to said assessed values shall only be accomplished through amendment of this Agreement, or termination of this Agreement and execution of a replacement Minimum Assessment Agreement, in writing and approved and executed by authorized representatives of all parties hereto.

"Owner"

MERLE HAY ANCHORS, LLC

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2022, by _____ as _____ of **Merle Hay Anchors, LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Illinois
My commission expires: _____

Consented to and Agreed to by:

Merle Hay Investors, LLC

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2022, by _____ as _____ of **Merle Hay Investors, LLC**, a Delaware limited liability company, on behalf of whom the instrument was executed.

Notary Public in the State of Illinois
My commission expires: _____

"City"

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
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 ___ day of _____, 2022, 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. _____ of City Council on the ___ day of _____, 2022, 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.

Notary Public in the State of Iowa
My commission expires: _____

Attachments:
Exhibit "1" –Property Description
Exhibit "2" – Excerpts from Iowa Code §403.6

CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Improvements to be constructed upon the Property described in Exhibit "1", and the market values assigned to such Improvements, and being of the opinion that the minimum market values contained in the foregoing Minimum Assessment Agreement appear reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the Property described in Exhibit "1" hereto, certifies that:

- 1) Commencing effective January 1, 2021, and continuing until the Termination of this Agreement, the minimum actual taxable value for assessment purposes of the Property, inclusive of the value of the Improvements and the underlying land, shall not be less than Six-Million Seven-Hundred Thousand Dollars (\$6,700,000.00)(the "Minimum Actual Value"), equaling the sum of Four-Million Five-Hundred Ninety-eight Thousand Six-Hundred Seventy-two Dollars (\$4,598,672.00) for Polk County Assessor Parcel 100/09472-004-003, locally known as 4010 Merle Hay Road, Des Moines, Iowa, plus Two-Million One-Hundred One Thousand Three-Hundred Twenty-eight Dollars (\$2,101,328.00) for Polk County Assessor Parcel 100/09472-004-004, locally known as 4000 Merle Hay Road, Des Moines, Iowa.

Date: _____

Assessor for Polk County, Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

Subscribed and sworn to before me by _____, Assessor for Polk County, Iowa, on this _____ day of _____, 2022.

Notary Public for the State of Iowa
My commission expires: _____

Exhibit "1"
Property Description

The Property subject to this Minimum Assessment Agreement is located in the City of Des Moines, west of Merle Hay Road and north of Douglas Avenue, and is more specifically described as follows:

Lot 1 and Lot 3, Merle Hay Anchors, LLC Subdivision, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

Exhibit "2"

Excerpts from Iowa Code §403.6

403.6 Powers of municipality.

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

.....

19. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$.

This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the Developer from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue and finance or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

The provisions of this chapter shall be liberally interpreted to achieve the purposes of this chapter.