

Date August 25, 2008

RESOLUTION APPROVING ISSUANCE OF CERTIFICATE OF COMPLETION FOR THE 4th STREET CONDOS AND THE MARKET PLACE LOFTS, AND AUTHORIZING PAYMENT OF ECONOMIC ASSISTANCE

WHEREAS, on November 8, 2004, by Roll Call 04-2446, the City Council approved an Urban Renewal Development Agreement with Court Avenue Partners II, L. P. (now known as Court Avenue Partners II, LLLP) (the "Developer"), whereby the City agreed to sell to Developer the vacant City-owned parcel west and south of the Spaghetti Works Building that was designated as Disposition Parcel No. 99A-1 of the Metro Centre Urban Renewal Area (the "Property") and Developer agreed to construct improvements on the Property, including a building at the Southeast corner of Court Avenue and 4th Street now known as the Market Place Lofts containing commercial space and common amenities for the apartments on the first floor and 52 units of apartments on the second through fifth floors, and to construct a building on the east side of 4th Street further south from Court Avenue now known as the 4th Street Condos containing forty residential condominium units with underground parking (collectively the "Improvements"); and,

WHEREAS, on November 7, 2005, by Roll Call No. 05-2679, the City Council approved the First Amendment to Urban Renewal Agreement to redirect payment of a portion of the economic development grant to Court Avenue Investors, Inc. ("CAI"), and to assign CAI primary responsibility for any repayment due the City from excess income and net proceeds of sale or refinancing; and,

WHEREAS, on March 20, 2006, by Roll Call No. 06-537, the City Council approved the Second Amendment to the Urban Renewal Agreement to provide for immediate conveyance of the Property to Developer and to give the Developer additional time to provide evidence of its financing of the Improvements; and,

WHEREAS, on May 8, 2006, by Roll Call No. 06-911, the City Council approved the Conceptual Development Plan for development of the Improvements by Developer; and,

WHEREAS, on December 18, 2006, by Roll Call No. 06-2475, the City Council approved the Third Amendment to the Urban Renewal Agreement for the purpose of: i) extending the deadline for completion of the Improvements; ii) consenting to the creation of a horizontal property regime in order to legally separate ownership of the apartments, residential condominiums, underground parking and commercial space; and iii) approving an Estoppel Certificate and Subordination Agreement with the principle lender; and,

WHEREAS, the City received a Good Faith Deposit in the amount of \$100,000 to assure the timely completion of the Improvements; and,

WHEREAS, the Developer has completed the Improvements in substantial compliance with the approved Conceptual Development Plan and has requested the City issue a Certificate of Completion as evidence of satisfaction of the Developer's construction obligations under the Development Agreement, as amended; NOW THEREFORE,

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

1. The City Council hereby finds and acknowledges that Developer has satisfied its obligation to complete the Improvements described above in substantial compliance with the approved Conceptual Development Plan and the requirements of the Development Agreement. This resolution shall serve as the Certificate of Completion to be issued by the City pursuant to Section 45 of the Development Agreement, for the Improvements to the property adjoining the east side of 4th Street south of Court Avenue, more specifically described as follows:

Lots 1, 2, 3 and 4, Block 25, Fort Des Moines, an Official Plat; AND, all the air rights over that part of the 16.5 foot wide vacated North/South alley beginning at the elevation of the existing roof line of the building located at 310 Court Avenue over said vacated North/South alley lying West of and adjacent to Lot 11 and East of and adjacent to Lot 2 in Block 25, Fort Des Moines, an Official Plat; AND, the 16.5 foot wide vacated East/West alley right-of-way lying South of and adjoining said Lots 1 and 2; AND, the West 1/2 of the vacated 16.5 foot wide North/South alley right-of-way lying East of and adjoining said Lots 3 and 4, AND, the vacated 16.5 foot wide vacated East/West alley right-of-way lying South of and adjoining said Lot 4 and lying South of and adjoining the West 1/2 of the vacated North/South alley lying East of and adjoining said Lot 4; AND, part of Lot 5, of said Block 25, more specifically described as follows: Beginning at the Northwest Corner of said Lot 5; thence North 74 (Degrees) 13' (minutes) 04" (seconds) East along the North line of said Lot 5, a distance of 109.10 feet; thence South 15°22'52" East, 66.54 feet to the South line of said Lot 5; thence South 74°13'04" West along the said South line, 109.05 feet to the Southwest corner of said Lot 5; thence North 15°22'52" West, 66.54 feet to the Point of Beginning, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

AND, Lots 9 and 10, Block 25, Fort Des Moines, an Official Plat; AND, the East 1/2 of the vacated 16.5 foot wide North/South alley right-of-way lying West of and adjoining said Lots 9 and 10, AND, the vacated 16.5 foot wide vacated East/West alley right-of-way lying South of and adjoining said Lot 9 and lying South of and adjoining the East 1/2 of the vacated North/South alley lying West of and adjoining said Lot 9, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(continued)

★ Roll Call Number
08-1512

Agenda Item Number
28

Date August 25, 2008

-3-

2. Upon request by the City Manager or his designee, the Finance Department is hereby authorized to pay and release to the Developer the following installments on the Economic Development Grants in accordance with the Development Agreement:
 - a) The First and Second Installments on the First Economic Development Grant in the total amount of \$2.5 million, less any credit due pursuant to Section 84 of the Development Agreement shall be paid within ten business days to Valley Bank for the account of Court Avenue Investors, Inc.;
 - b) The Third Installment on the Economic Development Grant in the amount of \$474,306 to be paid on the first anniversary of this date to Valley Bank for the account of Court Avenue Investors, Inc.; and,
 - c) The Second Economic Development Grant shall be paid in 34 equal installments of \$28,707.26 each November 1st and May 1st commencing on November 1, 2010, to Valley Bank for the account of Court Avenue Partners II, L.L.L.P.;

3. Upon request by the City Manager or his designee, the Finance Department is hereby authorized to release the Good Faith Deposit to Valley Bank for the account of Court Avenue Partners II, L.L.L.P.

4. The City Clerk is hereby directed to cause a certified copy of the resolution and roll call to be recorded in the land records of the Polk County Recorder.

(Council Communication No. 08- **515**)

MOVED by Vlassis to adopt.

FORM APPROVED:

Roger K. Brown
Roger K. Brown
Assistant City Attorney

C:\Rog\Eco Dev\Court Ave\Court Ave 3\Dev Agr\3rd\RC Cert of Comp.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				✓
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	6			1

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.

Diane Rauh City Clerk

MOTION CARRIED

APPROVED

Christine L. Healy
Mayor

MAYOR PRO TEM