



Roll Call Number

10-206

Agenda Item Number

35

Date February 8, 2010

RESOLUTION APPROVING FIRST AMENDMENT TO DEVELOPMENT AGREEMENT AND ISSUANCE OF A CERTIFICATE OF COMPLETION FOR THE MERLE HAY MALL REHABILITATION PROJECT

WHEREAS, on July 14, 2008, by Roll Call No. 08-2008, the City Council approved an Urban Renewal Development Agreement with Merle Hay Mall Limited Partnership (the "Developer") whereby the Developer agreed to rehabilitate the main concourse of the Merle Hay Mall for commercial retail use in conformance with an approved Conceptual Development Plan and having a minimum assessed value for taxation upon substantial completion of \$18,686,000 in exchange for an undertaking by the City to advance an Economic Development Grant in semi-annual installments over 15 years in amounts equal to the incremental taxes on the property; and,

WHEREAS pursuant to the Development Agreement, the Developer has completed the improvements to the main concourse of the Merle Hay Mall 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;

WHEREAS, the Developer has also requested City approval of an amendment to the Development Agreement to remove a conflict within the document concerning the proper date for the commencement of the installments on the Economic Development Grant; and,

WHEREAS, the Developer has further requested that the Agreement be amended to remove the requirement for all existing lenders to subordinate their liens to the Declaration of Covenants; and,

WHEREAS, the City Manager concurs with the need to remove the conflicting language regarding the date for commencement of the installments, and has negotiated a reasonable alternative to the subordination requirement on the Declaration of Covenants, all as more specifically set forth in the proposed First Amendment to Development Agreement between the City and Developer which is on file and available for public inspection in the office of the City Clerk; NOW THEREFORE,

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

- 1. The City Council hereby finds and acknowledges that Merle Hay Mall Limited Partnership has satisfied its obligation to complete the improvements to the main concourse of the Merle Hay Mall as 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 pursuant to Section 207 of the Development Agreement.

(continued)

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2. The proposed First Amendment to Development Agreement with Merle Hay Mall Limited Partnership is hereby approved. The Mayor and City Clerk are hereby authorized and directed to execute the First Amendment to Development Agreement on behalf of the City of Des Moines.
3. The Mayor and City Clerk are hereby authorized and directed to execute the Minimum Assessment Agreement for the main concourse of the Merle Hay Mall on behalf of the City, as provided in Section 302 of the Development Agreement. The City Clerk is further directed to forward the signed Minimum Assessment Agreement to the Legal Department for delivery to the Polk County Assessor for execution and recording.
4. Upon satisfaction of the Conditions Precedent set forth in Section 402 of the Development Agreement as hereby amended, and upon approval of the same by the City Legal Department and the City Manager or his designee, the Finance Department is hereby authorized to pay and release to Merle Hay Mall Limited Partnership the installments on the Economic Development Grant pursuant to Section 403 of the amended Development Agreement commencing with the first installment due November 1, 2011.

(Council Communication No. 10- 059)

MOVED by Hensley to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown
 Assistant City Attorney

C:\Rog\Eco Dev\Merle Hay\1st Amendment\RC 1st Amend & Cert of Comp.doc

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| GRIESS | ✓ | | | |
| HENSLEY | ✓ | | | |
| MAHAFFEY | ✓ | | | |
| MEYER | ✓ | | | |
| MOORE | ✓ | | | |
| TOTAL | 7 | | | |

MOTION CARRIED APPROVED
T. M. Franklin 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.

Diane Rauh City Clerk