

★ Roll Call Number

12-1759

✓  
Agenda Item Number

13

Date November 19, 2012

**APPROVAL OF SETTLEMENT AGREEMENTS AND RELEASES RELATING TO THE  
LEASE AGREEMENT AND 28E AGREEMENT FOR THE  
REAL PROPERTY LOCATED AT 401 5<sup>TH</sup> AVENUE**

**WHEREAS**, on July 10, 1995, by Roll Call No. 95-2665, the City Council approved a Lease Agreement ("Lease") between the City and William C. Knapp, Trustee of the William C. Knapp Revocable Trust for the public plaza located at 401 5<sup>th</sup> Avenue, in the vicinity of 5<sup>th</sup> Avenue and Locust Street, which Lease was assigned by William C. Knapp to Shaner Hotel Group pursuant to City consent in Roll Call No. 96-1850, and was further assigned to Shaner Hotel Group Properties Two, L.P. ("Shaner Hotel Group"), and extended until July 31, 2010 pursuant to Council approval by Roll Call No. 05-3006 on December 19, 2005; and

**WHEREAS**, on July 10, 1995, by Roll Call No. 95-2663, the City Council approved a 28E Agreement ("28E Agreement") between the City and the Des Moines Independent Community School District ("School District") relating to use of the leased property by the Downtown School, which 28E Agreement was extended until July 31, 2010 pursuant to Council approval by Roll Call No. 05-3006 on December 19, 2005; and

**WHEREAS**, pursuant to the Lease and 28E Agreement, the School District was required to pay to the City the amount of real property taxes owed for the leased property, which payment was in turn to be made by the City to Shaner Hotel Group, and the School District was further required to pay to the City a portion of the City's usual charge for parking spaces in the City parking ramp at 4<sup>th</sup> Street and Grand Avenue which were used by Shaner Hotel Group as partial consideration for the Lease; and

**WHEREAS**, questions have been identified between Shaner Hotel Group, the City, and the School District related the property tax and parking space payments set forth in the Lease and 28E Agreement; and

**WHEREAS**, Shaner Hotel Group has executed a Settlement Agreement and Release by and between the City, Shaner Hotel Group, and the School District, whereby Shaner Hotel Group releases claims against the School District and City in exchange for payment of the lump sum amount of \$36,121.50 for real estate taxes from July 2005 through March 2008, which payment is to be made by the School District to the City, and in turn by the City to Shaner Hotel Group; and

**WHEREAS**, the School District approved the above-referenced Settlement Agreement at its Board meeting on November 13, 2012, and at the November 27, 2012 Board meeting will be considering for approval a separate Settlement Agreement and Release by and between the City and the School District, whereby the City releases claims against the School District in exchange for payment of the lump sum amount of \$49,920.00 for payment of the parking space revenue from July 2005 through March 2008; and

**WHEREAS**, approval of such Settlement Agreements and Releases would be in the best interest of the City of Des Moines.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the Settlement Agreement and Release by and between the City, Shaner Hotel Group, and the School District, as on file in the office of the City Clerk, is hereby approved; the Mayor is authorized and directed to sign said Settlement Agreement on behalf of the City and the City Clerk is authorized and directed to attest to his signature; and the

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Finance Director is authorized and directed to make payment in the amount of \$36,121.50 to Shaner Hotel Group, LP, upon receipt of such funds from the School District.

BE IT FURTHER RESOLVED, that the Settlement Agreement and Release by and between the City and the School District, as on file in the office of the City Clerk, is hereby approved subject to approval by the School District, and the Mayor is authorized and directed to sign said Settlement Agreement on behalf of the City and the City Clerk is authorized and directed to attest to his signature upon receipt of payment in the amount of \$49,920.00 from the School District.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

RSW

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

MOTION CARRIED APPROVED Mayor T. M. Franklin Council

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