



Roll Call Number

14-0058

Agenda Item Number

34

Amended

Date January 13, 2014

RESOLUTION MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE FOR THE MIXED USE PROJECT AT 2005 INGERSOLL AVENUE BY INGERSOLL SQUARE PHASE III ASSOCIATES, L.P., REPRESENTED BY FRANK LEVY (OFFICER), ESTABLISHING THE PRIORITY OF THE CITY'S URBAN RENEWAL AND HOME MORTGAGES AND COVENANTS

WHEREAS, on November 18, 2013, by Roll Call No. 13-1809, the City Council approved a Urban Renewal Development Agreement and a HOME Agreement with Ingersoll Square Phase III Associates, L.P., represented by Frank Levy, Officer, whereby Ingersoll Square agreed to construct a four story mixed-use building at 2005 Ingersoll Avenue containing 5,500 square feet of retail space on the first floor, including 4,000 square feet to be occupied by Veridian Credit Union, 47 residential units on the upper floors including 3 that are to be affordable, and surface parking, in consideration of an undertaking by the City to provide the following financial incentives:

- An Economic Development Grant to be paid in installments for a term of 10 years commencing after expiration of the 10-year tax abatement, with the installments in each year to be in an amount equal to 58% of the TIF generated in that year by the residential component of the Improvements;
A Supplemental Grant to be paid in advance of construction in the amount of \$430,000, with such grant subject to repayment upon any default by Ingersoll Square under the Agreement, and also subject to possible repayment from available project cash flows as described in the Agreement; and,
A HOME Agreement loan of \$350,000.

WHEREAS, the City Council's approval of the two agreements was "subject to such changes required for Ingersoll Square to finalize the project financing and determined by the City Legal Department to have no material detrimental impact upon the City's interests"; and,

WHEREAS, the Supplemental Grant was recharacterized as a Supplemental Loan subject to repayment from available cash flows from the operation, refinancing and sale of the property, upon terms at least as favorable to the City as the language originally approved by the City Council; and,

WHEREAS, the parties have negotiated a Master Subordination Agreement and Estoppel Certificate which establishes the following order of priority amount the various liens and encumbrances upon the property:

- The HOME Funded Restrictive Covenant (requiring that 3 units remain rent restricted) shall have a first and senior priority;
The Veridian Credit Union loan and loan documents shall have a second priority;



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- 3) The Bankers Trust Loan and loan documents shall have third priority;
- 4) The City's HOME loan and loan documents (exclusive of the HOME Funded Restrictive Covenant) shall have fourth priority;
- 5) The City's urban renewal loan and loan documents shall have fifth priority;
- 6) The Sherman Hill Association, Inc., loan and loan documents shall have sixth priority; and,

WHEREAS, further amendments to the *Master Subordination Agreement and Estoppel Certificate* are likely because of the number of lenders and the complexity of the transaction; and,

WHEREAS, the City Manager recommends that the City Council approve the *Master Subordination Agreement and Estoppel Certificate*, subject to such further amendments as may be required to allow the project to obtain financing, and are determined by the City Manager and Legal Department to have no materially detrimental impact upon the City's interests.

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

- 1. The *Master Subordination Agreement and Estoppel Certificate* described above is hereby approved, subject to such amendments as may be required to allow the project to obtain financing, and are determined by the City Manager and Legal Department to have no materially detrimental impact upon the City's interests.
- 2. The Mayor and City Clerk are hereby authorized and directed to execute the *Master Subordination Agreement and Estoppel Certificate* on behalf of the City, with such amendments thereto as may be required to allow the project to obtain financing, which are determined by the City Manager and Legal Department to have no materially detrimental impact upon the City's interests.
- 3. The City Clerk is hereby directed to forward the signed *Master Subordination Agreement and Estoppel Certificate* to the Office of Economic Development

( Council Communication No. 14- 015 )

MOVED by Wensley to adopt.

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FORM APPROVED:

*Roger K Brown*

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
VOSS	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

*T. M. Franklin Cownie*  
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