



Roll Call Number

18-0420

Agenda Item Number

Ex. 2

Date March 8, 2018

**RESOLUTION AUTHORIZING AND APPROVING RETENTION OF ROBERT DOUGLAS AND THE DAVIS BROWN LAW FIRM ON ISSUES RELATING TO THE CITY'S INTEREST IN THE FORMATION OF A CONDOMINIUM REGIME FOR THE MIXED USE PROJECT TO BE KNOWN AS "THE FIFTH" AT THE SITE OF THE FORMER FIFTH AND WALNUT PARKING GARAGE**

WHEREAS, on April 3, 2017, by Roll Call No. 17-0631, the City Council approved a *Urban Renewal Agreement for Sale of Land for Private Redevelopment* (the "Agreement") with 5th and Walnut Parking LLC (the "Developer"), represented by Justin Mandelbaum, whereby the Developer has undertaken to purchase the Fifth and Walnut Parking Garage (the "Property") and to redevelop that Property by the construction of the following improvements to be known as "The Fifth" in consideration of certain financial incentives to be provided by the City:

- o The construction of a parking garage fronting on 5th Street in the middle of the Property, with approximately 564 parking spaces;
- o The construction of a movie theater or hotel (the "South Building") fronting on Court Avenue; and,
- o The construction of a building (the "Residential Building") fronting on Walnut Street and having at least 200 residential dwellings. If the South Building is not a hotel the Residential Building shall also contain a hotel with at least 84 guest rooms; and,

WHEREAS, on December 18, 2017, by Roll Call No. 17-2194, the City Council approved a *Second Amendment to Urban Renewal Agreement for Sale of Land for Private Redevelopment* with the Developer whereby the City agreed that the three parcels to contain the parking garage, the South Building and the Residential Tower could be created and defined by a declaration of horizontal property regime (commonly known as a condominium regime) instead of a plat of survey; and,

WHEREAS, the City has a substantial financial interest in the condominium regime because the City has retained the right to recover ownership of the property interests constituting the South Building and Residential Tower if the Developer does not timely commence construction of those components of the project; and,

WHEREAS, Robert Davis and the Davis Brown Law Firm have specialized expertise in the preparation and review of condominium regimes, and the City Attorney recommends that they be retained to assist the Legal Department and City Staff in reviewing and amending the proposed condominium regime for The Fifth.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that it hereby authorizes the retention of Robert Douglas and the Davis Brown Law Firm to provide legal representation on matters related to the formation of a condominium regime for The

( continued )



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Fifth at the hourly rate of \$295 subject to adjustment, and such other attorneys, paralegals and other staff at lower rates, including legal research fees and out-of-pocket expenses, and further authorizes and directs the City Attorney to sign an Engagement Letter and a Conflict Disclosure and Waiver for such legal representation.

MOVED by Coleman to adopt.

Sponsored by Council Member Coleman.

APPROVED AS TO FORM:

Roger K. Brown
Assistant City Attorney

\*Council Member Mandelbaum declares a conflict of interest and and abstains from voting.

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL.

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.

Mayor signature: T. M. Franklin

City Clerk signature: Diane Rauh