



Roll Call Number

23-1619

Agenda Item Number

23

Date November 20, 2023

**RESOLUTION APPROVING ISSUANCE OF CERTIFICATE OF COMPLETION
FOR THE KOHL'S SITE WITHIN THE MERLE HAY MALL PHASE 3 – MERLE HAY
COMMERCIAL AREA URBAN RENEWAL PROJECT**

WHEREAS, on March 25, 2019, by Roll Call No. 19-0479, the City Council approved the Urban Renewal Development Agreement (“Agreement”) with Merle Hay Investors, LLC ("MH Investors"), whereby MH Investors agreed to renovate existing spaces within the mall for new tenants in exchange for two phases of economic development assistance as set forth in the Agreement; and

WHEREAS, on August 17, 2020, by Roll Call No. 20-1332, the City Council approved the First Amendment to the Agreement, extending the deadline for MH Investors to submit to the City a proposed Master Plan and Conceptual Development Plan for the Phase B Improvements from September 25, 2020 to May 1, 2021, following the developer’s request due to the longer-than-anticipated conversations regarding environmental issues and purchase price with the property seller (Sears); and

WHEREAS, on October 19, 2020, by Roll Call No. 20-1662, the City Council approved the Second Amendment to the Agreement, revising the definition of the eligible Phase A and Phase B expenses to include acquisition costs of the Sears parcel in addition to the cost of design and construction of improvements to said parcel to address a financial gap identified by the MH Investors in relation to the purchase of said parcel; and

WHEREAS, on May 9, 2022, by Roll Call No. 22-0704, the City Council approved the Third Amendment to the Agreement, extending the condition precedent deadline related to occupancy of a building on Parcel 10 from April 1, 2022 to September 15, 2023, revising the Phase B Economic Development Grant to allow for reduction in semi-annual grant payments made by the City on a prorated basis if MH Investors does not meet the minimum required 75,000 square feet of occupancy in such building by said extended deadline of September 15, 2023, and updating the Minimum Assessment Agreement attached as an exhibit to the Agreement to reflect the sale of a portion of the property by MH Investors to a redeveloper; and

WHEREAS, the terms of the Development Agreement provide that the City shall issue the Certificate of Completion upon the City’s determination of satisfactory completion of the development Improvements; and

WHEREAS, the Kohl’s Improvements are located within a portion of Parcel 10 identified on Exhibit A of the Development Agreement and represent 55,526 square feet (74%) of the 75,000 square foot requirement for development within said parcel; and

WHEREAS, the Developer has requested that the Certificate of Completion for the Kohl’s Improvements be issued to allow a prorated payment based on the partial development of Parcel 10, all in accordance with the terms of the Development Agreement; and



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WHEREAS, City staff has inspected the development improvements and found the Kohl's Improvements have been completed in substantial compliance with the terms of the Development Agreement; and

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 construct the Kohl's Improvements within a portion (74%) of Parcel 10 of the Property in substantial compliance with the provisions of the Development Agreement and the approved Construction Plans.

2. This Resolution shall serve as the Certificate of Completion for the Kohl's Improvements to be issued by the City pursuant to Section 2.4 of the Development Agreement, which Kohl's Improvements are located within a portion of Parcel 10 identified in the Development Agreement, and shall allow for the associated prorated payment in accordance with the terms of Development Agreement.

3. The City Clerk is hereby directed to cause a certified copy of this resolution and roll call to be recorded with the Polk County Recorder and then delivered to the City's Office of Economic Development.

Moved by Gatto to adopt. Second by Boesen.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland
Lisa A. Wieland
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, COLEMAN, VOSS, WESTERGAARD, and TOTAL (7 yeas).

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

J. M. Frankin Cowrie Mayor

Laura Baumgartner City Clerk