

43 City of Des Moines



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Kind: AGREEMENT MISCELLANEOUS
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Fee Amt: \$42.00 Page 1 of 8
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2012-00017048

BK 13962 PG 719-726

Prepared by: Roger K. Brown, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515/283-4130
Return Address: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Minimum Assessment Agreement
Grantor's Name: 3801 LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: The West 50 feet of Lots 34 through 37, and except streets, Lots 43 through 54, Block P, Aviation Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, hereinafter referred to as the "Property".

MINIMUM ASSESSMENT AGREEMENT

This Minimum Assessment Agreement, dated as of this 25th day of July, 2011, by and among the **CITY OF DES MOINES, IOWA** (hereinafter "City"), **3801 LLC**, an Iowa limited liability company and its successors and assigns (hereinafter collectively the "Developer"), and the **COUNTY ASSESSOR FOR POLK COUNTY, IOWA** (hereinafter "Assessor").

WITNESSETH:

WHEREAS, on July 25, 2011, City and Developer entered into a Urban Renewal Development Agreement whereby Developer has undertaken to improve the Property described above by constructing a multi-tenant in-line commercial plaza building at least 15,300 square feet in size with the associated storm water management, landscaping and parking facilities (hereinafter the "Improvements"); and,

WHEREAS, pursuant to Section 403.6 of the Code of Iowa, a copy of which is attached hereto as Exhibit "1", City and Developer desire to establish a minimum actual value for the Property after substantial completion of the Improvements to be constructed or placed thereon by Developer pursuant to the Urban Renewal Development Agreement, which shall be effective upon substantial completion of the Improvements and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of the

Property and Improvements; and,

WHEREAS, pursuant to Article 4 of the Urban Renewal Development Agreement, the City will issue a Certificate of Completion in recordable form acknowledging the completion of the Improvements in substantial compliance such agreement; and,

WHEREAS, City and the Assessor have reviewed the preliminary plans and specifications for the Improvements contemplated to be erected by Developer on the Property.

NOW THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon issuance of the Certificate of Completion for the Improvements in accordance with Article 2 of the Urban Renewal Development Agreement, and continuing until termination of this Minimum Assessment Agreement, the minimum actual taxable value for assessment purposes of the Property, exclusive of the value of the underlying land, shall be Two Million Dollars (\$2,000,000.⁰⁰), which value is herein referred to as the "Minimum Actual Value".
2. Developer agrees that for the term of this Minimum Assessment Agreement:
 - (A) it will not seek administrative or judicial review of the applicability or constitutionality of any real property tax statute determined by any duly authorized public official to be applicable to the Property or to Developer, or raise the inapplicability or unconstitutionality of any such real property tax statute as a defense in any proceedings, including delinquent tax proceedings;
 - (B) it will not cause a reduction in the taxable value of the Property below the Minimum Actual Value through:
 - (i) willful destruction of the improvements to the Property or any part thereof;
 - (ii) a request to the assessor to reduce the taxable value of the Property below the Minimum Actual Value;
 - (iii) an appeal to the Board of Review to reduce the taxable value of the Property below the Minimum Actual Value;
 - (iv) a petition to the Board of Review or the director of review of the State of Iowa to reduce the taxable value of the Property below the Minimum Actual Value;
 - (v) an action in a District Court of the State of Iowa seeking to reduce the taxable value of the Property below the Minimum Actual Value;
 - (vi) an application to the State of Iowa, Polk County, or City, or to any other public officer or body requesting an abatement of real property taxes upon the Property pursuant to any present or future statute or ordinance, including but not limited to an exemption from taxation pursuant to Iowa Code Chapter 404;
 - (vii) an application to the assessor to have all or any part of the improvements to the Property declared to be tax exempt; or

(viii) any other proceeding, whether administrative, legal or equitable, with any administrative body within City, Polk County, or the State of Iowa or with any court of the State of Iowa or the federal government.

3. Prior to any voluntary sale or conveyance of any portion of the Property, Developer shall provide to the City and County Assessor a schedule which allocates the Minimum Assessed Value among the various tax parcels upon the Property in a manner determined to be reasonable by the Polk County Assessor. The portion of the Minimum Assessed Value allocated to each tax parcel shall constitute the Minimum Assessed Value for that parcel. Developer shall not cause or voluntarily permit any tax parcel to be created that contains any portion of the Property in combination with any real estate not included in the Property.
 4. Developer shall not cause or voluntarily permit any part of the Property or the improvements thereon to be owned by a telephone utility or any other entity of a type where the assessed value of taxable property of such entity is not treated in the same manner as privately owned real estate.
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5. Nothing herein shall be deemed to waive Developer's rights under Iowa Code Section 403.6(19), as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value assigned below the Minimum Actual Value established herein during the term of this Agreement.
 6. In the event that any portion of the Property is taken through the exercise of the power of eminent domain, the Minimum Actual Value shall be reduced by the same proportion as the value of the portion so taken bears to the value of the Property in its entirety immediately prior to such taking.
 7. This Minimum Assessment Agreement shall be promptly recorded by City with the Recorder of Polk County, Iowa.
 8. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Urban Renewal Development Agreement between City and Developer.
 9. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.
 10. This Minimum Assessment Agreement and the Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate fifteen (15) years following the date of issuance of the Certificate of Completion for the Improvements. However, in the event the City exercises its right under Section 406 of the Urban Renewal Development Agreement to not appropriate sufficient funds to pay in full the installment on the Economic Development Grant due in any fiscal year, then this Minimum Assessment Agreement shall be of no force or effect in that fiscal year. This Minimum Assessment Agreement shall immediately terminate in the event a Certificate of

Termination is issued by the City pursuant to Sections 406(D) and 607 of the Urban Renewal Development Agreement.

"Developer"

3801 LLC, an Iowa limited liability company

By: *Rich Eychaner*
Rich Eychaner, Managing Member

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on July 25, 2011, by **Rich Eychaner**, as the Managing Member of **3801 LLC**, an Iowa limited liability company, on behalf of whom the instrument was executed.



Sandra Dreyer
Notary Public in the State of Iowa
My commission expires: 2/28/12

"City"

CITY OF DES MOINES, IOWA

ATTEST:

By: *Diane Rauh*
Diane Rauh, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Roger K. Brown
Roger K. Brown
Assistant City Attorney

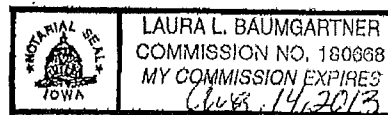
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STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 25th day of July, 2011, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 11- 1326 of City Council on the 25th day of July, 2011, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Laura L. Baumgartner
Notary Public in the State of Iowa
My commission expires: Aug. 14, 2013

Attachments:
Exhibit "1" - Excerpts from Iowa Code §403.6

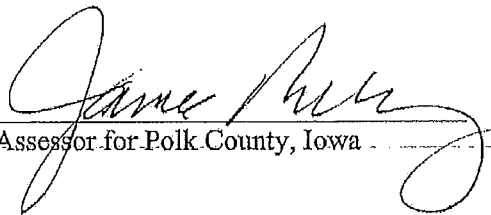


CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Improvements to be constructed upon the Property described above, and the market value assigned to such Improvements, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appear reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the Property described above, upon completion of the improvements to be made to it, certifies that the actual value assigned to the Property, exclusive of the value of the underlying land, shall be Two Million Dollars (\$2,000,000.⁰⁰), until termination of the Minimum Assessment Agreement pursuant to the terms thereof.

Date: 8-31-11


Assessor for Polk County, Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

Subscribed and sworn to before me by James Maloney, Assessor for Polk County,
Iowa, on this 31st day of August, 2011.

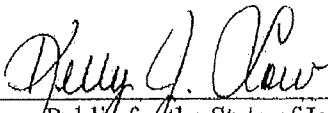

Notary Public for the State of Iowa
My commission expires: 8-20-14



Exhibit "1"

Excerpts from Iowa Code §403.6

403.6 Powers of municipality.

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

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19. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$.

This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the Developer from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue and finance or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

The provisions of this chapter shall be liberally interpreted to achieve the purposes of this chapter.

Mortgagee's Consent to Minimum Assessment Agreement

The undersigned holds an interest in the following Property pursuant to that certain Mortgage filed in the office of the Recorder of Polk County, Iowa, on June 1, 2011, in Book 13866, at Page 431.

The West 50 feet of Lots 34 through 37, and except streets, Lots 43 through 54, Block P, Aviation Park, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa,

The undersigned hereby consents to the foregoing Minimum Assessment Agreement and agrees that such Minimum Assessment Agreement shall remain in full force and effect notwithstanding any foreclosure of its mortgage.

US Bank
Mortgagee

By:

Jerald Jensen
Signature
Jerald Jensen, Vice President

State of Iowa)
) ss:
County of POLK)

This instrument was acknowledged before me on August 2, 2011, by Jerald Jensen as Vice President of US Bank on behalf of whom the instrument was executed.

NOTARY SEAL OF IOWA
MELISSA A. DENNIS
Commission Number 746386
My Commission Expires:
April 13, 2013

Melissa A. Dennis
Notary Public in the State of Iowa
My commission expires: 4/13/13