



Legislation Details (With Text)

File #: 67092 **Version:** 1 **Name:** 11800 JDS - 2nd Amendment Beitler / Mortenson
Type: Resolution **Status:** Passed
File created: 8/24/2021 **In control:** Economic Development Division
On agenda: 10/5/2021 **Final action:** 10/5/2021
Enactment date: 10/12/2021 **Enactment #:** RES-21-00673

Title: Authorizing the City’s execution of a Second Amendment to Development Agreement, together with other associated agreements and documents, between the City, Beitler Real Estate Services, LLC and Mortenson Development, Inc. pertaining to the property located at 223 S. Pinckney Street, which is part of the project commonly known as the Judge Doyle Square Development Project. (4th A.D.)

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Indexes:

Code sections:

Attachments: 1. Attachment 1 JDS Purchase AgreementFINAL.pdf, 2. Attachment 2 Parking Agreement, 3. Attachment 3 Room Block Agreement FINAL.pdf, 4. Block 105 - Mortenson Presentation.pdf, 5. Block 105 - Staff Presentation.pdf, 6. 09.22.21 TC Registration Report.pdf

Date	Ver.	Action By	Action	Result
10/5/2021	1	COMMON COUNCIL	Adopt	Pass
9/27/2021	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
9/22/2021	1	TRANSPORTATION COMMISSION	Return to Lead with the Recommendation for Approval	
9/1/2021	1	FINANCE COMMITTEE	Referred	
8/31/2021	1	COMMON COUNCIL	Referred	
8/24/2021	1	Economic Development Division	Referred for Introduction	

Fiscal Note

This resolution authorizes a second amendment to the development agreement related to the hotel development element of the Judge Doyle project. The fiscal effect of the second amendment is to remove the previous ground lease for the property and replace it with a purchase and sale agreement. The purchase price is \$4,020,000, less closing costs, which will be deposited in the Parking Utility enterprise fund.

On June 5, 2018, the Common Council adopted RES-18-00403, File ID #51484, which authorized appropriations for the construction of the above ground Podium component of the building on Block 88 as part of the Judge Doyle development. The Podium component, which included commercial space and two floors of above ground parking, was built as part of the construction of the underground public parking project (now known as the Wilson Street Garage) which replaced the above ground Government East parking ramp on Block 105. The \$11 million cost of the podium was financed from Parking Utility enterprise fund reserves. Under RES-18-00403, revenues from the ground lease to the developer of Block 105 were to be used to repay the Parking Utility enterprise fund for the cost of the podium, with interest.

On December 3, 2019, the Common Council adopted RES-19-00818, File ID #58250, which authorized a development agreement with Stone House Development related to the private element of Block 88 to be constructed in the air right above the existing publicly-owned below-ground Wilson Street Garage and above

ground retail space and parking facilities (the Podium). The development agreement included a \$6 million payment for purchase of the air rights and the Podium (\$5 million paid at closing and \$1 million paid fifteen years after the certificate of occupancy is issued for the private development). The initial \$5 million payment was deposited in the Parking Utility enterprise fund, as will the \$1 million payment to be made in 2036 (15 years after the certificate of occupancy was issued in 2021 for what are now known as the Novo Apartments).

With this resolution and the payment of \$4,020,000 for purchase of the lot in lieu of the ground lease, approximately \$10 million of the \$11 million of Parking Utility enterprise fund reserves used to finance the construction of the Podium will be repaid (\$9 million through 2021, with an additional \$1 million paid by the Block 88 developer -- Stone House -- in 2036). There remains one lot undeveloped on Block 105, which continues to have a ground lease element in the Development Agreement with Beitler Real Estate Services, LLC. Contingent on the final development of that lot, the ground lease payments would be used to fully repay the Parking Utility enterprise fund reserves for the remaining \$1 million outstanding, plus interest,

The Parking Utility enterprise fund is anticipated to finish 2021 with cash reserves of \$15 million. Deposit of the proceeds from the sale of this lot as authorized under this resolution will increase those anticipated reserves to \$19 million at year-end. Parking Utility enterprise fund reserves are used to finance the cost of replacing parking garages. Due to the economic effects of the pandemic, Parking Utility enterprise fund reserves have decreased from approximately \$25 million since 2019.

This resolution includes no city appropriations.

Title

Authorizing the City's execution of a Second Amendment to Development Agreement, together with other associated agreements and documents, between the City, Beitler Real Estate Services, LLC and Mortenson Development, Inc. pertaining to the property located at 223 S. Pinckney Street, which is part of the project commonly known as the Judge Doyle Square Development Project. (4th A.D.)

Body

WHEREAS, on April 19, 2016, the City's Common Council adopted RES-16-00317, File ID #42435, to approve the selection of Beitler Real Estate Services LLC (the "Developer") as a part of the Judge Doyle Square Development Team for the project commonly known as Judge Doyle Square ("Project"); and

WHEREAS, on July 5, 2016, the City's Common Council adopted RES-16-00510, File ID #43477, to authorize the Mayor and City Clerk to execute a Development Agreement and Ground Lease with the Developer for the Project; which was executed by the parties on July 12, 2016, and

WHEREAS, on January 8, 2019, the City's Common Council adopted RES-19-00038, File ID #53530, authorizing an amendment to the Development Agreement by that certain First Amendment to Development Agreement, executed by the parties on January 15, 2019 (together the "Development Agreement"), which, in part, shortened the development timelines for the Developer; and

WHEREAS, the Developer agreed to commence construction on the Block 105 Hotel, as defined in the Development Agreement, before December 17, 2021; and

WHEREAS, the Developer desires to assign its development rights in the Block 105 Hotel to Mortenson Development, Inc. (the "Assignee") in order to construct the Block 105 Hotel and subsequently transfer ownership to an experienced hotel operator (the "Assignment"); and

WHEREAS, the Developer therefore requires another amendment to the Development Agreement to authorize the Assignment, the change of the real estate transaction from a ground lease to a purchase of the Block 105 Hotel parcel, and other necessary changes outlined herein.

NOW THEREFORE BE IT RESOLVED, that the Common Council hereby authorizes a Second Amendment to the Development Agreement with Beitler Real Estate Services and Mortenson Development, Inc. on substantially the following terms and conditions:

1. Definitions.

- (a) From and after the Assignment Date, the Development Agreement is amended to include (or amend as the case may be) the following definitions:
 - (i) “Apartment Developer” means Beitler.
 - (ii) “Developer” means either or both of the Apartment Developer or Hotel Developer as the context requires.
 - (iii) “Hotel Developer” means Assignee.
- (b) The definition of Private Development Closing Deadline is December 17, 2021.

2. Assignment. To the extent required under the Development Agreement, City hereby consents to and approves of Beitler’s Assignment of the Development Agreement (pertaining to its interest in the Block 105 Hotel) to Assignee. From and after the Assignment Date, Section 1.1 of the Development Agreement is hereby deleted and replaced with the following:

“The City, Hotel Developer and Apartment Developer will develop the Property in accordance with this Development Agreement and will cooperate with one another in connection therewith. Apartment Developer will have all of the rights, benefits and obligations of Developer under the Development Agreement with respect to and will develop the Block 105 Apartment pursuant to the Development Agreement, and Hotel Developer will have all of the rights, benefits and obligations of Developer under the Development Agreement with respect to and will develop the Block 105 Hotel pursuant to the Agreement. In no event shall (i) Hotel Developer be required to perform any of the obligations of Developer under the Development Agreement or have any liabilities with respect to the Block 105 Apartment, or (ii) Apartment Developer be required to perform any of the obligations of Developer under the Development Agreement or have any liabilities with respect to the Block 105 Hotel. Each of the Hotel Developer and Apartment Developer shall be deemed to have fully satisfied their respective obligations under this Development Agreement and this Agreement shall terminate (as between City and the respective Developer) on the date that a certificate of occupancy is issued for the initial improvements to be constructed by Apartment Developer on the Block 105 Apartment, on the one hand, and by Hotel Developer on the Block 105 Hotel, on the other hand.”

3. Purchase of Block 105 Hotel In Lieu of Ground Lease. From and after the Assignment Date, the Development Agreement is amended to provide that (i) the Ground Lease shall be applicable to the development of the Block 105 Apartment but not the Block 105 Hotel, and (ii) in lieu of a Ground Lease for the Block 105 Hotel, City shall sell to Hotel Developer (or its designee) its fee interest in the Block 105 Hotel on terms and conditions of a purchase and sale agreement between City and Hotel Developer, which shall be in the form of Attachment 1 in Legistar (the “Purchase and Sale Agreement”). To the extent there is a conflict between the

Purchase and Sale Agreement and the Development Agreement, the terms and conditions of the Purchase and Sale Agreement shall control.

4. **Parking Lease**. Section 5.3(b) is hereby amended to add the following:

“(3) An agreement for the initial lease of One Hundred (100) parking stalls at the Wilson Street Parking Garage (the “Parking Lease”), the material terms of which are set forth in the Parking Lease in the form of Attachment 2 in Legistar . The Parking Lease shall also be approved by the Transportation Commission.”

5. **Hotel Operator**. Section 5.3(b)(1) is hereby amended by adding the following sentence:

“Any hotel operator approved by Hilton shall automatically be deemed to be an approved hotel operator and shall not require any further consents or approvals by the City (or City Council).”

6. **Conditions Precedent to Private Development Commencement**. From and after the Assignment Date, Section 6.2(c) as it pertains to the Block 105 Hotel shall be deleted and replaced with the following:

“(c) Execution of the Purchase and Sale Agreement and all other documents to be delivered by the City thereunder.”

7. **Restrictive Covenant**. Section 12 of the First Amendment is hereby amended to add the following sentence at the end of the paragraph:

“Notwithstanding the foregoing, this Restriction specifically permits the use of individual dwellings as rental housing by the occupants of the dwellings. By way of example, but without limitation, this permits the use of AirBnb by occupants of the Block 88 Apartments, to the extent otherwise permitted under applicable laws, ordinances and regulations.”

8. **Amendments**. From and after the Assignment Date, the following is added at the end of Section 11.1:

“For clarity, (i) only Apartment Developer and City shall be required to sign any amendment of this Development Agreement for matters pertaining only to the Block 105 Apartment, (ii) only Hotel Developer and City shall be required to sign any amendment this Development Agreement for matters pertaining only to Block 105 Hotel, and (iii) each of Apartment Developer, Hotel Developer and the City shall be required to sign any amendments for matters pertaining to the City’s obligations under this Development Agreement or both of the Block 105 Hotel and Block 105 Apartment.”

9. **Expiration**. The following is added to the end of Section 12.2:

“For clarity, each Developer shall be deemed to have fulfilled all of its obligations under this Development Agreement upon the issuance by the City of a certificate of occupancy relating to its portion of the Private Development. Upon request by a Developer after City’s issuance of a certificate of occupancy relating to its portion of the Private Development, City shall deliver a written affirmation that the requesting Developer has satisfied its obligations under this Development Agreement.”

BE IT FURTHER RESOVED, that the Mayor and City Clerk are hereby authorized to execute and deliver the Second Amendment to the Development Agreement materially on the terms stated herein, on a form approved by the City Attorney.

BE IT FURTHER RESOLVED, the Mayor and City Clerk are hereby authorized to execute, deliver and record the Purchase and Sale Agreement, Temporary Construction Easement, Parking Lease, and any other documents necessary to carry out the land transaction contemplated in this resolution in a form approved by the City Attorney.

BE IT FINALLY RESOLVED, that the Mayor, Clerk, and Monona Terrace are authorized to enter into the Room Block Agreement materially in the form of Attachment 3 in Legistar, in a final form to be approved by the City Attorney.