CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: June 13, 2016

ITEM: Resolution - Approval of Assignment of the Development Agreement between the City of West Des Moines and KTJ 201, LLC to TRUBANK

FINANCIAL IMPACT: None

SYNOPSIS: In October, 2011, the City of West Des Moines entered into a Development Agreement with KTJ 201, LLC regarding the development of the former Michael's Landing, now known as Woodland Hills. KTJ 201, LLC has now requested City approval of the assignment of the Development Agreement to TRUBANK as collateral for a loan to be obtained by KTJ 201, LLC. The Assignment will allow TRUBANK to receive the economic development grants payable to KTJ 201, LLC under the Agreement.

Article IX of the Development Agreement allows the assignment of the Agreement to a third party with the consent of the City and upon completion of the Initial Improvements, which has occurred.

RECOMMENDATION: Approve Assignment of the Development Agreement between the City of West Des Moines and KTJ 201, LLC to TRUBANK

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	No review		
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION APPROVING ASSIGNMENT OF INTEREST IN THE WOODLAND HILLS URBAN RENEWAL DEVELOPMENT AGREEMENT

WHEREAS, in October, 2011, the City of West Des Moines, Iowa and KTJ 201, LLC, a Minnesota limited liability company, entered into an Agreement for Private Development (the "Agreement"); and

WHEREAS, KTJ 201, LLC has requested City approval in assigning an interest in the Agreement to TRUBANK to provide payment of the remaining economic development grants (payable in the form of tax increment payments) as collateral for a loan from TRUBANK to KTJ 201, LLC; and

WHEREAS, pursuant to Article IX of the Agreement, KTJ 201, LLC shall not assign its interest in the Agreement unless it has completed construction of the initial public improvements and received the City's consent; and

WHEREAS, pursuant to Article IX of the Agreement, KTJ 201, LLC has completed its obligations regarding construction of the Initial Public Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. Article IX of the Agreement for Private Development By and Between the City of West Des Moines and KTJ 201, LLC ("Agreement") allows the assignment of the Agreement to a third party upon completion of the developers obligations.

2. Pursuant to Article IX of the Agreement, KTJ 201, LLC has requested that its interests in the Agreement be assigned to TRUBANK.

3. The attached Assignment of Development Agreement allowing the assignment of interests of KTJ 201, LLC to TRUBANK is hereby approved.

4. The Mayor is authorized to sign the attached Collateral Assignment of Payments and the Finance Department is directed to comply with the terms of the Assignment.

PASSED AND ADOPTED this 13th day of June, 2016.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

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June 3, 2016

City of West Des Moines
PO Box 65320
West Des Moines, Iowa 50265-0320

Ladies and Gentlemen:

The undersigned, as president of KTJ 201, LLC ("Borrower") is entering into a loan with TruBank, 6205 Mills Civic Parkway, West Des Moines, IA 50266 ("Lender") using the TIF payments to be made under the Agreement for Private Development by and between The City of West Des Moines and Borrower dated November 17, 2011 as amended April 30, 2012 and June 24, 2013 ("Development Agreement") as the primary payment source and collateral.

As part of the loan with the Lender, Borrower has given a collateral assignment of the payments to be received under the Agreement, and therefore, the undersigned hereby direct that on all checks for payments to the Borrower by the City, they be jointly issued to the Borrower and TruBank, until you receive a written notice from the Bank stating that it has released its collateral assignment of the Agreement

Sincerely,

KTJ 201, LLC

By: _____
Joseph H. Ryan, President

This letter has been received and acknowledged this ___ day of _____, 2016.

City of West Des Moines, Iowa

By: _____

Title: _____

#2394413

COPY

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT is made as of the 3rd day of June, 2016 by KTJ 201, LLC (the "Borrower") to TruBank ("Bank").

RECITALS

WHEREAS, the Borrower has entered into Agreement for Private Development by and between The City of West Des Moines and Borrower dated November 17, 2011, as amended April 30, 2012 and June 24, 2013 ("Development Agreement"); and

WHEREAS, pursuant to the Development Agreement, Borrower is to receive certain tax increment financing ("TIF") payments which are the refund of a portion of the real estate taxes paid on property developed by Borrower as described in the Development Agreement; and

WHEREAS, Borrower has requested a line of credit note (the "Loan") from Bank to borrow against the receipt of future TIF payments; and

WHEREAS, Bank is willing to extend the Loan to Borrower subject to, among other things, Borrower assigning to Bank all of Borrower's right, title and interest in the Development Agreement; and

WHEREAS, Borrower is willing to so assign its interests in the Development Agreement.

NOW, THEREFORE, in order to induce Bank to make the Loan, Borrower does hereby agree as follows:

1. **ASSIGNMENT OF DEVELOPMENT AGREEMENT.** To secure the Loan and all other indebtedness owing by Borrower to Bank, Borrower does hereby assign to Bank all of Borrower's right, title and interest in and to the Development Agreement, and all proceeds and benefits therefrom.

2. **RECORDING/UCC.** Borrower authorizes Bank to file this Assignment with the Polk County Recorder's office as well as a UCC-1 Financing Statement with the Iowa Secretary of State giving notice to all third parties of Bank's collateral interest.

3. **DEFAULT.** In the event Borrower defaults under the Loan or any documents executed in connection therewith, including this Assignment, Bank shall have the right, in addition to all other remedies provided in the Loan documents, or in law or equity, to make demand upon the City, and Borrower herein expressly authorizes the City to pay to Bank, all TIF payments or other monies to which Borrower is entitled under the Development Agreement.

4. **NEGATIVE PLEDGE.** Borrower agrees that it will not voluntarily or involuntarily pledge, encumber or otherwise allow any lien to be placed upon its interests in the Development Agreement, except for that granted to Bank hereunder.

5. **ENFORCEMENT COSTS.** If Bank hires an attorney to assist it in enforcing its rights and remedies hereto, Borrower agrees to pay the reasonable attorneys' fees and costs incurred by Bank.

6. **INDEMNITY**. Bank shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Development Agreement or under or by reason of this Assignment; and Borrower shall and does hereby agree to indemnify Bank for and to hold Bank harmless of and from any and all liability, loss or damage which it may or might incur under the Development Agreement or under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or Development Agreement contained in the Development Agreement, except for matters caused by Bank's gross negligence or willful acts. Should Bank incur any liability, loss or damage under the Development Agreement or under or by reason of this Assignment, or in the defense of any such claims or demands, the amounts thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby; and Borrower shall reimburse Bank therefor immediately upon demand, and upon failure of Borrower to do so Bank may declare all sums secured hereby immediately due and payable.

IMPORTANT: READ BEFORE SIGNING, THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Borrower warrants that it has received a copy of this Assignment and further states that it understands fully the terms and conditions described herein.

KTJ 201, LLC

By: _____
Joseph H. Ryan, President

TRUBANK

By: _____
Bradley R. Sporrer, EVP