



# Community Redevelopment Authority (CRA)

**Wednesday, November 14, 2018**  
**Regular Meeting**

## **Item X1**

**Request from Super Market Developers to Allow Sale of 5 Points  
Project to Ken-Ray LLC**

Staff Contact:

November 6, 2018

From: Chad Nabity, AICP Director

To: CRA Board

Re: Super Market Developers (SMD) Five Points Project Change of Ownership Request

### **Overview**

Enclosed you will an Assignment and Assumption of Redevelopment Contract document that requests the CRA grant permission to allow SMD the original developer of the Five Points Super Saver Project to sell all of the property covered by the redevelopment plan and agreement for that project. Ken-Ray L.L.C. represented by Raymond J. O'Connor of Grand Island, Nebraska is the proposed buyer of the project.

SMD is making this request because of the terms of the redevelopment contract specifically section 21 cited below. The first phase of this project has been completed with the construction of the Super Saver Store but the later phases were dependent on market conditions and have not been completed.

21. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of the Private Improvements there shall be no sale or transfer of the Redeveloper Property or assignment of Redeveloper's rights or obligations under this Contract to any party without the prior written approval of the Authority (which shall not be unreasonably withheld, conditioned, or delayed), other than leases, mortgages and involuntary transfers by reason of death, insolvency, or incompetence. The Authority shall be entitled to require, as conditions to any required approval, that:

a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Contract by Redeveloper; and

b. Any proposed transferee, (lessees excepted) by instrument satisfactory to the Authority and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the Authority, have expressly assumed all of the obligations of Redeveloper under this Contract; and

c. There shall be submitted to the Authority for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Contract; and if disapproved by the Authority, its disapproval and reasons therefore shall be indicated to Redeveloper in writing.

The creation of the master deed and condominium association would be done for the purpose of allowing ownership rights to units within the development to be sold. This should not create any issues with regard to Tax Increment Financing or redevelopment of this site.

**Recommendation**

Staff is recommending that the CRA move to approve the Assignment and Assumption Agreement and Authorize the Chair to sign on behalf of the CRA.

## ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT CONTRACT

**THIS ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT CONTRACT** ("**Assignment**") is made and entered into and effective as of \_\_\_\_\_, 2018, between **SUPER MARKET DEVELOPERS, INC.**, a Missouri corporation ("**Assignor**"), **KEN-RAY, L.L.C.**, a Nebraska limited liability company ("**Assignee**"), and the **COMMUNITY REDEVELOPMENT AUTHORITY OF GRAND ISLAND, NEBRASKA** (the "**Authority**").

### **RECITALS:**

**The following Recitals are a material part of this Assignment.**

A. The Authority and Assignor entered into that certain Redevelopment Contract dated June 5, 2015 (the "**Agreement**"), with respect to the redevelopment of certain property located in Grand Island, Hall County, Nebraska, as more fully described in the Agreement (the "**Property**").

B. Assignor now desires to transfer the Property and assign all of its right, title and interest in and to the Agreement to Assignee.

C. Assignee desires to accept the transfer and the assignment from Assignor and to assume all obligations of Assignor as redeveloper under the Agreement.

D. Assignor and Assignee desire to obtain the requisite written consent of the Authority prior to transferring the Property and assigning the Redevelopment Contract.

E. The Authority is willing to grant its written consent to the transfer of the Property and the assignment of the Redevelopment Contract from Assignor to Assignee.

**NOW, THEREFORE**, in consideration of the above Recitals, all of which are hereby incorporated into the terms of this Assignment, and in further consideration of the mutual covenants and agreements contained in this Assignment, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties to this Assignment hereby mutually covenant and agree as follows:

1. Assignor does hereby sell, assign, transfer and convey to Assignee, all of Assignor's right, title and interest in and to the Agreement. Notwithstanding the foregoing or anything else to the contrary, Assignor retains all right, title and interest in and to the TIF Note (as defined in the Agreement) and all rights to payments thereunder.

2. Assignee does hereby accept the assignment to it of all of Assignor's right, title and interest in and to the Agreement and does hereby expressly assume all of the obligations of the redeveloper under the Agreement as to all such obligations arising or accruing from and after the effective date of this Assignment, and does hereby covenant and agree to fully and faithfully perform, observe and comply with all of the covenants, agreements and conditions and other terms and provisions stated in the Agreement, which under the terms of the Agreement are to be performed, observed and complied with by the redeveloper thereunder from and after the effective date of the Assignment.

3. Assignor does hereby agree to indemnify, protect and save harmless Assignee from and against any and all costs, expenses, claims, losses or damages (including attorney's fees and costs of defense) arising by reason of Assignor's breach of any of the terms or conditions of the Agreement prior to the effective date of this Assignment. Assignee does hereby agree to indemnify, protect and save harmless Assignor from and against any and all costs, expenses, claims, losses or damages (including attorney's fees and costs of defense) arising by reason of Assignee's breach of any of the terms or conditions of the Agreement after the effective date of this Assignment.

4. The Authority does hereby consent to the transfer of the Property from Assignor to Assignee and to the above and foregoing Assignment on the conditions herein contained, and does hereby represent and warrant with and to Assignor and Assignee as follows:

(a) The Agreement has not been amended or otherwise modified and is in full force and effect.

(b) All of the covenants, agreements, conditions and other terms and provisions stated in the Agreement, which were or are to be performed, observed and complied with by Assignor or the Authority have been fully and faithfully performed, observed and complied with to the effective date hereof and the Agreement is free and clear of any breach, violation or default thereunder.

5. In consideration of the assumption by Assignee hereunder, the Authority hereby releases Assignor from any future liability and obligations which arise or accrue under the Agreement from and after the effective date of this Assignment.

6. Assignee directs, and the Authority acknowledges and agrees, that from and after the effective date hereof notices to be given to the redeveloper under the Agreement shall be delivered to Ken-Ray, L.L.C., 2502 A North Webb Road, Grand Island, Nebraska 68803, Attn: Raymond J. O'Connor and the Assignor

7. The parties each hereby acknowledge that this Assignment may be executed in one or more counterparts, all of which together shall constitute one and the same instrument, may be exchanged by facsimile or electronic transmission and that the facsimile or electronic copies of each party's respective signature shall be binding as if the same were an original signature.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, this Assignment is executed by the parties effective as of the day and year first written above.

**ASSIGNOR:**

**SUPER MARKET DEVELOPERS, INC.,**  
a Missouri corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**KEN-RAY, L.L.C.,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Raymond J. O'Connor, Managing Member

**THE AUTHORITY:**

**COMMUNITY REDEVELOPMENT AUTHORITY  
OF GRAND ISLAND, NEBRASKA**

By: \_\_\_\_\_  
Chair or Vice Chair