



## **CITY OF WASHINGTON, ILLINOIS**

### **City Council Agenda Communication**

**Meeting Date:** May 4, 2020

**Prepared By:** Jon Oliphant, AICP, Planning & Development Director  
Ray Forsythe, City Administrator

**Agenda Item:** Second Reading Ordinance – Heider Properties TIF Agreement Amendment

**Explanation:** **UPDATE**

The amended agreement has been edited to add clarifying language in Section II(A) that the trigger of the 2019 penalty clause would be a one-time violation. Any potential future violations would not require payment of the penalty provision. Additionally, language has been added to Section III(D) to indicate that the \$50 per day penalty is independent of any other late payment penalty.

**Current**

The City of Washington entered into a TIF redevelopment agreement with Heider Properties, LLC, in April 2017. The agreement allowed for the eventual interior and exterior renovations to the Blacksmith and Cornerstone Inn spaces.

The agreement paid Heider Properties \$350,000 in three installments. It includes a deescalating financial penalty that started at \$40,000 in 2017 and is reduced by \$8,000 each year thereafter if a restaurant on the lower floor, a restaurant or a mutually-agreed upon sales tax producing business on the first floor, or inn on the second floor were to be closed for a period of 20 consecutive days through 2021. A restaurant would need to serve at least two meals per day for at least six days a week through 2021. Of those meals, at least one must be offered in a restaurant on the lower level. Each of these provisions were violated in late 2019. Violation of these provisions in 2019 carries a repayment by the developer of \$24,000.

Additionally, the agreement contains a clause that requires repayment to the TIF Fund an amount equal to 10% of any profits accrued through 2021 or \$35,000, whichever is less. This is determined by the developer's adjusted EBITDA. It uses the developer and any entity under common control under Section 414 of the Internal Revenue Code of 1986. As a result, this also includes Heider & Son Properties and Kep's Sports Bar. The 2017 total is \$8,907.15, of which \$2,000 was previously paid. Heider Properties still also owes \$13,675.58 for 2018 (payable in 2019) for a grand total of \$20,582.73. The agreement would allow for up to an additional \$12,417.27 to be owed through 2021 depending on the EBITDA calculations for the remaining three years for the three entities. The current total due based on the existing agreement is \$44,582.73.

**Proposed**

Following prior Committee of the Whole feedback, an amendment to the redevelopment agreement has been drafted that bases any payments from Heider Properties to the TIF Fund on the 101-103 Washington Square businesses and real estate and eliminates Kep's from that equation. The Heider's accountant provided an updated statement of revenue and expenses for 2017 and 2018 based solely on the Denhart's spaces that has been reviewed by the City Attorney's office. This showed that there was a loss of about \$16,500 in 2017 (which would not carry a payment to the City) and a profit of \$45,175 in 2018, which would result in \$4,517.50 being owed to the City. Because \$2,000 was previously paid, the draft amendment to

the agreement would require that \$2,517.50 be paid. This amendment also would prorate the 2019 penalty from \$24,000 to \$16,462 to reflect that the developer was in compliance with the agreement for about 49 weeks.

Staff recommends that the 2018 EBITDA payment (\$2,517.50) and the 2019 penalty be paid in three installments as follows:

- First payment (\$2,517.50): Due within 30 days of the amended agreement approval or the first day of the calendar month after 30 days has ceased since the expiration of the Governor's Executive Order to allow for dine-in service, whichever is later. This reflects that \$2,000 had previously been paid in 2018. This would take into consideration the current substantial impact on business as a result of COVID-19;
- Second payment (\$8,231—half of the prorated \$16,462 portion of the 2019 penalty): Due on the first day of the calendar month after 60 days has ceased since the expiration of the EO; and
- Third payment (\$8,231): Due on the first day of the calendar month after 180 days has ceased since the expiration of the EO.

Additionally, staff recommends including a clause that the 2019 EBITDA calculation be done within 30 days of the effective date of the agreement. Any payment (if applicable) would be required within 60 days of the effective date or 60 days after the EO ceases, whichever is later. Finally, there would be a penalty of \$50 per day for any late payments.

**Fiscal Impact:** The City would receive a total of \$18,979.50 paid to the TIF Fund in three installments. Future EBITDA payments for 2019, 2020, and 2021 would be also be paid to the TIF Fund if there is a positive Adjusted EBITDA for any of those years.

**Action Requested:** Staff requests approval of the amendment to the TIF redevelopment agreement. A first reading ordinance is scheduled for the April 20 City Council meeting and a second reading ordinance will be scheduled for May 4.

**Ordinance No. \_\_\_\_\_**

(Adoption of this ordinance would approve an amendment to a TIF redevelopment agreement with Heider Properties, LLC, for the redevelopment of 101-103 Washington Square).

**AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE  
AGREEMENT FOR PRIVATE DEVELOPMENT WITH HEIDER PROPERTIES,  
LLC, FOR THE REDEVELOPMENT OF A PORTION OF THE DOWNTOWN  
TAX INCREMENT REDEVELOPMENT PROJECT AREA**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
WASHINGTON, TAZEWELL COUNTY, ILLINOIS, as follows:**

**Section 1.** That the First Amendment to the Agreement for Private Redevelopment between the City of Washington, Illinois, and Heider Properties, LLC, for the redevelopment of a portion of the Downtown Tax Increment Redevelopment Project Area, a copy of which is attached hereto, marked "Exhibit A," and by reference expressly made a part hereof, be, and the same is hereby approved.

**Section 2.** That the Mayor and City Clerk of the City of Washington be, and hereby are, authorized, empowered, and directed to execute said Agreement on behalf of the City of Washington in substantially the form of the document attached hereto, marked "Exhibit A," and by reference expressly made a part hereof, and to make, execute, and deliver any and all documents necessary for the effectiveness thereof.

**Section 3.** That this Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

**Section 4.** That all ordinances or parts thereof in conflict herewith are hereby expressly repealed.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**AYES:** \_\_\_\_\_

**NAYS:** \_\_\_\_\_

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**FIRST AMENDMENT TO THE  
AGREEMENT FOR PRIVATE REDEVELOPMENT  
BETWEEN THE CITY OF WASHINGTON,  
TAZEWELL COUNTY, ILLINOIS, AND  
HEIDER PROPERTIES, LLC**

This First Amendment to the Agreement for Private Redevelopment (“Amendment”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between the **CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS**, an Illinois home-rule municipal corporation (hereinafter referred to as the “City”), exercising its governmental powers pursuant to the 1970 Constitution of the State of Illinois, **HEIDER PROPERTIES, LLC**, an Illinois limited liability company (hereinafter referred to as “Developer”) and **BROCK AND ELIZABETH HEIDER** (hereinafter referred to as the “Guarantors”):

**R E C I T A L S**

**WHEREAS**, the City, the Developer and the Guarantors entered into that certain Agreement for Private Redevelopment dated April 17, 2017 (the “Agreement”) whereby the City provided assistance to the Developer to assist the Developer in its redevelopment of the real estate more particularly described in the Agreement, commonly known as 101-103 Washington Square, Washington, Illinois, (hereinafter referred to as the “Real Estate”) through assistance in the payment of certain redevelopment project costs of the Developer in a total amount of Three Hundred Fifty Thousand Dollars (\$350,000), in consideration of which Developer was willing to redevelop the Real Estate;

**WHEREAS**, as a material term of the Agreement, Developer and the Guarantors agreed for itself, its successors and assigns, that the Developer will use the Real Estate to operate a restaurant in the basement, a restaurant on the main level and an inn on the second level through December 31, 2021, including operating a restaurant that serves not less than two meals per day for a period of at least six (6) days per week and one of those meals per day being offered in a restaurant located on the below street level floor. If the Real Estate was not used for such purposes between September 1, 2017 and December 31, 2021, the Developer and/or the Guarantors agreed to pay the Special Tax Allocation Fund maintained by the City for the Project an amount equal to (“**Operations Penalty**”):

| Date Operations Ceased in the Real Estate | Amount Payable to the Special Tax Allocation Fund |
|-------------------------------------------|---------------------------------------------------|
| September 1, 2017- December 31, 2017      | \$40,000                                          |
| January 1, 2018 – December 31, 2018       | \$32,000                                          |
| January 1, 2019 – December 31, 2019       | \$24,000                                          |
| January 1, 2020 – December 31, 2020       | \$16,000                                          |
| January 1, 2021 – December 31, 2021       | \$8,000                                           |

**WHEREAS**, the Developer violated this requirement when the Real Estate did not include a restaurant that served not less than two meals per day for a period of six (6) days per week beginning on or about December 10, 2019;

**WHEREAS**, the City, the Developer and the Guarantors have agreed to modify the Operations Penalty such that the Developer and the Guarantors shall pay the Operations Penalty as if the failure occurred in 2020 plus the proration of the difference between the Operations Penalty for 2019 and 2020;

**WHEREAS**, as a material term of the Agreement, the Developer and the Guarantors agreed to pay to the Special Tax Allocation Fund maintained by the City for the Project Area an amount equal to ten percent (10%) multiplied by the Developer's Adjusted EBITDA, up to an amount equal to the lesser of ten percent (10%) multiplied by the Qualified Redevelopment Project Costs paid to the Developer under the Agreement or Thirty-Five Thousand Dollars (\$35,000);

**WHEREAS**, the Developer's Adjusted EBITDA was defined to include EBITDA generated by the Developer and any entity under common control with the Developer, including earnings generated by business activity outside the Project Area;

**WHEREAS**, the Developer and the City have agreed to amend the definition of the Developer's Adjusted EBITDA to include EBITDA generated by the Developer and any entity under common control with the Developer only with respect to business activity inside the Project Area;

**WHEREAS**, no payment is due to the City from the Developer's Adjusted EBITDA for the Developer's fiscal year that ended December 31, 2017;

**WHEREAS**, the Developer and the Guarantors acknowledge and agree that the Developer's Adjusted EBITDA, as amended by this Amendment, for the Developer's fiscal year that ended December 31, 2018 is Forty-Five Thousand One Hundred Seventy-Five Dollars (\$45,175) and that the Developer and/or the Guarantors owe the Special Tax Allocation Fund Four Thousand Five Hundred Seventeen and 50/100 Dollars (\$4,517.50), of which Two Thousand Dollars (\$2,000) was previously paid by the Developer to the Special Tax Allocation Fund;

**WHEREAS**, all capitalized terms used in this Amendment not defined herein shall have the meaning prescribed in the Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto covenant, consent, and agree as follows:

## **SECTION I INCORPORATION OF RECITALS**

The recitals set forth above are expressly incorporated as a material term of this Amendment.

## **SECTION II PAYMENT OF OPERATIONS PENALTY**

**A. Operations Penalty.** The Developer, the Guarantors and the City agree that the Operations Penalty is Sixteen Thousand Four Hundred Sixty-One and 54/100 Dollars (\$16,461.54). There shall no be further Operations Penalty assessed against the Developer and the Guarantor under the Agreement.

**B. Payment of Operations Penalty.** The Developer and the Guarantors shall pay Eight Thousand Two Hundred Thirty-One Dollars (\$8,231) of the Operations Penalty no later than the first day of the calendar month sixty (60) days after the Developer and/or the Developer's affiliate is permitted under Executive Order 2020-10 "Executive Order in Response to COVID-19", including any extensions or subsequent executive orders ("Executive Order") to reopen the dine-in service portion of its business located at the Real Estate. The remaining portion of the Operations Penalty shall be paid no later the first day of the calendar month one hundred eighty (180) days after the Developer and/or the Developer's affiliate is permitted under the Executive Order to reopen the dine-in service portion of its business located at the Real Estate.

**C. Late Payment of Operations Penalty.** If the Operations Penalty is not timely paid in accordance with this Section, Developer and/or the Guarantors shall pay a Fifty Dollars (\$50) per day penalty for each day the payment is late.

## **SECTION III PAYMENT TO SPECIAL TAX ALLOCATION FUND**

**A. Amendment to Section II, Paragraph L of the Agreement.** Section II, Paragraph L of the Agreement is hereby amended by adding the following at the end of Paragraph L:

*The Developer's Adjusted EBITDA shall be based exclusively on business activity located within the Projected Area, as certified by the Developer's certified public accountant.*

**B. 2018 Developer's Adjusted EBITDA.** The Developer, the Guarantors and the City agree that the Developer's Adjusted EBITDA for the Developer's fiscal year that ended December 31, 2018 is Forty-Five Thousand One Hundred Seventy-Five Dollars (\$45,175). The Developer and/or the Guarantors shall pay Two Thousand Five Hundred Seventeen and 50/100 Dollars (\$2,517.50), which represents the remaining amount due to the Special Tax Allocation Fund based on the Developer's 2018 EBITDA. Developer shall make the payment required by this paragraph within the later of thirty (30) days of the Effective Date or thirty (30) days after the

Developer and/or the Developer's affiliate is permitted under the Executive Order to reopen the dine-in service portion of its business located at the Real Estate.

**C. 2019 Developer's Adjusted EBITDA.** The Developer and the Guarantors shall calculate the Developer's Adjusted EBITDA for the Developer's fiscal year that ended December 31, 2019 within thirty (30) days of the Effective Date. If the Developer's Adjusted EBITDA for such fiscal year is greater than zero, the Developer and/or the Guarantors shall make the payment due to the Special Tax Allocation Fund within sixty (60) days of the later of the Effective Date or sixty (60) days after the Developer and/or the Developer's affiliate is permitted under Executive Order to reopen the dine-in service portion of its business located at the Real Estate.

**D. Late Payment of Amounts Due under Section II, Paragraph L of the Agreement.** For each occurrence a payment to the Special Tax Allocation Fund is not made within the time requirements of Section II, Paragraph L of the Agreement, as revised by this Amendment, the Developer and/or the Guarantors shall pay a Fifty Dollars (\$50) per day penalty for each day the payment is late. The late payment penalty provided for under this paragraph shall apply to each payment independent of whether any other payment is subject to a late payment penalty.

#### **SECTION IV GENERAL PROVISIONS**

**A. Full Force and Effect.** Except as modified herein, all of the terms and conditions contained in the Agreement shall remain in full force and effect. The Developer and the Guarantor hereby ratify and confirm that the City has fulfilled its obligations under the Agreement.

**B. Choice of Law.** The Agreement, as modified by this shall be construed under and pursuant to the laws of the State of Illinois.

**C. Execution of Counterparts.** If this Amendment is executed in two or more counterparts, each shall constitute one and the same instrument and shall be recognized as an original instrument.

**D. Construction of Agreement.** Each party was or had the opportunity to be represented by legal counsel during the negotiation resulting in this Amendment and have their legal counsel review this Amendment. The parties agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Amendment.

**[Remainder of Page Left Intentionally Blank]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement and caused their respective seals to be affixed and attested thereto as of the date and year first above written.

**CITY OF WASHINGTON  
TAZEWELL COUNTY, ILLINOIS**

**HEIDER PROPERTIES, LLC**

By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Brock Heider, Manager

\_\_\_\_\_  
Elizabeth Heider, Manager

ATTEST:

**GUARANTORS**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Brock Heider

\_\_\_\_\_  
Elizabeth Heider

**[First Amendment to the Agreement for Private Redevelopment]**