



CITY OF WASHINGTON, ILLINOIS

Finance and Personnel Committee Agenda Communication

Meeting Date: May 18, 2020

Prepared By: Jon Oliphant, AICP, Planning & Development Director

Agenda Item: Heider Properties TIF Agreement Amendment Modifications

Explanation: The amended Heider Properties TIF agreement was approved by Council on May 4. The following changes are included (and highlighted) in the attached document:

- The initial payment (the remaining 2018 EBITDA repayment of \$2,517.50) would be due within 120 days of being allowed to be open without any capacity restrictions or October 1, 2021. The October 1, 2021, date was not discussed at the meeting but has been inserted in case the capacity restrictions continue for the next 16+ months. That date was selected because the TIF is currently scheduled to expire at the end of 2021;
- The other two payments of \$8,231 apiece (both for the 2019 penalty) have been moved back accordingly by 90 days each, so that the first of those would be due within 150 days of being allowed to be open without any capacity restrictions (or October 1, 2021) and the second would be due by 270 days after those same parameters; and
- The payment of the 2019 EBITDA (if applicable) would also be moved back by 90 days, so that it would now be due within 150 days of being allowed to be open without any capacity restrictions or October 1, 2021.

Fiscal Impact: The City would receive a total of \$18,979.50 paid to the TIF Fund in three installments by October 1, 2021. 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: This has been provided for reference to the committee because the exact language had not been inserted upon the time of Council approval on May 4. No further action is necessary.

**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”):

RECITALS

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 earlier of the first day of the calendar month sixty (60 one hundred fifty (150)) 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 without any capacity restrictions or October 1, 2021. The remaining portion of the Operations Penalty shall be paid no later than the earlier of the first day of the calendar month one two hundred eighty (180 seventy (270)) 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 without any capacity restrictions or October 1, 2021.

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~~ *by* the ~~later~~ *earlier* of ~~thirty (30) days of the Effective Date or thirty (30 one hundred twenty (120) 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~~ *without any capacity restrictions or October 1, 2021.*

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~~ *by the earlier of one hundred fifty (150) 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* *without any capacity restrictions or October 1, 2021.*

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.

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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]