

Memo

To: Kurt Ulrich – Executive Director
From: Stacie Kvilvang
Date: December 14, 2010
Subject: COR Apartments - Development Proposal and Terms of Development Agreement and Other Obligations

Flaherty & Collins has submitted their concept for development of the COR Apartments which will consist of approximately 216 market rate apartments, 14 market rate, rental town homes and approximately 3,000 sq/ft of retail.

Based upon the above referenced development program, following is a listing of the proposed business terms for the Development Agreement and other obligations:

1. **General**

- a. Developer. The Developer is F & C Ramsey, LLC, an Indiana limited liability company, which is a single asset entity.

2. **Purchase Agreement**

- a. General. The HRA currently owns the land and a Purchase Agreement between them and the Developer will be executed contemporaneously with the execution of the Development Agreement. The HRA's obligation to sell is contingent upon the Developer providing the HRA with reasonable acceptable evidence that they have obtained all necessary governmental approvals to build the project and have obtained financing sufficient to finance 65% of the construction costs. The Developer is obligated to purchase Lot 3, Block 1, COR ONE, for a purchase price of \$250,000 and is contingent upon their determination, on or before December 31, 2010, that the condition of the property is acceptable to them and that various other conditions outlined in the various agreements have been met (amendment to parking agreement, special service district ordinance, obtaining permits to construct the project, obtaining financing and securing of a rail stop). Currently it is anticipated that the closing will be completed by April 29, 2011. The HRA's obligation to sell is also contingent upon the HRA's determination, on or before January 14, 2011, that the City will secure a stop on the North Star Commuter Rail Line and construct a stop and station on or before July 1, 2012.
- b. Right of Reverter. The HRA has the authority to commence an action in court seeking an order that re-vests title of the property to the HRA and grants the HRA immediate possession of the property if the Developer fails to substantially complete construction on or before June 30, 2013, or if the construction lender commences proceedings to foreclose the construction loan prior to Developer's substantial completion of the project. The HRA agrees that the it will subject its interest in the property to the lien of any construction loan provided that the construction lender acknowledges in writing that if they foreclose and the HRA obtains a court order re-vesting title to them, the HRA shall be entitled to redeem the property/project from foreclosure.

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- c. City Obligations. The City must substantially complete construction of an approximately 200 stall addition to the existing parking ramp on or before June 30, 2012, for which the City has a 3.5 million dollar CMAQ grant as a funding source. The construction of these additional stalls will allow for the allocation of 350 stalls for transit use over the entire parking structure. The City must record an Amendment to the Parking Improvement Use and Maintenance Agreement that grants the Developer an exclusive easement to use 275 stalls in the expanded parking ramp, gives them a non-exclusive easement to use other parking spaces in the expanded parking ramp and allocates 25 spaces in the portion of the expanded parking ramp that is not subject to their exclusive easement to for purposes of proof of parking. In addition, the City must purchase and install way finding and stall designation signage in the parking ramp which the Developer is required to reimburse the City.
- d. Public Hearing. The HRA is required to have a public hearing on the sale of the land, which public hearing is scheduled for December 14, 2010.
- e. Relationship Between the Development Agreement and the Purchase Agreement. In an event of a conflict between terms of the two agreements, the Development Agreement prevails. If the HRA or the Developer terminates the Purchase Agreement, the Development Agreement automatically terminates and only some terms may survive the termination. Likewise, if the City, HRA or Developer terminates the Development Agreement, the Purchase Agreement automatically terminates with the exception of provisions that state they survive termination.

3. Construction of Minimum Improvements

- a. Minimum Improvements. The Developer is required to construct a market rate rental project consisting of approximately 216 apartments and 14 town homes, along with approximately 3,000 sq/ft of commercial space.
- b. Submission of Plans. The Developer must submit plans for review and approval on or before April 1, 2011.
- c. Commencement and Completion of Construction. The Developer shall commence construction of the project by June 30, 2011 and substantially complete the project by June 30, 2013 (eligible to receive a Certificate of Occupancy). If unavoidable delays arise that affect either commencing or completing construction, the Developer is required to give the City and HRA notice within 30 days of the unavoidable delay.

4. Tax Increment

- a. Creation of a TIF District. The City will be required to create TIF District No. 14 on or before February 1, 2011 (a public hearing on the establishment of the TIF district has been set for December 14, 2010). This will be a Redevelopment District as defined by the special legislation approved by the City. It is anticipated that the first increment will be received in 2013 for this project, thus the district will terminate on December 31, 2038 (26 years).

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- b. Termination Right if TIF District Not Established. If the City doesn't establish the TIF district by February 1, 2011, the Developer may terminate the Development Agreement upon written notice to the City and HRA. If the City creates the TIF district after this date, but before the Developer exercises their termination right, they can no longer terminate the Development Agreement for this reason.
- c. Minimum Assessment Agreement. The Developer will be required to enter into a Minimum Assessment Agreement with the City and County for a minimum value of \$9,710,000 as of January 2, 2012, \$19,420,000 as of January 2, 2013 (Note: the minimum assessment amounts are subject to review and approval by the County Assessor). These minimum values were utilized to determine the size of the TIF Note. The County Assessor will determine the actual value, however at no time will Developer be able to contest the assessed valuation of the property below the above referenced amount. If the value is higher than the required minimum assessment amount and the Developer contests the value, they are required to provide 30 day notice to the City. The City will then make TIF payments based solely upon the minimum assessed value until such time the tax petition is resolved. This agreement will remain in place until the TIF Note is paid in full or the district is terminated, whichever is earlier.
- d. Base Valuation. Since the property is currently exempt from property taxes, the County Assessor will be required to assign a value to the property. The Developer will not have the right to contest this valuation. For purposes of TIF estimates for this project, the base value was set at \$1,840,000 per discussions with the County Assessor. If this is the final base valuation set by the County Assessor, this will equate to approximately \$9,200 in annual taxes to the City's General Fund.
- e. Amount of Increment: Based upon the assumptions for base value of the existing land and the value of the development stated in the Minimum Assessment Agreement, it is estimated that the development will generate approximately \$2 million in present value tax increment at a 6.25% rate.

NOTE: THE ACTUAL AMOUNT OF INCREMENT THAT WILL BE GENERATED WILL DEPEND UPON THE BASE VALUE ESTABLISHED BY THE COUNTY ASSESSOR, VALUATION OF THE DEVELOPMENT DETERMINED BY THE COUNTY ASSESSOR AND CURRENT TAX RATES.

- f. Eligible Reimbursement Costs. The Developer will be reimbursed for the lesser of \$2 million or the actual costs associated with the following:

General Conditions, removal of top soil, fill, utilities, grading, foundations, fire separation from parking ramp, parking lot and curb, sidewalk, lighting, landscaping, irrigation, pool improvements, permit and plan review fees and contractor fee (full detailed list in Exhibit J).
- g. Fiscal Disparities. The City Council will need to make a determination if fiscal disparities will be paid inside or outside of the District. The Council is currently reviewing this information and will make that determination at a future date (prior to the public hearing on establishment of the TIF District).

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- h. Administration Expense Allocation. Currently all TIF calculations show the first 15% of the tax increment being available to the City/HRA to pay for administration or other qualified expenditures within the TIF District (approximately \$32,600 annually).
- i. TIF Note. The Developer will finance the eligible reimbursement costs up front and will receive tax increment on a Pay-As-You-Go (PAYGO) basis. This means that as they pay their taxes, they will receive a portion of their tax dollars back (approximately \$.73 on the dollar). The TIF note is being paid at a 6.25% PAYGO rate, which is based upon their anticipated financing rate. The TIF Note will be issued to the Developer after certification of eligible reimbursement costs to the City/HRA.

2. City Loan

- a. Loan Amount. The City is providing the Developer a loan for \$1.3 million to assist in the financing of the development to assure it moves forward in a timely fashion. The funds will be advanced from the City's TIF District #1. The Developer is not obligated to pay interest on this loan, but rather will pay the City a fee of \$120,000 (total repayment of \$1,420,000).
- b. Loan Repayment. The loan will be repaid to the City from 20% of the annual cash flow generated from the project and/or 20% of the proceeds received from a sale or refinancing of the development. Beginning on April 1, 2014, the Developer is required to have its accountants prepare operating financial statements to determine the amount of cash flow for the project. To the extent there is available cash flow, 20% will be paid to the City and applied to payment on the City Loan (the remaining 80% will be paid to the equity investors). Based upon current projections, it is estimated that the loan would be repaid within ten (10) years. If the loan is not paid prior to 2024 (10 years), simple interest at a rate of 6.25% will accrue on the unpaid balance from April 1 2024, until the loan is paid in full. If at any time the Developer defaults in timely payment of the loan and the City provides the Developer notice and the Developer does not cure the default within ten (10) days, the unpaid balance will accrue at a twelve (12) percent rate until such time the default is cured.
- c. Loan Guaranty. Flaherty & Collins Construction Inc. is providing a corporate guarantee for the loan. To the extent there is inadequate cash flow from the project to repay the loan, Flaherty & Collins Construction Inc. will be required to make the payments.
- d. Spending Plan. In order to provide the loan to the Developer, the City is required to develop a Spending Plan and hold a public hearing on the Plan in accordance with legislation that was approved in 2010. If the City does not hold the public hearing and/or adopt the Spending Plan on or before February 1, 2011, the Developer may terminate the Development Agreement. If the City holds the public hearing and approves the Spending Plan after this date, but before the Developer exercises their termination right, they can no longer terminate the Development Agreement for this reason. The public hearing on the Spending Plan is scheduled for December 14, 2010.

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- e. Limitations on Disbursement. The City is not required to disburse any proceeds to the Developer if they do not commence construction by June 30, 2011 (loan agreement terminates). The City will only pay out proceeds of the loan to the Developer after they have actually incurred the costs and submitted proof of payment. The Developer will not be reimbursed for eligible costs that are reimbursed by the \$2 million PAYGO TIF Note or for costs that are not expended by December 31, 2011.

3. Miscellaneous.

- a. Payment of Administrative Expenses. Costs associated with the creation of TIF District #14, Spending Plan for TIF District 1 and 2, all agreements related to this development and the administrative fee paid to Landform, will be paid from TIF District #1 and #2. The HRA and City will set up an interfund loan for an amount not to exceed \$500,000 from this TIF District and will repay itself from TIF generated from TIF District #14, when such increment is available. The interfund loan will carry an interest rate of four (4) percent.
- b. Development Fees. Since the HRA currently owns the property, they are required to pay the various fees associated with platting the property. These fees are currently estimated to be approximately \$2,443,200. The HRA will be setting up an interfund loan from TIF District 2 to pay for these fees. TIF District 2 will be repaid from TIF generated from various projects within the new TIF District.
- c. Assistance For Commercial Space. If after twelve (12) months from receiving the Certificate of Occupancy for the commercial space the Developer has not been able to lease all or a portion of the space to a third party, the HRA will provide assistance to the Developer. The HRA will provide the Developer up to \$16 sq/ft annually, for up to a three year period, for space that has not been leased by a third party (up to \$144,000 maximum).
- d. Contingency For Rail Stop. At any time on or before January 15, 2011, the City or Developer may terminate the development agreement by written notice if they are not comfortable that the City will secure a North Star Commuter Rail Stop and complete construction of the Rail Stop on or before July 1, 2012.
- e. Sale or Assignment. The Developer is precluded from selling its development rights to the project or the property, development agreement or TIF Note prior to issuance of a Certificate of Occupancy (CO) on the project. The Developer can only sell or transfer its rights upon written approval from the City, which approval can be granted, withheld or conditioned solely at the City's discretion.
- f. Events of Default. The following issues constitute an event of default:
 - i. Developer's default in the performance of one or more of their obligations under the Purchase Agreement.
 - ii. Failure of the Developer to construct the minimum improvements.
 - iii. Developer default in the timely payment of any amounts due under the City Loan Agreement or the City Note.

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- iv. Developer default in timely reimbursement to the City for costs associated with the way finding and stall designation signage in the parking ramp expansion.
- v. The holder of any mortgage on the property commences foreclosure proceedings.
- vi. Developer filing any petition for bankruptcy or reorganization.
- vii. Failure of Developer to pay real estate taxes or special assessments.
- g. Remedy of Default. If the Developer (or the construction lender) does not cure various events of default as provided for in the various agreements, the City and/or HRA may terminate the Development Agreement, Loan Agreement and TIF Note.

Please contact me at 651-697-8506 with any questions.