

June 23, 2021

WHEREAS, WCWRD Inc, by and through its affiliates and subsidiaries, is redeveloping and renovating Red Bird Mall located at 3662 West Camp Wisdom Road; and

WHEREAS, the Project is supporting increased density and diversified uses in a more pedestrian-oriented development pattern to enhance economic vibrancy, improve quality of life, and provide permanent employment opportunities to southern Dallas; and

WHEREAS, the Project is located in a Redevelopment Area as designated in the City of Dallas Comprehensive Housing Policy adopted by City Council on May 9, 2018, by Resolution No. 18-0704, as amended; and

WHEREAS, the City recognizes the importance of its role in local economic development; and

WHEREAS, the use of economic development incentives is a necessary tool to attract catalyst developments to southern Dallas; and

WHEREAS, on May 14, 2014, City Council authorized the designation of the Mall Area Redevelopment TIF District in accordance with the Tax Increment Financing Act, as amended, V.T.C.A. Texas Tax Code, Chapter 311, by Resolution No. 14-0783; Ordinance No. 29340; and

WHEREAS, the Mall Area Redevelopment TIF District was created to stimulate private investment and sustain the orderly redevelopment and revitalization of two commercial core assets of the City while taking advantage of each area's strategic regional location at the crossroads of key transportation corridors; and

WHEREAS, the Mall Area Redevelopment TIF District comprises two non-contiguous sub-districts: (1) the Montfort-IH 635 Sub-District for the Valley View Center Mall area in northern Dallas and (2) the Westmoreland-IH 20 Sub-District for the Red Bird Mall area in southern Dallas; and

WHEREAS, on June 17, 2015, City Council authorized the Mall Area Redevelopment TIF District Project Plan and Reinvestment Zone Financing Plan by Resolution No. 15-1145; Ordinance No. 29771; and

WHEREAS, on January 13, 2016, City Council authorized entering into a Chapter 380 Grant Agreement ("2016 Chapter 380 Grant Agreement") to provide Developer with a \$2,400,000.00 grant for the Project, such grant being secured by a deed of trust ("Deed of Trust") encumbering the Project by Resolution No. 16-0103; and

WHEREAS, on June 13, 2018, City Council authorized a first amendment to the 2016 Chapter 380 Grant Agreement to extend all dates by eighteen months by Resolution No. 18-0850; and

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WHEREAS, on June 13, 2018, City Council authorized entering into a Tax Increment Development, Chapter 380 Grant, and Chapter 380 Loan Agreement (“2018 TIF/Chapter 380 Agreement”) with Developer in consideration of the Red Bird Mall Redevelopment Project, providing: (1) a conditional grant in an amount not to exceed \$10,000,000.00; (2) a 15-year interest-only subordinate loan in an amount not to exceed \$12,000,000.00 (“Loan”); (3) a development agreement awarding an amount not to exceed \$15,600,000.00 in tax increment funding from the Mall Area Redevelopment TIF District; and (4) an assignment of all tax increment payable under the 2018 TIF/Chapter 380 Agreement to the City, the Loan and performance obligations which are secured by the Deed of Trust and a guaranty provided by 3662 Investors, LP by Resolution No. 18-0850; and

WHEREAS, on December 11, 2019, City Council authorized the re-adoption of the City of Dallas Public/Private Partnership Program Guidelines and Criteria through December 31, 2020, which (1) established certain guidelines and criteria for the use of City incentive programs for private development projects; (2) established programs for making loans and grants of public money to promote local economic development and to stimulate business and commercial activity in the City pursuant to the Economic Development Programs provisions under Chapter 380 of the Texas Local Government Code; and (3) established appropriate guidelines and criteria governing tax abatement agreements to be entered into by City as required by the Property Redevelopment and Tax Abatement Act, as amended, (Texas Tax Code, Chapter 312) ("Tax Abatement Act") by Resolution No. 19-1959; and

WHEREAS, on January 8, 2020, City Council authorized: (1) a New Markets Tax Credit transaction between the Dallas Development Fund and its subsidiaries, Capital One N.A. and its subsidiaries and Developer for improvements within the Red Bird Mall Redevelopment Project; and (2) a second amendment to the 2016 Chapter 380 Grant Agreement, a first amendment to the 2018 TIF/Chapter 380 Agreement with Developer, and to amend or execute any other documents necessary to: (A) release the property owned by OMRB LLC (being the Foot Locker) and the property owned by OMRB II LLC (being the Lawn) from the lien Deed of Trust and the indebtedness evidenced by the City’s 15-year interest-only subordinate loan; (B) specifically remove the condition of the disbursement of the second loan installment that all 2017 General Obligation Bond Funds be fully disbursed and expended by Developer and allow the second loan installment to be disbursed on or before January 31, 2020; (C) increase the Developer’s required total minimum investment for the Project by \$1,000,000.00 from \$115,000,000.00 to \$116,000,000.00 as consideration for (A) and (B); and (D) make such other modifications which may be necessary to effectuate the foregoing amendments by Resolution No. 20-0118; and

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WHEREAS, on May 13, 2020, City Council authorized: (1) a third amendment to the 2016 Chapter 380 Grant Agreement with Developer and a second amendment to the 2018 TIF/Chapter 380 Agreement with Developer, approved as to form by the City Attorney, related to the Red Bird Mall Redevelopment Project to: (a) increase the amount of the 2018 Chapter 380 conditional grant by \$3,000,000.00 in bond funds; (b) remove the requirement that the Developer make any Distributable Cash Payments to the City pari passu with distributions of cash flow to the Project's equity investors; and (c) increase the minimum Investment Requirement for the Project by \$14,000,000.00; (2) placement of a deed of trust in favor of the City on the former Sears Property and, at the request of the Developer, any other future properties acquired by the Developer within the Westmoreland-IH 20 Sub-District of Tax Increment Reinvestment Zone Number Twenty; and (3) the City Manager to negotiate and execute any other documents, including but not limited to Subordination, Non-Disturbance, and Attornment agreements necessary to accommodate the Project in accordance with City Council approved terms, approved as to form by the City Attorney by Resolution No. 20-0763; and

WHEREAS, on December 9, 2020, City Council authorized the re-adoption of the City of Dallas Public/Private Partnership Program Guidelines and Criteria through June 30, 2021, which (1) established certain guidelines and criteria for the use of City incentive programs for private development projects; (2) established programs for making loans and grants of public money to promote local economic development and to stimulate business and commercial activity in the City pursuant to the Economic Development Programs provisions under Chapter 380 of the Texas Local Government Code; and (3) established appropriate guidelines and criteria governing tax abatement agreements to be entered into by City as required by the Property Redevelopment and Tax Abatement Act, as amended, (Texas Tax Code, Chapter 312) ("Tax Abatement Act") by Resolution No. 20-1972; and

WHEREAS, the Developer recently requested amendments to the 2016 Chapter 380 Agreement and the 2018 TIF/Chapter 380 Agreement that are intended to address several issues arising over the past year mostly due to the COVID-19 pandemic and its impact on both development timelines and market demand for certain Project elements that had previously been contemplated in 2018; and

WHEREAS, the amendments are also associated with the Developer's need for greater flexibility to complete private financing transactions necessary to be able to navigate the impacts of the COVID-19 pandemic and continue development of the Project without additional City funding; and

WHEREAS, on June 11, 2021, the Mall Area Redevelopment TIF District Board of Directors reviewed and recommended approval of the amendments to the 2016 Chapter 380 Grant Agreement and the 2018 TIF/Chapter 380 Agreement.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager is hereby authorized to execute a fourth amendment to the 2016 Chapter 380 Grant Agreement (“2016 Chapter 380 Agreement”) with WCWRD Inc and its affiliate or subsidiaries (“Developer”), a third amendment to the Tax Increment Development, Chapter 380 Grant, and Chapter 380 Loan Agreement (“2018 TIF/Chapter 380 Agreement”) with Developer, and any amendments to any other documents, including but not limited to deeds of trust and promissory notes, necessary to accommodate the Project in accordance with the City Council-approved terms, approved as to form by the City Attorney, related to the Red Bird Mall Redevelopment Project (“Project”) generally located at the southeast corner of Camp Wisdom Road and Westmoreland Road in the Mall Area Redevelopment TIF District to: **(a)** modify Programmatic Requirements in the 2018 TIF/Chapter 380 Agreement to (i) reduce by 60,000 gross square feet (from a minimum of 100,000 gross square feet to a minimum of 40,000 gross square feet) the Developer’s requirement to construct new retail, restaurant, and entertainment buildings and (ii) authorize the Developer to use reasonable efforts to prepare and convey property within the Project site to a hotel developer; **(b)** clarify authorization for the Developer to obtain mezzanine and preferred equity financing and authorization for the City to enter into intercreditor agreements and/or recognition agreements, as applicable; **(c)** extend the maturity date on the loan (“Loan”) authorized by the 2018 TIF/Chapter 380 Agreement by five years until June 2038; **(d)** authorize the release of a portion of the property within the Project site (“Sears Property”) to a third-party purchaser upon completion of the initial phase of tenant improvements and prior to the Loan’s maturity date; and **(e)** modify the Developer’s ability to sell the Project prior to maturity of the Loan, subject to the Loan and assignment of the 2018 TIF/Chapter 380 Agreement; and as consideration for the amendments: **(i)** increase the Developer’s Minimum Investment Requirement by \$5,000,000.00 for the Project from \$130,000,000.00 to \$135,000,000.00, **(ii)** add a requirement to the Programmatic Requirements that the Developer make reasonable efforts to prepare and convey property within the Project site for a grocery store or renovate and lease space within an existing building within the Project site for a grocery store, **(iii)** require that the Developer pay interest current on the Loan to the extent that the TIF Subsidy does not fully repay the Loan during the extended term, and **(iv)** prohibit the Developer from distributing any net proceeds of the sale of the Sears Property to equity shareholders and require the Developer to use the net proceeds to either repay debt that is senior to the City’s lien in payment priority, pay for remaining Infrastructure Work, invest in additional building improvements on property secured by the City’s lien, or acquire additional properties in the Project area to be added to the City’s collateral.

SECTION 2. That the following amendments be made to:

- a. Modify Programmatic Requirements in the 2018 TIF/Chapter 380 Agreement to reduce by 60,000 gross square feet (from a minimum of 100,000 gross square feet to a minimum of 40,000 gross square feet) the Developer's requirement to construct new retail, restaurant, and entertainment buildings.
- b. Modify Programmatic Requirements in the 2018 TIF/Chapter 380 Agreement to authorize the Developer to use reasonable efforts to prepare and convey property within the Project site to a hotel developer. Reasonable efforts means either of the following:
 - i. Executing a letter of intent or purchase and sale agreement with a hotel user, or
 - ii. land (e.g., rough grading; or roadway and utility improvements at the perimeter of the site) of sufficient size to support a hotel user and providing written quarterly reporting on the status of Developer's pursuit of a hotel user.
- c. Clarify authorization for the Developer to obtain mezzanine and preferred equity financing and authorization for the City to enter into intercreditor agreements and/or recognition agreements, as applicable, with mezzanine lenders or preferred equity investors on terms and conditions reasonably acceptable to the Director of the Office of Economic Development ("Director") within forty-five days of a written request.
- d. Extend the maturity date on the Loan authorized by the 2018 TIF/Chapter 380 Agreement by five years until June 2038.
- e. Authorize the release of a portion of the property within the Project site ("Sears Property") to a third-party purchaser upon completion of the initial phase of tenant improvements and prior to the Loan's maturity date. The lease agreement dated as of December 2, 2019 by and between UT Southwestern Medical Center ("UTSW") and Developer contains a purchase option and right-of-first-refusal ("ROFR") in favor of UTSW, and any sale of the Sears Property by Developer to an unaffiliated third-party will still be subject to the rights of UTSW to exercise the purchase option and ROFR. Any proposed sale of the Sears Property will be subject to the prior written approval of the Director, which may not be unreasonably withheld so long as UTSW's rights (purchase option and ROFR) are preserved.

SECTION 2. (continued)

- f. Modify the Developer's ability to sell the Project to an unaffiliated third-party prior to maturity of the Loan, subject to the Loan and assignment of the 2018 TIF/Chapter 380 Agreement, upon completion of the Initial Project. Initial Project is hereby defined as completion of the requirements in Section 2.C of the TIF/Chapter 380 Agreement, including all Infrastructure Work and Programmatic Requirements, except for:
 - i. Section 2.C(7): renovation of the former Macy's building; and
 - ii. Section 2.C(10): construction of a minimum of 40,000 (original requirement is 100,000) gross square feet of new retail, restaurant, and entertainment buildings.

Developer will be required to provide at least sixty days prior written notice to the City. The notice shall identify the proposed purchaser (including principal parties and loan guarantor) and shall include a copy of the purchase and sale agreement, sufficient information about proposed purchaser's financial responsibility, experience, and general fitness, and any other information reasonably requested by the Chief of Economic Development and Neighborhood Services ("Chief") for the Chief to ascertain the qualifications of the proposed purchaser to complete the Project and assume the obligations pursuant to the TIF/Chapter 380 Agreement. Any proposed sale of the Project will not require City Council approval but will be subject to the prior written approval of the Chief, which may be granted or withheld in the Chief's sole discretion.

- g. Increase the Developer's Minimum Investment Requirement by \$5,000,000.00 for the Project from \$130,000,000.00 to \$135,000,000.00.
- h. Add a requirement to the Programmatic Requirements in Section 2.C for Developer to make reasonable efforts to (i) prepare and convey property within the Project site to a grocery store user reasonably approved by the Director for the construction of a minimum 20,000 square foot free-standing grocery store, or (ii) renovate and lease a minimum of 20,000 square feet within an existing building within the Project site for a grocery store user reasonably approved by the Director by December 31, 2024. Reasonable efforts means either of the following:
 - i. Executing a letter of intent with a grocery store user, or
 - ii. Preparing land (e.g. rough grading; roadway and utility improvements at the perimeter of the site) or a space within an existing building (e.g. cold dark shell) of sufficient size to support a grocery store user and providing written quarterly reporting on the status of Developer's pursuit of a grocery store user for said site(s) and/or space(s).

SECTION 2. (continued)

- i. Require that, commencing on June 14, 2033 (i.e. after the original maturity date), the Developer pay interest current on the Loan to the extent that the TIF Subsidy does not fully repay the Loan during the extended term.
- j. Prohibit the Developer from distributing any net proceeds of the sale of the Sears Property to equity shareholders and require the Developer to use the net proceeds to either repay debt that is senior to the City's lien in payment priority (including loan made by GrowSouth Red Bird, LLC to RB Holdco, LLC and any other mezzanine loan, preferred equity investment, or property assessed clean energy loan), pay for remaining Infrastructure Work, invest in additional building improvements on property secured by the City's lien, or acquire additional properties in the Project area to be added to the City's collateral.

SECTION 3. That this resolution does not constitute a binding agreement upon the City or subject the City to any liability or obligation with respect to the funds described herein, until such time as the documents are duly approved by all parties and executed.

SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.