

September 23, 2020

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

WHEREAS, on June 13, 2007, City Council authorized the creation of Tax Increment Financing Reinvestment Zone Number Fifteen (Fort Worth Avenue TIF District) in accordance with the Tax Increment Financing Act, as amended, V.T.C.A. Texas Code, Chapter 311, to promote development and redevelopment in the Fort Worth Avenue area through the use of tax increment financing by Ordinance No. 26798, as amended; and

WHEREAS, on March 26, 2008, City Council authorized the Project Plan and Reinvestment Zone Financing Plan for the Fort Worth Avenue TIF District by Ordinance No. 27129, as amended; and

WHEREAS, on February 12, 2020, City Council authorized (1) a Resolution of Support for Villas at WH 20, LP, or its affiliate, related to its application to the Texas Department of Housing and Community Affairs for 9% Low Income Housing Tax Credits for the development of Villas at Western Heights and (2) an agreement with the applicant for a line of credit in an amount not to exceed \$500.00 for the proposed multifamily development by Resolution No. 20-0289; and

WHEREAS, on September 1, 2020, the Fort Worth Avenue TIF District Board of Directors reviewed the proposed Villas at Western Heights Mixed-Income Project ("Project") and recommended City Council authorization of a development agreement with Villas at WH 20, LP ("Developer") and/or its affiliates in an amount not to exceed \$7,678,874.00; and

WHEREAS, the Economic Development Committee was briefed regarding this matter on September 8, 2020; and

WHEREAS, to further implement the Fort Worth Avenue TIF District Project Plan and Reinvestment Zone Financing Plan, the City desires to enter into a development agreement with Villas at WH 20, LP and/or its affiliates in an amount not to exceed \$7,678,874.00 ("TIF Subsidy"), payable from current and future Fort Worth Avenue TIF District Funds, in consideration of affordable housing in the Project on property currently addressed at 1515 Fort Worth Avenue and 1418 Castle Street ("1515 Fort Worth Avenue").

Now, Therefore,

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

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SECTION 1. That the City Manager is hereby authorized to execute a development agreement, and all other necessary documents with Villas at WH 20, LP (“Developer”) and/or its affiliates in an amount not to exceed \$7,678,874.00, payable from current and future Fort Worth Avenue TIF District Funds, in consideration of affordable housing in The Villas at Western Heights Mixed-Income Project (“Project”) on property currently addressed at 1515 Fort Worth Avenue in Tax Increment Financing Reinvestment Zone Number Fifteen (Fort Worth Avenue TIF District), approved as to form by the City Attorney, thereby confirming the Fort Worth Avenue TIF District Board of Director’s dedication of current and future tax increment revenues, in an amount not to exceed \$7,678,874.00.

SECTION 2. That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct.

SECTION 3. That the City Manager is hereby authorized to increase appropriations in an amount not to exceed \$7,678,874.00 in the Fort Worth Avenue TIF District Fund (subject to current and future appropriations from tax increments), Fund 0058, Department ECO, Unit W650, Activity FWTI, Object 3072.

SECTION 4. That the Chief Financial Officer is hereby authorized to disburse funds to Villas at WH 20, LP and/or its affiliates from the Fort Worth Avenue TIF District Fund (subject to current and future appropriations from tax increments), as follows:

Fort Worth Avenue TIF District Fund, Fund 0058, Department ECO, Unit W650, Activity FWTI, Object 3072, Program No. FWATIF0007, Encumbrance/Contract No. CX-ECO-2020-00014382, Vendor VC21128, in an amount not to exceed \$7,678,874.00.

SECTION 5. That the TIF Subsidy shall be payable from the Fort Worth Avenue TIF District Affordable Housing budget category in at least two (and possibility three) installments, with “Installment No. 1”, in the amount of \$2,500,000.00, payable contemporaneously with the acquisition closing of the Project, secured by a Deed of Trust on the property which shall take the first lien position until such time of construction financial closing, at which time the Deed of Trust may be subordinate only to senior construction lenders holding a lien against all or part of the property, and “Installment No. 2” and “Installment No. 3”, if needed, upon completion of the Project and satisfaction of all terms and conditions in SECTION 8 herein and subject to all other Sections of this Resolution, at which time the Deed of Trust shall be released.

SECTION 6. That the Developer shall design, fund and/or construct the Project and related public infrastructure improvements on and adjacent to property currently addressed at 1515 Fort Worth Avenue in the Fort Worth Avenue TIF District as described in SECTION 8 and in substantial conformance with **Exhibit G and G-1**.

SECTION 7. That nothing in this resolution shall be construed to require the City to approve payment from any source of City funds other than the Fort Worth Avenue TIF District Fund and/or Tax Increment Bonds. Any funds expended under the development agreement that remain unpaid upon termination of the Fort Worth Avenue TIF District, due to lack or unavailability of Fort Worth Avenue TIF District Funds, shall no longer be considered project costs of the Fort Worth Avenue TIF District or the City, and the obligation of the Fort Worth Avenue TIF District to pay Developer shall automatically expire.

SECTION 8. That in addition to the conditions set out in the sections above, the development agreement is hereby expressly made subject to all of the following contingencies which must be performed or occur:

- A. The Project shall include a minimum of 130 residential units reserved for elderly households, defined as 55 years or older, of which a minimum of 40% must be leased and occupied prior to TIF Installment No. 2 payment and 60% must be leased and occupied prior to TIF Installment No. 3. Of the 130 residential units, 80%, or 104 residential units shall be set aside to those earning 30%, 50% and 60% of the Area Median Income for a period of 15 years (the "Affordability Period"), in accordance with the attached rent schedule (**Exhibit B**).

The Fort Worth Avenue TIF District Mixed Income Housing Guidelines ("Guidelines") (**Exhibit C**) shall be followed except where the requirements of this resolution are more restrictive than the Guidelines. The affordable units shall be identical finish-out and materials as market rate units, shall not be fixed to specific unit numbers and shall not be segregated or concentrated in any one floor or area of the Project, but shall be dispersed throughout all of the residential portions of the Project. By right, Developer may decrease the size of any unit as shown in Exhibit B by 10%. Prior to the Project's completion as defined in Section 8(E) herein, the affordability requirement shall be impressed upon the property by deed restriction for the Affordability Period.

After the Project's completion as defined in Section 8(E) herein and throughout the Affordability Period, Developer shall monitor and submit bi-annual reports to the Director of the Office of Economic Development ("Director") on the status of its compliance with the requirements of the Project's affordability. Developer shall submit written certification and documentation of compliance on the form attached as **Exhibit D** or may submit Texas Department of Housing and Community Affairs ("TDHCA") compliance documents in lieu of Exhibit D.

- B. In accordance with City of Dallas Ordinance 30246, approved by Resolution 16-1760, at least 10% of the Project's residential units must be set aside and leased to voucher holders. Should Ordinance 30246 and Chapter 20A of the Dallas City Code be amended prior to the Project's Certificate of Occupancy date, Developer shall abide by such amended terms.

SECTION 8. (continued)

The affordability requirement shall be impressed upon the property by deed restriction.

- C. Developer shall incur (or cause to be incurred) and provide documentation evidencing a minimum of \$21,000,000 in Private Investment Expenditures **(Exhibit A)** for the Project, including site acquisition, off-site infrastructure, on-site preparation, site amenities, building construction/finish-out/furnishings, and professional fees (e.g. architecture, engineering, landscape architecture, interior design, environmental assessments). Construction management costs may be considered a Private Investment Expenditure if services are directly related to ensuring the quality of the construction of the Project and are performed by an independent and unaffiliated third-party. Construction management costs must be evidenced by invoices with detailed descriptions of services performed. Developer fees, legal fees, marketing fees, financing fees, leasing commissions, carrying costs, reserves, operating deficits through stabilization and other similar costs shall not be considered a Private Investment Expenditure. With the exception of site acquisition, professional fees, and other eligible due diligence costs required by TDHCA, no expenditures made prior to City Council approval may count towards minimum private investment.
- D. Developer shall obtain a building permit by September 30, 2021. A foundation permit may constitute meeting the obligation of this requirement.
- E. Construction of the Project, including associated public improvements/streetscape improvements, shall be complete and all portion of the building occupiable by December 31, 2022 or the placed in-service deadline established by TDHCA for the Project, as evidenced by certificate of occupancy, letter of acceptance, certificate of completion, and/or similar documentation from the City. Developer shall provide the Director documentation of any changes to TDHCA's placed in-service deadline within five (5) days of Developer notification.
- F. The proposed management group for the Project must be submitted at least three months prior to Project completion, for review by the Director to consider acceptance based on the management entity's comparable experience managing other multi-family properties, such approval not being unreasonably withheld.
- G. Developer shall execute an Operating and Maintenance Agreement for all non-standard TIF eligible improvements prior to payment of Installment No. 2. Compliance with the executed Operating and Maintenance Agreement shall be required of all future Developers for the entire 20-year period of the Operating and Maintenance Agreement.

SECTION 8. (continued)

If Developer chooses to forgo the TIF funding, Developer shall remain responsible for the maintenance of the non-standard public improvements through the term of the Operating and Maintenance Agreement. The maintenance obligations under the development agreement (and the Operating and Maintenance Agreement) is assignable to a new Developer of all or a portion of the Property or to the manager of a public improvement district or a property Developer's association with the written consent of the Director, which consent shall not be unreasonably withheld.

- H. Developer shall make a good faith effort to comply with City's Business Inclusion and Development ("BID") goal of 25% participation by certified Minority/Women-owned Business Enterprises ("M/WBE") for all hard construction expenditures on the Project and meet all reporting requirements as shown in **Exhibit E**.
- I. Until the Project has passed final building inspection and all required paperwork for Installment No. 2 has been submitted, Developer shall submit to the Office of Economic Development quarterly status reports (**Exhibit F**) for ongoing work on the Project as well as public improvements. Such status reports will be due no later than thirty (30) calendar days after the end of each calendar quarter after the City Council approval date.
- J. The Urban Design Peer Review Panel ("UDPRP") is an independent group of professional designers selected by the City Manager with expertise in architecture, landscape architecture, engineering, and urban planning. Review by the UDPRP is required for all projects requesting TIF subsidies. Following a formal review of the Project's preliminary conceptual drawings and renderings on January 24, 2020, the UDPRP provided advice (see **Exhibit G**). On February 13, 2020, Owner submitted a response to the City's Planning and Urban Design Department ("PUD") staff with updated conceptual drawings and renderings (see **Exhibit G-1**). On February 13, 2020, the PUD staff indicated that the updated conceptual drawings and renderings provided by Owner on February 13, 2020 satisfied the UDPRP's advice. Prior to building permit submittal to the City's Sustainable Development and Construction Department, Owner shall submit a set of permit drawings to PUD for a final staff review to ensure that the Project (i.e. public and private improvements) will be constructed in substantial conformance with the conceptual drawings and renderings submitted by Owner on February 13, 2020.

The Director may authorize minor modifications to the conceptual site plan and conceptual renderings which may arise during the development process due to local, state, or federal regulatory requirements so long as the minor modifications are in substantial conformance with the spirit and intent of the UDPRP advice.

SECTION 8. (continued)

Modifications to the conceptual site plan and conceptual renderings, should the Director determine they are material, shall require review by the UDPRP. As the final step in the urban design process and prior to permit approval, Developer shall provide a set of permit drawings for the Project to PUD for internal review and approval to ensure compliance with UDPRP recommendations and responses. PUD shall complete the review of the permit drawings within ten business days of Developer's submission.

- K. Upon completion, the Project shall be consistent in general form, material and character with the conceptual design for both the private development and public improvements approved by the Fort Worth Avenue TIF Board and City Council.
- L. For all permanent employment opportunities created by operation of the Project and prior to payment of Installment #2 of the TIF Subsidy, Developer shall submit to the City a written plan describing how Developer or project management group shall use and document best efforts to recruit and hire residents of the city of Dallas. At a minimum, the written plan shall describe how Developer or project management group will target local recruitment through local advertisement, community outreach, local engagement, participation in local job fairs, and/or coordination with local hiring sources. The plan shall be subject to approval by the Director to ensure that employment opportunities are targeted to Dallas residents and that reasonable efforts were made to promote the hiring of neighborhood residents for any new permanent jobs created.
- M. Developer shall own and control the property and the Project until a certificate of occupancy, defined in Section 8(E) above, or other equivalent evidence of completion has been issued by the City for the Project.
- N. Developer shall market the apartments pursuant to an affirmative fair housing marketing plan approved by the City **(Exhibit H)**.
- O. The Director may authorize minor modifications to the Project, including, but not limited to, adjustment in unit type, unit mix, set-aside duration, qualifying Area Median Family Income and/or evidence of capital sources extension, if consistent with the TDHCA Project requirements and in compliance with Fort Worth Avenue TIF District Policies and Plans.
- P. After approval and recommendation of the Fort Worth Avenue TIF Board, the Director may authorize an extension of the Project deadlines up to 12 months.

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SECTION 9. That payment of the TIF Subsidy is subject to the availability of tax increment. If the appraised value of the property in the Fort Worth Avenue TIF District remains constant or decreases in value from the base year value, the TIF Subsidy for that year may be reduced or unpaid due to the lack of available increment. The TIF Subsidy shall be paid solely from the Tax Increment Fund, if and when tax increments are received and available for such purpose, during the life of the Fort Worth Avenue TIF District (including collection of the 2029 tax year increments in calendar year 2030), subject to the limitations on repayment of the TIF Subsidy provided in the development agreement.

SECTION 10. That assuming all other conditions for payment have been met, the City of Dallas will administer the payment of the TIF Subsidy for the Project annually, pursuant to the Fort Worth Avenue TIF District Increment Allocation Policy attached hereto as **Exhibit I.**

SECTION 11. That Prior to completing all obligations in SECTION 8 required to begin receiving payment of the TIF Subsidy, excluding Installment No. 1, the Developer may assign the TIF development agreement only to a direct affiliate with the Director's prior approval, but in no case shall this Section supersede SECTION 8(M). However, at any time, Developer may assign the development agreement to a non-profit corporation participating in the Project, with prior written approval of the Director, not to be unreasonably withheld.

After completing all obligations in SECTION 8 required to begin receiving payment of the TIF Subsidy, excluding Installment No. 1, an assignment of the obligations of the TIF development agreement, in whole or in part, shall require the written approval of the Director (which approval shall not be unreasonably withheld). If the Director, in his or her sole discretion, allows the Developer to assign the TIF development agreement, however, the terms and conditions of the TIF development agreement shall be binding upon the successors and assigns. Such assignment shall not be effective unless or until the assignee assumes and expressly agrees to perform, observe, and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Developer under the TIF development agreement from and after the date of assignment.

Any receivables due under the TIF development agreement may be assigned and transferred by Developer or assignee upon providing the Director with written notice within 30 calendar days of such assignment. Developer and assignee have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, interest under the TIF development agreement for the benefit of their respective lenders without the consent of, but with written notice to, the Director. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate the lender to perform any obligations or incur any liability under the TIF development agreement unless the lender agrees in writing to perform such obligations or incur such liability.

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SECTION 11. (continued)

Upon dissolution or termination of the assignee, however, the terms and conditions of the TIF development agreement shall revert to the Developer.

SECTION 12. That within 90 days of site acquisition closing, Developer shall provide evidence of binding commitments of all capital sources necessary to complete the Project.

SECTION 13. 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.