

# MEMORANDUM

## COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

TO: Thomas Thomas, City Manager  
SUBJECT: Downtown TIF Housing Project: 1808-10 3<sup>rd</sup> Avenue

DATE: August 6, 2012

A tenth application has been filed for the Downtown Tax Increment Finance District Upper Story Housing program. JDH LLC is proposing to create four apartments (one owner occupied loft and three for rent) on the second floor of properties at 1808-10 3<sup>rd</sup> Avenue. The first floor will be occupied by a commercial tenant.

JDH LLC will invest not less than \$400,000 in the property, including \$80,000 from the City's Downtown Tax Increment Finance District fund plus \$30,000 from the City's Façade Improvement Program. See the attached letter for additional details. The City's TIF Housing share will be a forgivable five-year zero percent loan. Should JDH LLC continue to own the property, maintain it and keep the apartments occupied for five years following completion of the renovation, the City's loan would be released. This is in accord with the Council approved program guidelines.

The Façade Program funds would be a rebate to JDH LLC by the City for approved exterior improvements to the "skin" of the buildings.

Improvements to the property include plumbing, electrical, HVAC, tile, floor covering, painting, insulation, wall repair, new windows and awnings, electrical service, code and life safety requirements, etc. The project will also include a 10% contingency.

As indicated in the attached development agreement, parking will be provided for tenants on the subject parcel. This responds to City Council's concerns about the marketability of the apartments and is similar to the previous agreements with TIF program participants.

If Council approves the TIF commitment, JDH LLC will proceed to the final stages of program review, including building plan review and completing required program applications and supporting documentation.

JDH LLC received a copy of the agreement and accepted the terms and conditions. The developer will be in attendance at the August 13<sup>th</sup> meeting to respond to Council's questions.

**Recommendation:** That City Council approve the attached Development Agreement committing \$80,000 of Downtown TIF funds to create four apartments at 1808 – 1810 3<sup>rd</sup> Avenue, subject to completing the program application.

Submitted by: Alan M. Carmen, Planning and Redevelopment Administrator  
Jeff Eder, Community and Economic Development Administrator

Approved: Thomas Thomas, City Manager

## AGREEMENT

This Agreement made as of this \_\_\_\_ day of August, 2012 by and between the City of Rock Island (the "City") and JDH LLC (the "Developer");

WHEREAS; the Developer desires to undertake a residential development project (the "Project") on certain real property as legally described herein; and,

WHEREAS, the City has created a Tax Increment Finance District ("TIF") as set forth in 65ILCS 5/11-74.4-1, et seq. (the "Act") and by enactment of City Ordinance #84-77, #84-78 and #84-79 in which the Property is situated; and,

WHEREAS, Developer anticipates the expenditure of significant funds to achieve the terms of this Agreement; and,

WHEREAS, each party has performed certain other obligations under said Agreement in reliance upon execution of this Agreement, and;

WHEREAS, City wishes to exercise its powers under 65 ILCS 5/11-74.4-4 of the Act to provide an incentive to the Developer to develop the Property through contributions to capital for certain costs from funds realized through the increase in incremental real estate tax revenues resulting from such development as defined in the Act; and,

WHEREAS, it is the intent of the City to encourage economic development which will increase employment and expand the tax base of the City; and,

WHEREAS, the Developer has proposed a development which will meet said goals and requested assistance from the City to help defray the development project costs associated with redevelopment of the Property;

NOW, THEREFORE, the Parties in exchange for the promises herein contained the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Developer agrees to undertake redevelopment of the Property located at 1808-10 3<sup>rd</sup> Avenue in the City of Rock Island and legally described as (see Exhibit A).
2. Developer agrees that the Property will be developed to create four (4) dwelling units in general accordance with the plans and renderings submitted to the City. Prior to initiating construction, Developer shall submit to the City final construction drawings as are required to obtain a building permit. City shall have the right to review and approve said plan and construction drawings and said approval shall not be unreasonably withheld.
3. Developer agrees to provide parking for tenants (one space per unit) on the subject parcel.
4. Developer agrees that the total project costs, including but not limited to architectural services, planning, engineering, legal services, professional fees, mortgage

interest, construction interest, labor and construction materials, will exceed Four Hundred Thousand Dollars (\$400,000).

5. Developer agrees to commence work on the Project not later than September 4, 2012 and have all construction work completed and the Project ready for occupancy no later than July 31, 2013. Failure to complete construction of this Project shall be considered a material breach of this Agreement, entitling the City to terminate this Agreement by written notice to Developer at his address of such intention not less than fourteen days (14) prior to the desired termination date.

6. Developer agrees to obtain all necessary federal, state and local permits to carry out this Project and construct the Project in accordance with all applicable laws, including, but not limited to, building codes, subdivision regulations and other applicable laws.

7. Developer agrees that the first floor of the property must house a viable (that is occupied or occupiable) commercial business (retail, service or office) for the five years following completion of the upper story renovation and that said developer shall continue to own the property for the same five-year period. Failure to do so will result in a default by Developer and the requirement that the City's investment be repaid in its entirety. The Developer is obligated to inform the city if property will be sold or converted to another use, or vacancy will occur on the first floor within the five-year timeframe.

8. Developer agrees that the entire structure must be in substantial code compliance at time of application or after rehabilitation is complete and that it shall be maintained in such condition for five years following the completion of the building's rehabilitation. Failure to do so will result in a default by Developer and the requirement that the City's investment be repaid in its entirety.

9. Developer agrees to abide by the TIF Upper Story Loan Guidelines as approved by the Rock Island City Council on December 18, 2006, attached hereto as Exhibit B.

10. Developer agrees to indemnify, defend and hold the City harmless from any claim arising from execution of Developer's obligations under this Agreement, including but not limited to construction of this project or any part thereof, including reasonable attorneys fees incurred by the City in defending any such claim.

11. Developer, upon request from the City, shall provide proof of evidence that Developer has the financial resources to complete Developer's obligations hereunder.

12. Developer shall not allow any mechanic's liens to attach to the premises and agrees to discharge any and all such claims within sixty (60) days of filing of said claims. In the event that any mechanics liens shall attach, the Developer shall use due diligence to have said liens removed within sixty (60) days.

13. City hereby agrees to contribute the sum of Eighty Thousand Dollars (\$80,000) to the Project said contribution to be taken from the Downtown Tax Increment Finance Fund. Said contribution shall be in the form of a zero percent five-year forgivable loan and shall be secured by a Note and Mortgage.

14. With regard to the use of funds provided by section 9 herein, the Developer shall use such funds for payment of expenses to the extent permitted by the Act and may allocate such funds for any purpose described by the Act. The parties acknowledge that the determination of eligible Project costs, and, therefore, qualification for payment hereunder is subject to changes or interpretations made by amendments to the Act, administrative rules or judicial interpretation. The parties agree to fully cooperate in obtaining approval of eligible costs as set forth under any such changes. Eligible costs shall include all costs includable under a broad definition of the terms of the Act.

15. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois, including the Illinois Prevailing Wage Law.

16. In the event of a default under this Agreement by either party hereto which default is not cured within thirty (30) days of the date of receipt of notice to the defaulting party specifying that said party has failed to perform a particular obligation, the other party shall have an action for damages or, in the event damages would not fairly compensate the non-defaulting party of this Agreement, the non-defaulting party shall have such other equity rights and remedies as are available at law or in equity.

17. Delays by the Developer or City in performing its obligations hereunder due to acts of God or belligerent war powers, strikes, fires, floods, explosions, wars, differences with workers, delays in transportation or accidents to construction, military arrest or restraints, acts, demand, or requirements of the United States or any state or territory thereof, or any governmental subdivision thereof, or due to any other causes whatsoever, whether similar or dissimilar to those above enumerated, which are beyond Developer's or City's control and not resulting from Developer's or City's fault shall cause an automatic extension of the starting and/or completion dates for the period attributable to any such cause. The affected component of this Agreement shall be deemed suspended for so long as its execution is prevented or delayed by such cause.

18. Time is of the essence of this Agreement.

19. The rights and obligations of the Developer are fully assignable by means of written notice to the City, provided that no assignment shall be deemed to release the assignor of its obligations to the City under this Agreement unless the consent of the City to the release of the Assignor's obligations is obtained. Consent shall not be unreasonably withheld.

20. Either party to this Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any right or remedy thereafter, nor shall it be deemed to constitute a waiver of other rights or remedies provided said party pursuant to this Agreement.

21. If any term or provision of this Agreement be held invalid or unenforceable, to any extent, the remainder of this Agreement shall be fully valid and enforceable.

22. All notices, demands, consents, approvals or other instruments required or permitted by this Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as to the date of actual delivery, if delivered personally, or as of the third day from and

including the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid addressed as follows:

To Developer: JDH LLC  
2916 21<sup>st</sup> Avenue  
Rock Island, IL 61201

To City: City of Rock Island  
Attention: City Clerk  
1528 Third Avenue  
Rock Island, IL 61201

23. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their heirs, devisees, successors and assigns.

CITY OF ROCK ISLAND

DEVELOPER

BY: \_\_\_\_\_  
Thomas Thomas, City Manager

BY: \_\_\_\_\_  
JDH LLC

ATTEST:

ATTEST:

BY: \_\_\_\_\_  
Aleisha Patchin, City Clerk

BY: \_\_\_\_\_

## **Exhibit A**

### **Legal Description**

The East 18 feet of the West 38 feet of Lot 2, Block 12 of Spencer and Cases Addition to the City of Rock Island and Lot 2 of Block 12 of Spencer and Cases Addition excluding the West 38 feet.

## **EXHIBIT B**

### **CITY OF ROCK ISLAND – PLANNING AND REDVELOPMENT DIVISION** **DOWNTOWN TIF UPPER** **STORY HOUSING LOAN PROGRAM GUIDELINES**

**Program Purpose: To increase the number of residential units, upgrade existing units and enhance the appearance of facades in the Downtown Rock Island Tax Increment Financing District in conformance with City Council goals and the Downtown 2000 Plan**

#### **Eligibility**

- ❖ Located in Downtown Tax Increment Financing District
- ❖ Existing structures only; new construction is not eligible
- ❖ Residential use only
- ❖ Vacant units or space only
- ❖ First floor must be viable (that is occupied or occupiable) commercial business (retail, service or office). Buildings with storage or vacant ground floors are not eligible. Entire structure must be in substantial code compliance at time of application or after rehabilitation is complete
- ❖ Proposed residential units may be owner or tenant occupied
- ❖ No income or rent controls

#### **Use of Funds**

- ❖ TIF funds to be used for interior, structural renovations including roof, tuck pointing, window repair or replacement, carpentry, plumbing, electrical, HVAC, fire detection, fire suppression, finish work and “soft costs” (including, but not limited to architectural and design fees, appraisals, plan review and inspection fees, etc.)
- ❖ Project must include enhancement of building exterior if deemed appropriate by the city
- ❖ New technologies are encouraged (for example – ground source heat pump system)
- ❖ TIF housing program may be used in conjunction with Façade Improvement Program

#### **Development agreement required (to be recorded)**

- ❖ Specify minimum investment commitment by owner.
- ❖ Commitment by owner that building permit(s) will be obtained when required and all renovations will meet or exceed city code requirements and housing rehabilitation standards
- ❖ Design review and approval by City staff
- ❖ Project owner must maintain ownership of property for at least five years or TIF funds are repaid
- ❖ First floor must retain viable commercial use for five years or TIF funds are repaid

- ❖ Insurance and property taxes must remain current or TIF funds are repaid
- ❖ City utility payments must remain current or TIF funds are repaid
- ❖ Owner is obligated to inform the city if property will be sold or converted to another use, or vacancy will occur on the first floor within the five-year timeframe
- ❖ Owner must have merchantable title; City will take subordinate position
- ❖ Property taxes must be current on all Rock Island properties owned by the applicant
- ❖ Property owner shall have no outstanding code issues or payments due to the City on other applicant-owned properties
- ❖ Standard default, repayment, assumption and other conditions from City's note and mortgage included
- ❖ TIF funds limited to \$20,000 per newly-created residential unit; or
- ❖ TIF funds limited to \$10,000 per residential unit occupied within the past five years
- ❖ TIF funds may not exceed 40% of total project cost
- ❖ 10% contingency is required
- ❖ Cost averaging among multi-unit structures is permitted based on occupancy / vacancy history and the needs of an individual unit
- ❖ Investment structured as a 0% five year forgivable loan

### **Procedure**

- ❖ Application for program completed and submitted to CED staff along with detailed plans, bids, contractor name, etc.
- ❖ Application and plans are reviewed by CED staff (Inspection and Planning and Redevelopment), modified if necessary and approved (or not)
- ❖ Project and property are evaluated for consistency with historic preservation goals, *Residential Design Guidelines* and architectural significance and integrity
- ❖ TIF development agreement is drawn up and approved by council and owner
- ❖ Loan agreement and recapture signed by owner using City's standard documents
- ❖ Work is accomplished with routine inspections as required by code and development agreement
- ❖ Project owner submits bills for payment
- ❖ Payment is made directly to contractor, with lien waivers required for progress and final payments
- ❖ 10% retainage from progress payments; not paid until all required improvements and punch list items are satisfactorily completed
- ❖ Use of contingency funds and change orders must be approved in writing and in advance by staff
- ❖ Planning and Redevelopment and Inspection staff will conduct inspections consistent with current housing rehabilitation program practices