



TO: The Honorable Mayor and City Council

FROM: Ty Livingston, Director of Planning & Community Development

DATE: September 28, 2021

SUBJECT: First Amendment to Flaherty & Collins Development Agreement

BACKGROUND: For the past few years, the Mayor, staff and the City Attorney's Office have been working with the team at Flaherty & Collins on a mixed-use development here in the Levee District since we signed a development agreement with them back in 2019. Since that time, we have explored a variety of financing options to ensure a high-quality development the City deserves. Also, in that time we've had to deal with a pandemic and the fallout (material and labor shortages) that we continue to experience yet today.

After all that we've been through, I'm pleased to report the team from Flaherty & Collins is just as committed to the project as they have been from the beginning. While the pandemic has delayed the construction, it hasn't dampened the resolve to build this catalyst project here in East Peoria.

The attached First Amendment to the City's development agreement with Flaherty & Collins recognizes the delay caused by the pandemic with some extended timelines. For example, the developer will have until the end of June 2024 to complete the project. In addition, through the leadership of the Mayor, in working with our local taxing bodies and Senator Koehler, the City was able to receive an extension on its West Washington TIF. The property tax revenues from this development are critical to making it happen as they will be utilized as an incentive for this project.

RECOMMENDATION: Approval, as presented.

RESOLUTION NO. 2122-061

East Peoria, Illinois

_____, 2021

RESOLUTION BY COMMISSIONER _____

**RESOLUTION TO APPROVE FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT WITH FLAHERTY & COLLINS, INC.
FOR DOWNTOWN MIXED-USE PROJECT**

WHEREAS, the City of the East Peoria (“City”) has established the West Washington Street Redevelopment Project Area (the “West Washington TIF District”) under authority of the Illinois TIF Act (65 ILCS 5/11-74.4-1, *et seq.*); and

WHEREAS, the City currently owns property located on the civic triangle portion of the Levee District that is located entirely within the West Washington TIF District (the “City Property”); and

WHEREAS, in June 2020, the City entered into a Development Agreement with Flaherty & Collins, Inc. (“Developer”), an experienced developer and manager of high-quality multi-family residential complexes undertaken in conjunction with municipalities, for the development of a mixed-used project consisting of residential apartments, commercial buildings, and a related parking facility on the City Property (the “Development Agreement”); and

WHEREAS, under the terms of the Development Agreement, the Developer will construct this high-quality, mixed-use project on the Property that will consist of a four (4) story residential complex of approximately two hundred thirty (230) luxury apartments with approximately ten thousand (10,000) square feet of supporting retail commercial space (the “Project”); and

WHEREAS, the Project has experienced delays due to the ongoing pandemic and related matters, including the difficulty in obtaining construction materials and the resulting higher prices for these construction materials; and

WHEREAS, the City has recently extended the life of the West Washington TIF District by recent City Council action, which will allow the Project to proceed despite these recent delays, thereby allowing the necessary financing for the Project to be extended during the extended life of the West Washington TIF District; and

WHEREAS, the City and the Developer have now negotiated an amendment to the Development Agreement to address the delay caused by the pandemic, assisting in the implementation of the necessary financing for undertaking the Project, and clarifying the development incentive that will provide the funding for the financing (the “First Amendment”), attached hereto as “Exhibit A” and incorporate by reference; and

WHEREAS, the City Council hereby finds that the First Amendment to Development Agreement for the Project is in the best interests of the City and its citizens and is a significant component of the City’s ongoing efforts to promote the continuing development of the Levee District and development in the West Washington TIF District;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the First Amendment to Development Agreement (attached hereto as Exhibit A) for undertaking the Project in the West Washington TIF District, under such terms and conditions as the Mayor in his discretion deems appropriate; provided that the City shall have no obligation under the terms of the First Amendment until a fully-executed original has been provided to both the City and the Developer.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

**First Amendment to Development Agreement
with Flaherty & Collins**

FIRST AMENDMENT TO DOWNTOWN MIXED-USE DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DOWNTOWN MIXED-USE DEVELOPMENT AGREEMENT (the “Amendment”) made and entered into as of the ____ day of September, 2021, by and between the **CITY OF EAST PEORIA, ILLINOIS**, an Illinois municipal corporation (the “City”) and **FLAHERTY & COLLINS DEVELOPMENT, INC.**, an Indiana corporation (“Developer”).

RECITALS

- A. The City and Developer have entered into that certain Downtown Mixed-Use Development Agreement dated as of June 2, 2020 (the “Agreement”); and
- B. The City and Developer have agreed to modify the terms of the Agreement; and
- C. The parties desire to enter into this Amendment;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Development Incentive Annual Payment.** “Development Incentive Annual Payment”, as defined in Article I of the Agreement, is hereby amended and restated, in its entirety, as follows:

“Development Incentive Annual Payment” means the annual payment of a cash incentive by the City to the Developer to be made on the first day of November each year commencing with the first day of November after the EAV has been determined and the initial Incremental Property Tax Revenue distribution has been received by the City and continuing thereafter for eighteen (18) total years.

- 2. Debt Service Reserve Fund Payment.** The following defined term is hereby added to Article I of the Agreement:

“Debt Service Reserve Fund Payment” means the annual payment by the City in the amount necessary to replenish any draws or disbursements from the debt service reserve fund established in connection with the Developer’s monetizing of the Development Incentive Annual Payment.

- 3. Total Cost of the Project.** Section 2.3 of the Agreement is hereby amended and restated, in its entirety, as follows:

2.3 Total Cost of the Project. Developer shall expend no less than forty-eight million dollars (\$48,000,000) in hard and soft costs on the Project, inclusive of the Development Incentive, but exclusive of the value of the Project Site and any portion of developer fees in excess of five percent (5%) of the total hard and soft costs of the Project (other than the Developer fees).

4. Date of Completion. Section 2.5 of the Agreement is hereby amended and restated, in its entirety, as follows:

2.5 Date of Completion. Subject to Delays and the City's performance of its obligations hereunder, the Developer shall use commercially reasonable efforts to cause the Date of Completion to be no later than June 30, 2024.

5. Maintenance Standard. Section 2.7 of the Agreement is hereby amended and restated, in its entirety, as follows:

2.7 Maintenance Standard. Until the earlier of the expiration of the City's obligation under this Agreement or the date that the Developer no longer holds fee simple title in and to the Project and the Project Site, the Project and the Project Site (including all Improvements and landscaping thereon) shall be maintained by Developer in a good, safe, and clean condition, operation, and repair and in compliance with City Code and other applicable laws. This maintenance obligation shall require the Project and Project Site to be maintained in high-quality repair and condition, being a standard of quality that equals or surpasses that of the Developer's or its affiliates' existing portfolio of similar mixed-use projects. Accordingly, the Developer shall make all repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Project and Project Site in high-quality repair and condition.

6. Closing. The last sentence of Section 3.3 of the Agreement is hereby amended and restated, in its entirety, as follows:

The parties shall use commercially reasonable efforts to cause the Closing to occur no later than the third quarter of 2022.

7. Development Incentives. Section 3.6 of the Agreement are hereby amended and restated, in their entirety, as follows:

3.6 Development Incentive. The City shall make timely payment to the Developer of the following: (a) the Development Incentive Annual Payment each year for eighteen (18) years, beginning immediately after the EAV has been determined for the completed Project and the initial Incremental Property Tax Revenue distribution for the completed Project has been received by the City, and (b) if applicable, the Debt Service Reserve Fund Payment. The annual Development Incentive Annual Payment paid to the Developer shall be limited to the actual Incremental Property Tax Revenue received in such Fiscal Year up to a maximum of one million one hundred thousand dollars (\$1,100,000.00) in any given Fiscal Year regardless of the actual annual debt service payable on the instrument(s) issued in monetizing the Development Incentive Annual Payment. Any Incremental Property Tax Revenue received by the City in a Fiscal Year over the maximum Development Incentive Annual Payment of one million one hundred thousand dollars (\$1,100,000.00) shall be retained by the City and used by the City

for any lawful purpose including reimbursement of any Debt Service Reserve Fund Payments made by the City. The Developer shall have the right to assign the rights to the Development Incentive Annual Payments and the Debt Service Reserve Fund Payments and to enter into such other agreements and instruments as the Developer deems necessary or desirable to monetize the Development Incentive Annual Payments and the Debt Service Reserve Fund Payments at the Closing. At the Closing, the City, upon request, shall execute and deliver such agreements and instruments in connection with any of the foregoing, each in form and substance reasonably satisfactory to the City. The Developer shall be permitted to use the proceeds of the Development Incentive Annual Payments and/or the Debt Service Reserve Fund Payments to pay, or reimburse the Developer for, any and all hard and soft costs of the Project.

8. Debt Service Reserve Fund Payment. Section 3.9 of the Agreement is hereby added to Article III of the Agreement:

3.9 Debt Service Reserve Fund Payments. The City shall promptly make Debt Service Reserve Fund Payments when necessary to replenish any draws or disbursements from the debt service reserve fund established in connection with the Developer's monetizing of the Development Incentive Annual Payment. Further, the City shall annually make an appropriation in the amount required to replenish any draws or disbursements from this debt service reserve fund established in connection with the Developer's monetizing of the Development Incentive Annual Payment.

9. Miscellaneous. All capitalized terms used in this Amendment and not defined herein shall have the meanings ascribed to such words in the Agreement. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control. Except as expressly provided in this Amendment, all the terms and conditions of the Agreement shall remain in full force and effect, and the City and Developer reaffirm the validity and binding effect of the Agreement, as amended by this Amendment.

[Signature page to follow.]

IN WITNESS WHEREOF, the City and Developer have executed this Amendment as of the date first set forth above.

CITY OF EAST PEORIA

FLAHERTY & COLLINS DEVELOPMENT, INC.

By _____
Its Mayor

By _____
Its _____

ATTEST:

Its City Clerk