

ALTERNATE

Fiscal Note:

The 2009 budget does not anticipate any revenue from the return of prior year TIF loans. Thus, the adoption of this resolution has no budgetary impact, although it would postpone the dates by which 309 W. Washington, LLC, the developer of Capitol West, must make payments for its failure to comply with the unit sales thresholds contained in the current development agreement and avoid repayment of the original loan amount totaling \$4,274,000. This resolution would also provide a partial credit against repayments due based on the number of additional future unit sales that occur. Given current real estate market conditions, it is highly unlikely that the developer will be able to achieve the first required sales threshold on June 15, 2009. If the developer were unable or unwilling to repay a portion of the TIF loan at that time, the City would pursue remedies available under the development agreement in an attempt to enforce compliance with this provision of the current development contract. Those remedies could include suing the developer (309 W. Washington, LLC), suing the personal guarantor (Randy Alexander) or commencing a foreclosure action. If the developer were unable to achieve the second sales threshold on May 15, 2010, additional installment payments would become due, with similar potential remedies available to the City.

Title: Amending Enactment No. RES-07-00419 and authorizing the execution of a second amendment to the Tax Incremental Financing Development Agreement between the City and 309 W. Washington, LLC.

Body:

On November 21, 2006, the Common Council adopted Enactment No. RES-06-00986 (the "2006 Resolution") that authorized the execution of a development agreement to fund a tax incremental finance loan in the principal amount of \$4,274,000 to 309 W. Washington, LLC ("Developer"). Under the terms of the 2006 Resolution, \$3,274,000 of the TIF loan was to become a grant if Developer sold seventy-one (71) residential condominium units to owner-occupants by July 15, 2008, and the remaining \$1,000,000 of the TIF loan was to become a grant if Developer sold an additional fifty-three (53) residential condominium units to owner-occupants by March 15, 2009. The Development Agreement provides that if Developer does not sell the required number of units by the two specified dates, Developer is to repay the City the amounts of \$3,274,000 and \$1,000,000, respectively.

On April 17, 2007, the Common Council adopted Enactment No. RES-07-00419, File No. 05934 (the "2007 Resolution"), which extended the two sales dates set forth in the 2006 Resolution by eleven and fourteen months to June 15, 2009 and May 15, 2010. Developer has requested that the two owner-occupant sales dates be further extended due to the economic downturn and the resulting reduction in real estate sales. To date, Developer has sold 42 units of the 141 unit project to owner-occupants, including all 16 inclusionary zoning units.

NOW, THEREFORE, BE IT RESOLVED that:

1. Enactment No. RES-07-00419 is amended to alter the dates by which Developer must sell units and repay the City if Developer fails to sell the required number of units to owner-occupants. If Developer fails to sell seventy-one (71) units to owner-occupants by June 15, 2009, Developer shall repay the City \$3,274,000. Such repayment shall be due in three annual installments of \$1,091,333 each payable on June 15, 2010, June 15, 2011 and June 15, 2012. If Developer fails to sell fifty-three (53) additional units to owner-occupants by June 15, 2010, Developer shall repay the City an additional \$1,000,000 in two annual installments of \$500,000 each on June 15, 2011 and June 15, 2012. Beginning

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- June 15, 2009, Developer shall receive a credit against each installment payment in the amount of \$34,478 for each unit sold to an owner-occupant in the twelve month period preceding each installment payment due date.
2. The Mayor and City Clerk are hereby authorized to execute an amendment to the Development Agreement between the City and Developer to incorporate the extension terms as approved herein.
 3. All other terms and conditions of Enactment No. RES-07-00419 shall remain the same.

Sponsor(s):
Ald. Bruer