



Legislation Text

File #: 47539, Version: 1

Fiscal Note

No fiscal impact.

Title

Authorizing the Mayor and City Clerk to execute a partial assignment of interest in the \$913,000 TIF Loan to Landmark Oaks Development, LLC as approved by RES-1700229 to Holborn Landmark, LLC.

Body

WHEREAS, Landmark Oaks Development, LLC, or its assigns, (“Assignor”) has proposed to construct 109,000 square feet of commercial space on the Property at an estimated development cost of approximately \$26,330,000 (“Project”) located at 2921 Landmark Place (“Property”); and

WHEREAS, Common Council approved a \$913,000 TIF Loan (“Loan”) on March 21, 2017 by RES 17-00229, File No. 46229; and

WHEREAS, Assignor will be assigning a twenty-five percent interest in the Property to Holborn Landmark, LLC (“Assignee”) as part of a tenant in common (“TIC”) ownership structure; and

WHEREAS, in order to effectuate the TIC for tax purposes, twenty-five percent of the Loan and related documents (“Loan Documents”) and their obligations and benefits must also be assigned to the Assignee; and

NOW THEREFORE BE IT RESOLVED, that the assignment documents necessary to effectuate the transaction described above shall be on substantially the following terms:

1. Acceptance and Assumption. Assignee accepts the assignment made hereby and agrees to perform all obligations of Assignor, as applicable, under the Loan Documents and all other obligations of Assignor, as applicable, with respect to the Loan, limited, however, only to 25% of such obligations.
2. The parties represent and warrant to City (“Lender”) as follows as of the Effective Date:
 - a. The Property is subject to a written tenancy-in-common agreement (“**TIC Agreement**”) dated on or prior to the date of this Assignment that satisfies each of the following requirements:
 1. It is executed by Assignor and Assignee (each, a “**Co-Owner Borrower**”).
 2. It specifies that any termination, cancellation, amendment, or waiver of the TIC Agreement must be in writing and signed by all of the Co-Owner Borrowers to be effective.
 - b. The TIC Agreement is in full force and effect and has not been amended or modified, except as disclosed to Lender in writing.
 - c. There is no default under the TIC Agreement, and there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default under the

TIC Agreement.

3. Additional Covenants.

- a. Each Co-Owner Borrower will satisfy its obligations under the TIC Agreement.
- b. Each Co-Owner Borrower will promptly provide Lender with a copy of any notice it receives from any other Co-Owner Borrower asserting any default under the TIC Agreement, alleging to terminate or abandon the TIC Agreement, requesting arbitration or appraisal proceedings pursuant to the TIC Agreement, or citing any other matter that could impact the continued validity of the TIC Agreement.
- c. Any right to partition the Property, whether by physical division or by sale of the entire Mortgaged Property and division of the sale proceeds, shall not release Lender's Mortgage in the Mortgaged Property, without the prior written consent of Lender.
- d. No Co-Owner Borrower will take any of the following actions:
 1. Amend the TIC Agreement without the prior written consent of Lender.
 2. Terminate or cancel the TIC Agreement without the prior written consent of Lender.
 3. Surrender, release or extinguish the Co-Owner Borrower's interest in the TIC Agreement or the Mortgaged Property without the prior written consent of Lender.
- e. No release or forbearance of any Co-Owner Borrower's obligations under the TIC Agreement, whether pursuant to the TIC Agreement or otherwise, will release any Co-Owner Borrower from any of its obligations under this Loan Agreement.

4. Transfers between Co-Owner Borrowers. The Transfer of any interest in the Mortgaged Property between Co-Owner Borrowers without written consent of the Lender is prohibited and constitutes a default under the Loan.

5. Pledge, Assignment, and Subordination.

- a. Each Co-Owner Borrower pledges and assigns to Lender all its rights and privileges as a party to the TIC Agreement as further security for the repayment of the indebtedness and for the performance of the covenants, agreements, obligations and conditions of this Loan, including all of the following:
 1. All rights of first refusal.
 2. Any options to purchase and similar rights.
 3. Any rights to terminate, cancel, amend, or waive the TIC Agreement.
 4. Any rights to partition the Mortgaged Property.
- b. The TIC Agreement is subject and subordinate to the lien of the Loan Documents. In addition, each Co-Owner Borrower subjects and subordinates each of the following to the lien of the mortgage, and all the Loan Documents:

1. All of its rights and remedies under the TIC Agreement, including any rights to indemnification.
 2. All options to purchase or rights of first refusal and any other similar rights with respect to another Co-Owner Borrower's interest in the mortgaged property it holds under the TIC Agreement.
 3. All of its transfer rights under the TIC Agreement.
6. This Assignment shall not affect the Personal Guaranty of Bradley L. Hutter guaranteeing the payment of Assignor's obligations under the Loan Documents. No guaranty shall be required from the principals of Assignee.

BE IT STILL FURTHER RESOLVED that the assignment is hereby approved and that the Mayor and City Clerk are hereby authorized to execute an assignment and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.