

SPECIAL CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Friday, October 27, 2017

8:00 a.m.

MEETING #5081

CALL TO ORDER

ROLL CALL

1. Third Amendment to Leisure Development, LLC Development Agreement.
2. Amended Assignment and Assumption of Leisure Development, LLC Development Agreement.

ADJOURNMENT

THIRD AMENDMENT TO LEISURE DEVELOPMENT, LLC
DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO LEISURE DEVELOPMENT, LLC DEVELOPMENT AGREEMENT (the "Amendment") is made as of _____ 2017 by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City"), **LEISURE DEVELOPMENT, L.L.C.**, a Kansas limited liability company ("Initial Developer") and **INN VESTMENTS II, L.L.C.**, the successor developer as assignee of all Leisure Development, L.L.C. right, title and interest, a Kansas limited liability company ("Developer").

RECITALS:

A. The City owned certain real property situated in Ford County, Kansas (the "Site"), which consists of the "Hotel Parcel", the "Restaurant Parcel" and the "Campground Parcel" (collective the "Site Parcels" or the "Site").

B. On April 24, 2015 the City and Initial Developer fully executed and delivered that certain Leisure Development, LLC Development Agreement (the "Original Agreement") pursuant to which Initial Developer agreed, subject to terms and conditions set forth in the Original Agreement, to design, construct, develop, complete and operate the Hotel Improvements, Restaurant Improvements, and Campground Improvements as described in Section 2.3 thereof (collectively, the "Project") in and on the Hotel Parcel, Restaurant Parcel and Campground Parcel, respectively.

C. On September 9, 2015, the City and Initial Developer entered into that certain First Amendment to Leisure Development, LLC Development Agreement (the "First Amendment"), which First Amendment provided for, among other things, the creation of community improvement district (the "CID Ordinance") to be imposed on the Site Parcels in order to pay for certain costs incurred in connection with the project.

D. On November 19, 2015, the City and Initial Developer entered into that certain Second Amendment to Leisure Development, LLC Development Agreement (the "Second Amendment"), which Second Amendment amended the CID Financing Article XI, and to amend certain provisions relating to the disbursement of STAR Bond Proceeds, subject to the terms and conditions set forth in the Second Amendment.

E. Also on November 19, 2015 Initial Developer assigned all of its rights, benefits, privileges and obligations under the Original Agreement, First Amendment and Second Amendment to Inn Vestments II, L.L.C., a Kansas limited liability company, subject to all terms, conditions, reservations and limitations set forth in the Original Agreement, First Amendment and Second Amendment. The City agreed to this assignment.

F. On December 22, 2015 the City transferred ownership of the Site Parcels to Inn Vestments II, L.L.C. to begin the Project.

G. The parties now desire to amend certain provisions relating to the disbursement of STAR Bond proceeds, subject to the terms and conditions set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereby agree to amend the Agreement (later defined) as follows:

1. Nature of the Third Amendment. In connection with this Third Amendment to Leisure Development, LLC Development Agreement, the parties hereby agree as follows:

(a) References. The Original Agreement as amended by the First Amendment and Second Amendment and further amended by this Amendment shall be referred to collectively as the "Agreement".

(b) Other Terms. All other terms and provisions of the Agreement not modified herein shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Agreement prior to this Amendment the terms of this Amendment shall govern and control.

(c) Severability. It is the intent of the parties that the provisions of the Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in the Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

(d) Capitalized Terms. Capitalized Terms used but not defined in this Agreement shall have the respective meanings set forth in the Original Agreement, First Amendment or Second Amendment.

(e) Incorporation of Recitals. The parties hereby understand and agree that the Recitals set forth above are hereby incorporated in this Agreement as though more fully set forth herein.

2. Modification of Conditions to Release of STAR Bonds from Escrow. The underwriter of the STAR Bonds has required an escrow of approximately \$4,000,000 of STAR Bond proceeds until such time as the Hotel Component, the Restaurant Component and the Campground Component have been Substantially Completed and opened for business. Accordingly, the following provision of the Agreement is hereby modified as follows:

(a) The last sentence of Section 4.2(h)(iii) of the Agreement shall be deleted and replaced with the following:

“Developer hereby understands and agrees that its reimbursement for Project Costs up to a maximum of \$1,770,000 from City shall only be released upon Substantial Completion and opening for business of the Hotel Component, the Restaurant Component and the Campground Component no later than the dates set forth in Section 6.11, as amended, except as specifically provided in Subsection (iv) below.”

3. Modification of Completion Date. The parties hereby agree to modify the Completion Dates as follows:

(a) Section 6.11(a) of the Agreement shall be modified to read as follows:

“Hotel Component – by August 23, 2017 escrow of \$1,020,000.”

(b) Section 6.11(b) of the Agreement shall be modified to read as follows:

“Restaurant Component – by December 10, 2016.”

(c) Section 6.11(c) of the Agreement shall be modified to read as follows:

“Campground Component – by July 1, 2017.”

Restaurant and Campground Components Combined escrow of \$750,000.

4. Certificate of Occupancy. The Certificates of Occupancy were in fact issued as follows:

(a) Hotel Component – August 23, 2017

(b) Restaurant Component – December 2, 2016

(c) Campground Component – May 30, 2017

5. Miscellaneous. In connection with this Agreement, the parties hereby agree as follows:

(a) In any subsequent court action in which the validity or the effect of this Amendment is at issue, the party prevailing in such action shall be entitled to its costs, expenses and reasonable attorney’s fees in prosecuting or defending such action.

(b) The parties declare and represent that no promises, inducements or agreements not herein expressed have been made, that this Amendment contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not mere recitals.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns.

(d) All remedies at law or in equity shall be made available for the enforcement of this Agreement.

(e) This Agreement and any amendments hereafter may be executed in Counterparts and delivered by electronic mail, confirmation receipt retained, facsimile or first class certified mail each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) This Agreement shall be construed in accordance with the laws of the State of Kansas.

[Remainder of this page intentionally left blank. Signature page immediately follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date and year first above written.

THE CITY:

THE CITY OF DODGE CITY, KANSAS

By: _____
Rick Sowers, Mayor

INITIAL DEVELOPER:

LEISURE DEVELOPMENT, L.L.C.

By: _____
Steven C. Olson, Authorized Member

DEVELOPER:

INN VESTMENTS II, L.L.C.

By: _____
Steven C. Olson, President of Heritage Associates, LLC its Manager

**AMENDED ASSIGNMENT AND ASSUMPTION OF LEISURE DEVELOPMENT, LLC
DEVELOPMENT AGREEMENT**

THIS AMENDED ASSIGNMENT AND ASSUMPTION OF LEISURE DEVELOPMENT, LLC DEVELOPMENT AGREEMENT (the “Amendment”) is effective as of November 19, 2015, by and between **INN VESTMENTS II, L.L.C.**, a Kansas limited liability company (“Inn Vestments”) and **LEISURE DEVELOPMENT, L.L.C.**, a Kansas limited liability company (“Leisure”).

RECITALS:

A. The City of Dodge City, Kansas (“City”) owns certain real property and holds option(s) to acquire certain other real property, all situated in Ford County, Kansas (the “Site”), which consists of the “Hotel Parcel,” the “Restaurant Parcel,” and the “Campground Parcel” (collectively the “Site Parcels” or the “Site”).

B. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12 17,160 et seq., as amended (the “STAR Bonds Act”), the City approved a STAR Bond Project District (the “STAR Bond District”) by passage of Ordinance No. 3527, which STAR Bond District encompasses an area which is larger than the Site, but includes the Site. More specifically, the STAR Bond District contains two (2) separate non-contiguous areas totaling approximately 500 acres located within the City – (i) one area is approximately 166 acres located in the historic downtown area of Dodge City, Kansas (the “Heritage Area”), and (ii) the other area is generally located between U.S. Highway 50 and 108th Road, South of Frontview Road (the “Entertainment Area”). The STAR Bond Project Area, including that portion thereof which constitutes the Site, shall have the same boundaries as the Heritage Area of the District.

C. On March 16, 2015, pursuant to the STAR Bond Act, the City set and provided public notice for a hearing on April 20, 2015 in order to consider the Heritage Area Project Plan for the Heritage Area (the “Project Plan”).

D. On April 20, 2015 the Dodge City Commission approved the Project Plan and the Development Plan for the Site, and authorized granting Leisure development rights pursuant thereto and approved the execution and delivery of a development agreement with Leisure, and on April 24, 2015, Leisure and the City fully executed and delivered that certain Leisure Development, LLC Development Agreement (the “Original Agreement”) pursuant to which Leisure agreed, subject to the terms and conditions to set forth in the Original Agreement, to design, construct, develop, complete and operate the Hotel Improvements, Restaurant Improvements, and Campground Improvements as described in Section 2.3 thereof (collectively, the “Project”) in and on the Hotel Parcel, Restaurant Parcel and Campground Parcel, respectively.

E. On September 9, 2015, the City and Leisure entered into that certain First Amendment to Leisure Development, LLC Development Agreement (the “First Amendment”).

F. On November 19, 2015, the City and Leisure entered into that certain Second Amendment to Leisure Development, LLC Development Agreement (the "Second Amendment" together with the First Amendment and the Original Agreement the "Development Agreement").

G. The Development Agreement contemplates the assignments of the Development Agreement to the Original Site Parcel Owners (as defined therein), which in each Leisure intends to be Inn Vestments.

H. Leisure desires to assign to Inn Vestments, and Inn Vestments desires to assume all of Leisure's rights and obligations under the Development Agreement, as amended.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the agreements and covenants herein set forth, together with the sum of Ten Dollars (\$10.00) and other good and valuable consideration this day paid and delivered by Inn Vestments to Leisure, the receipt and sufficiency of all of which are hereby acknowledged by Inn Vestments, Leisure does hereby ASSIGN, TRANSFER, SET OVER and DELIVER until Inn Vestments all of Leisure's obligations under the Development Agreement, and all of Leisure's rights, benefits and privileges thereunder, but subject to all terms, conditions, reservations and limitations set forth in the Development Agreement and subject to the following:

1. Capitalized terms used not defined herein shall have the meaning set forth in the Development Agreement.

2. This Amendment may be executed in counterparts, and delivered by facsimile or electronic mail each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3. Leisure hereby assigns to Inn Vestments all of the obligations of the "Developer" under the Development Agreement, and Inn Vestments hereby assumes all of the obligations of the "Developer" under the Development Agreement.

4. Except to the extent expressly provided in the Development Agreement to the contrary, Leisure is hereby released from all obligations, responsibilities and liabilities thereunder.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

ASSIGNOR:

LEISURE DEVELOPMENT, L.L.C.
a Kansas limited liability company

By: _____
Steven C. Olson,
Authorized Member

ASSIGNEE:

INN VESTMENTS II, L.L.C.
a Kansas limited liability company

By: _____
Steven C. Olson, President of Heritage
Associates, LLC, its Manager

Dated this _____ day of October, 2017.

APPROVED:

The City of Dodge City, Kansas

By: _____
Rick Sowers, Mayor