

Brandy Barrett

From: [REDACTED]
Sent: Tuesday, February 28, 2023 10:59 PM
To: Brandy Barrett
Cc: [REDACTED] Drew McLemore; [REDACTED] [REDACTED] [REDACTED] 'John Howl'
Subject: PILOT Draft
Attachments: Redline - Agreement for Payments for Benefits Received-4857-2312-3538-v1 and Agreement for Payments for Benefits Received-4857-2312-3538-v3.pdf; Agreement for Payments for Benefits Received.docx

Follow Up Flag: Flag for follow up
Flag Status: Completed

Brandy,
Attached is the marketed-up version of the PILOT program. I think this address most of the issues we discussed. We are happy to have a call with all the stakeholders plus attorneys if needed. Let us know what works for you.

Thanks,

Brian McLemore

Owner
McLemore Development Advisors LLC
[REDACTED]



McLemore
Development Advisors

AGREEMENT FOR PAYMENTS FOR BENEFITS RECEIVED

This ~~agreement~~Agreement for Payment for Benefits Received (the "Agreement") is made between the City of Westworth Village, a general law city located in Tarrant County, Texas (the "City") and The Cumberland Rest, Inc., a not-for-Texas non-profit corporation domiciled in the State of ~~Trinity Terrace~~ ("Owner"). This Agreement is effective upon its execution by both parties.

Recitals

WHEREAS, ~~Trinity Terrace Owner, or its wholly owned subsidiary, owns or will own a~~ -acre largely undeveloped tract legally described on Exhibit A attached hereto (the "Property") located within the City; and

WHEREAS, ~~Trinity Terrace Owner~~ plans to develop and build a campus-style upscale retirement development upon the Property; and

WHEREAS, ~~Trinity Terrace Owner's~~ not-for-profit status and its charitable activities make it generally exempt from the payment of *ad valorem* taxes under the Texas Tax Code, and specifically, as it relates to this Agreement, *ad valorem* taxes upon the Property, and

WHEREAS, the Property and ~~Trinity Terrace Owner~~ receive benefits from municipal services provided by the City due to its location within the City, in the same manner as other real properties located within the City which are subject to *ad valorem* taxation, and

~~WHEREAS, the City contends that the Property is properly subject to ad valorem taxation due to the City's obligation to provide municipal services to the Property, and specifically so once the Property is developed, and~~

~~WHEREAS, Trinity Terrace Owner, in the event the Property is exempt from ad valorem taxation, agrees that it will pay the City an annual amount equal to the amount which would have been due had the Property been subject to ad valorem taxation, and~~

WHEREAS, the City has adopted a resolution authorizing the City to enter this Agreement, which resolution is attached as Exhibit ~~A;B.~~

NOW, THEREFORE, in consideration of the mutual covenants contained within this Agreement, the parties agree as follows:

I. PAYMENT OBLIGATIONS

Annually, on or before the last date on which an owner of taxable real property within Tarrant County must pay *ad valorem* taxes imposed for a particular tax year without such payment being considered delinquent, ~~Trinity Terrace Owner~~ shall pay the City (a) for the period commencing as of the date Owner acquires the Property and ending on December 31st of the year in which Owner receives its first certificate of occupancy for an improvements located on the

Property (the "Construction Period"), an amount equal to One Hundred Thousand and 00/100 Dollars (\$100,000.00), and (b) for the period commencing on the January 1st after the expiration of the expiration of the Construction Period and for the duration of the term of this Agreement, an amount calculated by multiplying (i) the appraised value of the Property, as determined by the Tarrant County Appraisal District, for that particular tax year (subject to Article V of this Agreement), by (ii) the City tax rate that would have been used to assess *ad valorem* taxes for Tract for that tax year if the Property had been subject to *ad valorem* taxation. For clarity, the first payment due from ~~Trinity-Terrace~~Owner to the City under this article shall be computed based upon ~~TAD~~Tarrant County Appraisal District's valuation with respect to ~~2022-ad-valorem tax data;~~ item (b) above shall be based on the last calendar year of the Construction Period and shall be due on or before January 31, ~~2023~~st of the following calendar year.

If ~~Trinity-Terrace~~Owner does not make a payment under this Agreement to the City when due, then ~~Trinity-Terrace~~Owner shall be required to pay to the City, in addition to the amount due, an amount equal to the penalty and interest which would have been imposed under the Texas Tax Code had ~~Trinity-Terrace~~Owner's payment been instead an *ad valorem* tax payment in the same amount that was paid after the delinquency date for such tax.

Further, ~~Trinity-Terrace~~Owner agrees, in addition to penalty and interest prescribed in the preceding paragraph, that ~~the City shall have all enforcement and foreclosure powers the City would otherwise have enjoyed under~~ the right to file a lien against the Property for any unpaid or delinquent amounts under this Agreement, such lien which may be foreclosed in accordance with the Texas ~~Tax~~Property Code ~~as if the payments due under this Agreement were payment of ad valorem taxes. (Will Pruitt - amplify)~~ (such lien being referred to as the "City Lien"). Any City Lien imposed upon the Property shall be subject to all matters of record, including, without limitation, any liens imposed by a third-party lender securing financing provided to Owner in connection with the ownership, development, and operation of the Project.

II. TERM AND TERMINATION

This Agreement shall remain in place so long as ~~Trinity-Terrace~~Owner owns the Property and enjoys tax-exempt status; provided, however, that this Agreement shall terminate as of the date of which the Property is irrevocably subject to *ad valorem* taxation.

III. AVOIDANCE OF DUPLICATIVE PAYMENTS

If the Property in the future becomes subject in whole or in part to *ad valorem* taxation, the City shall make a payment to ~~Trinity-Terrace~~Owner equal to the amounts paid by ~~Trinity-Terrace~~Owner under this Agreement that were computed with reference to tax years for which the Property is subject to *ad valorem* taxation, and equal to the amount of any *ad valorem* taxes actually paid to the City for such tax years. For purposes of illustration of the operation of this section, if ~~Trinity-Terrace~~Owner pays \$150,000.00 per year under Article I above, computed with respect to the Property's appraised value for a particular tax year, and if the Property becomes subject to *ad valorem* taxation, upon receipt of the full amount of *ad valorem* taxes the City shall pay to ~~Trinity-Terrace~~Owner the sum of \$150,000.00. The City shall pay any amount due under this section no later than five business days after the City's receipt of the *ad valorem* tax revenue giving rise to ~~Trinity-Terrace~~Owner's obligation to make a payment to the City under this section. This paragraph shall survive termination of this Agreement.

It is the parties' intent that ~~Trinity Terrace~~Owner shall not pay an amount of contractual payments under this Agreement which exceeds the *ad valorem* taxes that the City would have received with respect to the Property if no exemption from *ad valorem* taxation applied to the Property.

IV. WAIVER OF IMMUNITY

The City acknowledges and agrees that this Agreement is subject to the provisions of subchapter I of chapter 271, Texas Local Government Code, as amended. The City agrees that its immunity from suit is waived for the purpose of adjudicating a claim for breach of this Agreement, which is subject to the terms and conditions of subchapter I of chapter 271, Texas Local Government Code, as amended.

V. PROTEST OF APPRAISED VALUE

Nothing within this Agreement shall limit ~~Trinity Terrace~~Owner's right to protest the Tarrant Appraisal District's proposed valuation of the Property for *ad valorem* tax purposes. ~~Trinity Terrace~~Owner agrees to provide notice (as provided below) to the City of any such protest, and of the Tarrant Appraisal District's determination of any such protest.

~~VI. [onsite 24/7 ECA or higher personnel; direct calls to MedStar]~~

~~VII. [Burton Hill/White Settlement signal light]~~

~~Trinity Terrace agrees that this Agreement shall be binding upon any mortgage lender relating to the Property, and Trinity Terrace agrees that no mortgage shall be made upon the Property without the lender agreeing and specifically accepting the terms of this Agreement.~~

The terms and conditions of this Agreement are binding upon ~~Trinity Terrace~~Owner's successors and assigns, ~~and the~~ solely to the extent such successor or assign is exempt from the payment of *ad valorem* taxes under the Texas Tax Code (a "Non-Profit Successor"). In the event Owner elects to sell, transfer, or otherwise convey the Property to a Non-Profit Successor, Owner shall cause such Non-Profit Successor to assume this Agreement and shall provide evidence of the same to the City promptly after the occurrence of such sale, transfer or conveyance. Owner shall be fully released from any and all obligations under this Agreement ~~shall specifically run with the land~~ upon the sale, transfer, or conveyance of the Property; provided, however, that if Owner transfers the Property to a Non-Profit Successor and such Non-Profit Successor does not assume the obligations under this Agreement, then Owner shall remain liable for all sums which may be due to City under the terms of this Agreement.

~~[Is Trinity Terrace paying other taxing jurisdictions?]~~

~~[Confidentiality?]~~

Each party represents it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

Geheb, Phill [GP1]
Suggest moving to a development agreement

Geheb, Phill [GP2]
Suggest moving to a development agreement

Geheb, Phill [GP3]
In the event of a foreclosure to a lender, this agreement would terminate since the property would then be taxable. Trinity Terrace' lender would not need to recognize the City's rights under this agreement.

Geheb, Phill [GP4]
Note: This Agreement is subject to the Texas Public Information Act, so there is no need for a confidentiality clause

Any notice required or permitted to be delivered under this Agreement shall be deemed received three days after sent by United States Mail postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below, or on the day actually received if sent by courier, overnight courier service, or upon hand delivery.

If intended for the City, to:

Attn: City Administrator
311 Burton Hill Road
Westworth Village, Texas 76114

If intended for ~~Trinity Terrace~~ Owner, to:

Attn: General Counsel
1600 Texas Street
Fort Worth, Texas 76102

This Agreement is the entire agreement between the parties with respect to the subject matter covered by this Agreement. There are no other oral or written agreements between the parties that in any manner relate to the subject matter on this Agreement.

This Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in the state district courts of Tarrant County, Texas.

Within fifteen (15) days of receipt of a written request from Owner, City will provide an estoppel certificate confirming (i) to the best of its knowledge, if Owner is in default or violation of this Agreement and, if so, identifying the subject default or violation, (ii) that this Agreement and any amendments are in full force and effect as of the date of such estoppel certificate, (iii) confirming the amount of the payments which are due and payable under this Agreement, and (iv) the recipient of such certificate has the right to rely on such certificate.

This Agreement may only be amended in writing by the mutual written agreement of the parties.

The City and Owner shall execute a memorandum of this Agreement, the form and substance which shall be subject to the mutual approval of City and Owner, within thirty (30) days of Owner acquiring the Property and shall record the same in the Official Property Records of Tarrant County, Texas.

This Agreement may be executed in multiple counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED on this ___ day of _____, 202_.

THE CITY OF WESTWORTH VILLAGE,
TEXAS

By: _____

L. Kelly Jones, Mayor

Date: _____

By: _____

Brandy Barrett, City Secretary

Date: _____

~~TRINITY TERRACE~~

OWNER:

THE CUMBERLAND REST, INC.

By: _____

Name: _____

Title: _____

Date: _____

Document comparison by Workshare Compare on Monday, February 27, 2023
2:54:32 PM

Input:	
Document 1 ID	netdocuments://4857-2312-3538/1
Description	Agreement for Payments for Benefits Received
Document 2 ID	netdocuments://4857-2312-3538/3
Description	Agreement for Payments for Benefits Received
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	58
Deletions	54
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	116