

TRI-PARTY AGREEMENT
FOR COMMERCIAL REDEVELOPMENT INCENTIVE GRANT
AND RELATED SERVICES

This Tri-Party Agreement for Commercial Redevelopment Incentive Grant and Related Services (herein the “Tri-Party Agreement”) is entered into as of the 3rd day of May, 2022, by and among the City of Pascagoula (hereinafter, “City”), Revival Property 111, LLC (hereinafter “DEVELOPER”) and Southern Mississippi Planning and Development District, Inc. (hereinafter, “SMPDD”). Each above entity is a “Party” and collectively they shall be referred to as the “Parties”.

WHEREAS, the City has authority to appropriate and provide to SMPDD such sums as it deems necessary and desirable pursuant to Miss. Code Ann. § 17-19-1; and

WHEREAS, the City may also place reasonable conditions on the use of the funds allocated to SMPDD, and otherwise earmark such funds for a specific purpose; and

WHEREAS, SMPDD is a 501(c)(3) private non-profit corporation which engages in activities which include, but are not limited to, administration of a Commercial Redevelopment Incentive Grant Program (the “Grant Program”), which allows private developers to apply for redevelopment grants to incentivize the reuse/redevelopment of existing commercial properties; and

WHEREAS, it is the desire of the City to allocate to SMPDD certain sums described below for the specific purpose of funding the Grant Program to be used as described below for redevelopment of commercial property located at 650 Delmas Avenue (the “Redevelopment Project”), which shall be developed for the purpose of opening and operating a retail chain establishment, and specifically, Hotel Whiskey; and

WHEREAS, it is understood by all parties that the incentive for DEVELOPER’s participation in the Grant Program is based upon the Verified Tax Increase, as defined herein, and as further described in the Program Agreement to be entered into by and between SMPDD; and

WHEREAS, DEVELOPER has approached the City and requested participation in the Grant Program administered by SMPDD in order to incentivize the reuse/redevelopment of existing commercial property within the City, as described above; and

WHEREAS, Michael Craven, on behalf of DEVELOPER, and the City entered into a Memorandum of Intent (hereinafter “MOI”) on May 3, 2022, and DEVELOPER relied upon said MOI in moving forward with the Redevelopment Project; and

WHEREAS, Revival Property 111, LLC, the City and SMPDD wish to proceed with memorializing these agreements;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. DEVELOPER REPRESENTATIONS AND RESPONSIBILITIES

1. DEVELOPER represents that it owns or will purchase the Redevelopment Project, and that it has or will secure a lease of the Redevelopment Project with Hotel Whiskey's LLC if given, as lessee ("COMMERCIAL ENTITY"), for the purpose of operating a Hotel Whiskey retail chain establishment ("COMMERCIAL ENTITY") upon the Redevelopment Project.
2. Upon the execution of this Tri-Party Agreement, DEVELOPER will immediately complete a grant application with SMPDD which shall include, but is not limited to, estimated costs, projected tax increase, and development time frame, in order to take part in the Grant Program.
3. Upon approval of the grant application, DEVELOPER will enter into a Program Agreement with SMPDD governing the distribution of funds under the Grant Program.
4. DEVELOPER will redevelop the Redevelopment Project and will document all costs incurred by it in said redevelopment for the purpose of leasing the property to Hotel Whiskey for the further purpose of opening and operating COMMERCIAL ENTITY.
5. DEVELOPER acknowledges and agrees that within 90 days of the grant of a certificate of occupancy for the Redevelopment Project, documentation of project costs will be provided to the City and SMPDD, to the City's and SMPDD's satisfaction. "Project Costs" shall be defined as any expenditure related to the reuse and redevelopment of the Redevelopment Project, including the purchase price of the real property related to the Redevelopment Project (but excluding associated acquisition costs, including, but not limited to, attorney's fees, title abstract fees, title insurance, hazard insurance, attorney's fees, prorated taxes, appraisal costs, and financing-related costs), and cost of materials directly related to the reuse and redevelopment (but excluding expenditures for furniture, fixtures and equipment, inventory of merchandise to be sold by COMMERCIAL ENTITY, general maintenance, and work that does not improve the appearance or functionality of the Redevelopment Project).
6. DEVELOPER acknowledges that it is eligible to participate in the Grant Program administered by SMPDD. Under the Grant Program, commencing twelve (12) months after the certificate of occupancy is issued, and once per year for a period of up to fifteen (15) consecutive years, DEVELOPER is eligible to receive an amount equal to agreed upon 100% of the City's portion of the verified increase in sales tax collected by the City and directly attributable to sales made by COMMERCIAL ENTITY (the "Verified Tax Increase") for the first five years (years 1-5). DEVELOPER is eligible to receive an amount equal to agreed upon 80% of the City's portion of the verified increase in sales tax collected by the City and directly attributable to sales made by COMMERCIAL ENTITY (the "Verified Tax Increase") for the next five years (years 5-10). DEVELOPER is eligible to receive an amount equal to agreed upon 50% of the City's portion of the verified increase in sales tax collected by the City and directly attributable to sales made by COMMERCIAL ENTITY (the "Verified Tax Increase") for the last five years (years 11-15). The agreed upon percentages of the Verified Tax Increase attributable to sales by COMMERCIAL ENTITY shall be referred to herein as

the “Grant Award.” Under no circumstances will the total Grant Award exceed one-third (1/3) of DEVELOPER’s total substantiated Project Costs (the “Grant Cap”).

7. DEVELOPER acknowledges that SMPDD shall be entitled to an administration fee of 10% of every Grant Award (the “Administrative Fee”), as more fully detailed in the Program Agreement, which will be deducted from all Grant Awards prior to SMPDD paying the balance thereof to DEVELOPER.
8. DEVELOPER acknowledges that upon acceptance of its completed Grant Program application, and execution of this Tri-Party Agreement and the Program Agreement, Grant Awards will not begin until twelve (12) months after the certificate of occupancy is issued to DEVELOPER for the Redevelopment Project, and the Verified Tax Increase is reviewed and accepted by both the City and SMPDD. It shall be DEVELOPER’s responsibility to provide documented proof of the Verified Tax Increase to the City and SMPDD to the satisfaction of each entity.
9. DEVELOPER acknowledges that its lease agreement with COMMERCIAL ENTITY requires Hotel Whiskey, as lessee, to provide the Verified Tax Increase information and supporting documentation to DEVELOPER, the City and SMPDD on an annual basis. This shall include, but is not limited to, the total Mississippi sales taxes paid by COMMERCIAL ENTITY. The parties acknowledge that this information provided by COMMERCIAL ENTITY is third party proprietary information and will not be further released by any Party to this Tri-Party Agreement, unless required by law.

II. CITY REPRESENTATIONS AND RESPONSIBILITIES:

1. City agrees that upon DEVELOPER’s compliance with the above obligations, and as consideration therefore, it will provide to SMPDD, as administrator of the Grant Program and on DEVELOPER’s behalf, the Grant Award. SMPDD shall be compensated by way of the Administrative Fee. The Administrative Fee shall be deducted from the Grant Award prior to submission of payment to DEVELOPER.
2. For DEVELOPER’s successful participation in the Grant Program, the City agrees to provide the Grant Award to SMPDD for a period of fifteen (15) consecutive years, or until the Grant Cap is reached, whichever occurs first, unless sooner terminated in accordance with Paragraphs 4 or 5 of this Section II.
3. The City will execute and deliver to SMPDD any other documentation consistent with this Tri-Party Agreement necessary to carry out the terms hereof.
4. Should the Redevelopment Project as defined herein cease to exist, or in the event Hotel Whiskey terminates its lease and/or its operations at 650 Delmas Avenue, this Tri-Party Agreement will automatically terminate and the responsibilities of the City and SMPDD, as identified herein, shall terminate effective immediately as of the date of termination of operations of COMMERCIAL ENTITY or cessation of the Redevelopment Project, whichever date first occurs.

5. The City is agreeing to contribute the Grant Award as calculated by the Verified Tax Increase in sales tax resulting from only this Redevelopment Project, and specifically excludes an increase in sales tax resulting from any further expansion, or additional redevelopment in the future. If at any time the Redevelopment Project is conveyed, transferred or assigned to any other entity by DEVELOPER, whether by specific act or operation of law, or is leased by any entity other than COMMERCIAL ENTITY, the City's obligations under this Tri-Party Agreement shall automatically terminate.

III. SMPDD REPRESENTATIONS AND RESPONSIBILITIES

1. Upon execution of this Tri-Party Agreement, SMPDD will provide an application to DEVELOPER for participation in SMPDD's Grant Program.
2. Upon reaching terms satisfactory to SMPDD and DEVELOPER, SMPDD will enter a Program Agreement with DEVELOPER governing the distribution of funds under the Grant Program.
3. The Grant Program and Program Agreement will allow for and detail the mechanism for distribution of the Grant Award to DEVELOPER pertaining to the Redevelopment Project.
4. The Program Agreement between SMPDD and DEVELOPER will define the Administrative Fee to be charged by SMPDD and paid from the Grant Award provided by the City; however, no additional funds from the City shall be obligated beyond those identified above.
5. SMPDD will administer the Grant Program to ensure that DEVELOPER meets all requirements and obligations identified herein and in the Program Agreement prior to distribution of any Grant Award.
6. SMPDD's administration of the Grant Program includes receipt of the Grant Award from the City, determining (in conjunction with the City) the appropriate amount of funds due to DEVELOPER, if any, and disbursing the Grant Award, less the Administrative Fee, to DEVELOPER in accordance with this Tri-Party Agreement and the Program Agreement.
7. Upon SMPDD's annual receipt of the Grant Award, SMPDD shall prepare a report to DEVELOPER and the City (the "Annual Report") which will include, but is not limited to: (a) the Verified Tax Increase for the year; (b) the amount of the Grant Award for the year; (c) the amount of the Administrative Fee to be deducted from that year's Grant Award and retained by SMPDD; and (d) the amount of eligible awards remaining on the Grant Cap after each annual Grant Award.

IV. GENERAL TDEVELOPERS

1. All notices, requests, demands, and other communications which may or are required to be delivered hereunder will be in writing and will be delivered by messenger, by a nationally-recognized overnight mail delivery service or by certified mail, return receipt requested, to the following:

Michael Silverman, City Manager
City of Pascagoula
603 Watts Avenue
Pascagoula, MS 39568

Revival Property 111, LLC
305 Decatur Street #102
New Orleans, LA 70130

Southern Mississippi Planning and Development District, Inc.
Attn: Leonard Bentz, Executive Director
10441 Corporate Dr., Suite 1
Gulfport, MS 39503

2. The modification or amendment of this Tri-Party Agreement, or any of the provisions herein, will not become effective unless executed in writing by all Parties.

3. Except for disclosure to legal counsel, accountant or financial advisors, no Party to this Tri-Party Agreement shall disclose the terms hereof to any person who is not a Party or signatory hereto, unless disclosure thereof is required by law or otherwise authorized by this Tri-Party Agreement or consented to by all Parties in writing. Unauthorized disclosure of the terms of this Tri-Party Agreement shall be a material breach hereof.

4. Nothing contained in this Agreement shall be construed as constituting any Parties as principal and agent, partners or joint venturers.

5. If any provision of this Tri-Party Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision herein is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

6. This Tri-Party Agreement shall be construed in accordance with the laws of the State of Mississippi. Any and all disputes arising hereunder shall be tried in a court of competent jurisdiction in Jackson County, Mississippi. By execution hereof, each Party consents to jurisdiction in Jackson County, Mississippi, and waives any and all defenses or objections to jurisdiction or venue in Jackson County, Mississippi.

7. This Tri-Party Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. The Parties stipulate that a photocopy of an executed original shall be admissible in evidence for all purposes in any proceeding as between the Parties.

8. This Tri-Party Agreement has been jointly drafted by all Parties, and in the event of any ambiguity, such ambiguity shall not be construed against any drafting Party.

AGREED:

City of Pascagoula:

DATE:

By:

Revival Property 111, LLC:

DATE:

By:

Southern Mississippi Planning and Development District, Inc.

DATE:

By: