

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 6.a

Title:

Consideration of Agreement for Deferred Electric Utility Project Costs for the Crystal Lofts Condominium Development

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: January 28, 2019

Proposed Cost: \$135,000

Budgeted Amount: \$0

Not Budgeted: ☒**Executive Summary** *(if not budgeted please explain):*

The Developer (Crystal Lofts, LLC) of the Crystal Lofts Condominium project on Indiana Avenue has requested deferral of Electric Utility project costs related to the relocation of the existing overhead lines to underground, and also deferral of project costs related to providing service to the building.

The standard City process for developments includes payment of the estimated electric fees as part of the building permit at the beginning of the project. Public Works and Community Development have worked collaboratively with Crystal Lofts, LLC.

The proposed agreement was developed by the City Attorney and the terms have been agreed to by Crystal Lofts, LLC. The agreement includes timelines for repayment and collateral should Crystal Lofts, LLC. default on the agreement.

Attachments *(please list):*

* Developer Agreement

Recommendation/Suggested Action *(briefly explain):*

Consideration of Agreement for Deferred Electric Utility Project Costs for the Crystal Lofts Condominium Development.

REIMBURSEMENT AGREEMENT

Return to: John M. McGuirk, Esq.
1001 E. Main Street, Suite G
St. Charles, Illinois 60174

REIMBURSEMENT AGREEMENT
Electrical Improvements

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this _____ day of February, 2019, by and between the CITY OF ST. CHARLES, an Illinois Municipal Corporation (hereinafter referred to as the "CITY"), and CRYSTAL LOFTS, LLC, an Illinois Limited Liability Company (hereinafter referred to as "OWNER").

WITNESSETH:

WHEREAS, the OWNER is the owner of record of the real estate described in Exhibit "A" attached hereto and made a part hereof as though fully set forth (hereinafter referred to as the "SUBJECT REALTY"), the same being situated in St. Charles, Illinois; and,

WHEREAS, the SUBJECT REALTY is located within the city limits of the CITY OF ST. CHARLES; and,

WHEREAS, the OWNER has obtained approval from the CITY to construct condominium units on the SUBJECT REALTY. The condominium units total fourteen (14) and it is anticipated that they will be built in two phases. Phase I shall consist of nine (9) units and Phase II shall consist of five (5) units; and,

WHEREAS, the plans and specifications for the electrical improvements to be constructed by the OWNER will be submitted to the CITY for approval. Said electrical improvements will be constructed in accordance with the St. Charles Municipal Code; and,

WHEREAS, the CITY requires developers of property within the corporate limits to pay for electrical improvements in advance of the issuance of Building Permits; and,

WHEREAS, the OWNER has requested the City to defer payment for the electrical improvements until the construction has commenced and certain condominium units have been completed; and,

WHEREAS, the CITY is willing to defer payment for the electrical improvements provided the reimbursement plan is detailed in this written Agreement and that the OWNER provide sufficient security for construction of the electrical improvements;

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants and conditions hereinafter contained, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties hereto agree as follows:

1. Deferral of Payment for Electrical Improvements. The CITY agrees and acknowledges that the OWNER shall not be required to make payment for the electrical improvements at the time of the issuance of the Building Permit as long as payments are made in accordance with the schedule of payments set forth herein and provided that the OWNER provides a letter of credit securing an amount sufficient to secure all future payments.

2. Payments. OWNER agrees to make payments in the amount of Fifteen Thousand Dollars (\$15,000.00) prior to the issuance of the Certificate of Occupancy for each of the first eight (8) units in Phase I. OWNER shall make final payment of all outstanding indebtedness to the City prior to the issuance of the Certificate of Occupancy for Unit 9 in Phase I or within two (2) years of the date of the commencement of the electrical work, whichever is first to occur.

3. Interest. Interest at the rate of six (6%) percent per annum shall accrue on any unpaid amount remaining after the CITY commences work with respect to the electrical improvements. Said interest shall accrue until the amount outstanding has been paid in full.

4. Letter of Credit. To secure OWNER's obligation to reimburse the City for the electrical improvements described herein, OWNER hereby agrees to execute a Letter of Credit Agreement in substantially the form attached hereto as Exhibit "B."

5. Default. OWNER shall be in default in the event of any of the following: (a) OWNER fails to make any payment or other sum or amount payable hereunder and such failure shall continue for five (5) days after written Notice by the CITY; (b) OWNER fails to perform any other obligation to be performed by OWNER hereunder and such failure shall continue for five (5) days then OWNER shall be considered in default; (c) if OWNER abandons or vacates the SUBJECT REALTY.

6. Attorney's Fees. If either party hereby brings an action at law or in equity to enforce, interpret or for breach of this Agreement, then the prevailing party in such action shall be entitled to recover all court costs, witness fees, and reasonable attorney's fees in addition to all other appropriate relief.

7. Miscellaneous Provisions.

A. AMENDMENT. This Agreement may be amended by mutual consent of the parties hereto or their successors or assigns, from time to time by written instrument without the consent of any other person or corporation owning the parcels of property deemed benefited hereunder.

B. SEPARABILITY. Should any provision of this Agreement or the application of such provisions to any person or circumstance, be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and/or the application of such provisions to persons or circumstances, other than those specific provisions or applications held invalid, shall not be affected.

C. BINDING EFFECT. Except as otherwise herein provided, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the OWNER and any successor municipal corporation of the CITY.

D. ENFORCEMENT. Any party to this Agreement or their respective successors or assigns, may either in law or in equity by suit, action mandamus, or other proceeding, enforce and compel performance of this Agreement against any other party hereto and their respective successors and assigns.

E. **HOLD HARMLESS AND INDEMNIFICATION.** In the event a claim is made against the CITY, its officers, agents and employees or any of them or if the CITY is made a part-defendant in any proceeding arising out of or in connection with this Agreement the OWNER hereby releases and agrees to defend and hold the CITY and such officers, agents, and employees harmless from all claims, liabilities, losses, taxes, judgments, costs, fees, including expenses and reasonable attorneys fees, in connection therewith. Any such indemnified person may obtain separate counsel at his own expense; provided however, if the canons of legal ethics require such indemnified person to be separately defended where there is no consent to a conflict of interest, then OWNER shall bear such expense. The CITY and such officers, agents and employees shall reasonably cooperate in the defense of such proceedings.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the day and date first written above.

CITY OF ST. CHARLES, an Illinois
Municipal Corporation

By: _____
Raymond P. Rogina,
MAYOR

ATTEST:

CRYSTAL LOFTS, LLC, an Illinois Limited
Liability Company

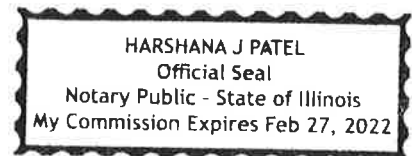
By: _____
Jeffrey Funke, Manager

A handwritten signature in black ink, appearing to read 'Jeffrey Funke', is written over a horizontal line. The signature is stylized with a large, looping initial 'J'.

STATE OF ILLINOIS)
COUNTY OF Kane)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeffrey Funke, Manager of CRYSTAL LOFTS, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and severally acknowledge that he signed, sealed and delivered this instrument as his own free and voluntary act as the free and voluntary act of CRYSTAL LOFTS, LLC, for the uses and purpose herein set forth.

H. J. Patel
Notary Public



STATE OF ILLINOIS)
)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond P. Rogina, personally known to me to be the Mayor of the CITY OF ST. CHARLES, a municipal corporation, and Charles Amenta, personally known to me to be the City Clerk of the City of St. Charles, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and severally acknowledged that as such Mayor and City Clerk of said municipal corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the City Council of the City of St. Charles as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Notary Public

This Instrument prepared by and Return Recorded Document to:
John M. McGuirk, Esq.
1001 E. Main Street, Suite G
St. Charles, Illinois 60174

EXHIBIT "A"
Legal Description of Subject Realty

(To be attached after recording of Final Plat of Condominium)

BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 40
NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY,
ILLINOIS.

EXHIBIT "B"

LETTER OF CREDIT TEMPLATE

**Performance Letter of Credit Template
(FINANCIAL INSTITUTION LETTERHEAD)**

IRREVOCABLE LETTER OF CREDIT NO. _____

DATE: _____, 20__

BENEFICIARY: City of St. Charles ("City")
ATTN: Development Engineering Division
Manager 2 East Main Street
St. Charles, IL 60174

FOR THE ACCOUNT OF: Crystal Lots, LLC

AMOUNT OF CREDIT: \$512,694.00

EXPIRY DATE: _____

Ladies and Gentlemen:

We hereby open our Irrevocable Standby Letter of Credit in your favor available by your draft on us at sight, signed by the Director of Public Works, City of St. Charles, bearing the clause "Drawn under (Name of Bank) Letter of Credit No. _____ effective (Date) accompanied by the following documents:

1. This original Letter of Credit and all amendment(s) thereto (if any).
2. A statement in duplicate signed by the Director of Public Works, City of St. Charles, reading as follows: "Crystal Lofts LLC has failed to comply with any one or more of the following as such relates to the Crystal Lofts Condominiums.
 - a. The Land Improvement Agreement entered into by and between the City of St. Charles and (Name of Developer/Owner) on or about, 20 ;
 - b. Any other applicable Agreement entered into by and between the City of St. Charles and (Name of Developer/Owner) or applicable completion date for the Land Improvements (as defined in the St. Charles Municipal Code) set forth in the St. Charles Municipal Code.

The funds claimed under this Letter of Credit are for the payment of the cost of construction of improvements according to the engineering plans prepared by (Name of Engineer inn Firm) and dated (Date of Plans), together with any amendments thereto approved by the City

and/or reimbursement to the City of expenses or other costs as set forth in the Land Improvement Agreement."

Demands may be presented either in person or via mail or overnight courier; provided, however that payment under such draw will only be effected after receipt of original documents by (Name of Bank). Original documents are to be sent to: _____ (Address of Bank).

No consent by (Name of Developer/Owner) shall be required in order for the City to make demand hereunder.

(Name of Bank) agrees that this Irrevocable Letter of Credit shall not be reduced or discharged except upon receipt of a certificate from the Director of Public Works for the City of St. Charles, or his designee, certifying that this Irrevocable Letter of Credit may be reduced and the amount by which it may be reduced. The outstanding balance of this Irrevocable Letter of Credit shall be the face amount of this Irrevocable Letter of Credit less any amount which is discharged upon certification of the Director of Public Works, or his designee, provided, however, the outstanding balance of this Irrevocable Letter of Credit shall not be reduced to less than 115% of the Development Engineering Division Manager's estimate of the cost of completion of all remaining Land Improvements until the St. Charles City Council has accepted all of the aforementioned Land Improvements and the Director of Public Works, or his designee, has certified that the City Council has released this Irrevocable Letter of Credit.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for additional periods of one year from the present and each future expiration date, unless we notify you in writing via Certified Mail, Return Receipt Requested, at least ninety (90) days prior to any given expiry date that we have elected not to renew this Letter of Credit for such additional period of time. Upon receipt of such notice, you may draw hereunder by means of the following:

1. Sight draft in accordance with the terms of this Letter of Credit;
2. This original Letter of Credit, and all amendment(s) thereto (if any);
3. A statement, signed by the Director of Public Works, City of St. Charles, reading as follows:
"(Name of Bank) has elected not to renew Letter of Credit No. _____ beyond its present expiration date and (Name of Developer/Owner) has failed to supply us with an acceptable replacement Letter of Credit and/or other acceptable substitute collateral."

We hereby agree with you that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on presentation. In the event that we do not make payouts in accordance with this Letter of Credit and the City of St. Charles is required to file a lawsuit to compel compliance with this agreement and shall prevail, we will be obligated to pay to the City of St. Charles its expenses and costs of litigation including attorneys' fees.

The undersigned institution hereby represents and warrants to the City that it has the full power, right and authority to deliver this Irrevocable Letter of Credit, that the same is within all lending limits of such institution, is in full conformity with all state and federal law, and that the same is binding in accordance with its terms on the undersigned institution. All acts, requirements and other preconditions for the issuance of this Irrevocable Letter of Credit have been completed.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary

Credits (2007 Revision), International Chamber of Commerce Publication No. 600 ("UCP 600") and to the Uniform Commercial Code -Letters of Credit, 810 ILCS 5/5-101 et seq., as amended, as in effect in the State of Illinois (UCC). In the event of conflict between UCP 600 and the UCC, UCP 600 shall govern.

(FINANCIAL INSTITUTION)

BY: _____

ATTEST: _____