



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol Mitten, City Administrator
Stepheny McMahon, Economic Development Supervisor

DATE: July 29, 2021

SUBJECT: An Ordinance Approving an Amendment to a Redevelopment Agreement with D & E Enterprises, LLC 136 Main Street Series (Cohen Building – 136 W. Main Street)

Introduction

On February 6, 2017, the City Council approved Ordinance No. 2017-01-005, which authorized the City of Urbana to enter into a Redevelopment Agreement with D & E Enterprises, LLC to facilitate the renovation of the historic Cohen Building at 136 W. Main Street.

It was anticipated at that time that the incentives would support the renovation of the building for occupancy by a variety of uses including a first floor restaurant, a basement speakeasy, and offices or apartments on the second floor. The redevelopment agreement was structured in six phases. The first three phases were required; the latter three phases were optional:

Redevelopment Phases

- | | |
|-----------|---|
| Phase I | Install an ADA-compliant elevator serving all levels of the building |
| Phase II | Sprinkler system on each floor of the building |
| Phase III | Improvements to the exterior of the building (could include entrances, facades, windows, rooftop improvements, solar panels, etc.) |
| Phase IV | Tenanted restaurant and bar on the first floor with a commercial kitchen in the basement |
| Phase V | Additional tenanted bar/restaurant in the basement |
| Phase VI | Either 1) at least one commercial tenant on the second floor or 2) four apartments on the second floor with at least five bedrooms in total |

According to the terms of the Redevelopment Agreement, Phases I and II were required to commence no later than December 31, 2017; Phase III was required to commence no later than December 31, 2019. The project completion date for any phase that would be eligible for loan forgiveness was December 31, 2021.

The City's financial support for the redevelopment took the form of the reimbursement of a percentage of eligible costs up to a maximum for each project phase, as summarized below:

<u>Project Phase</u>	<u>Percentage Reimbursement</u>	<u>Maximum Reimbursement</u>
Phase I	65%	\$111,000
Phase II	65%	\$53,000
Phase III	15%	\$21,000
Phase IV	15%	\$166,000
Phase V	15%	\$76,000
Phase VI	15%	\$73,000

The maximum total reimbursement for all phases would be \$500,000, which amounted to about 20% of the then-anticipated total project cost of \$2,492,308.

Upon reimbursement, the payments to the developer were to be considered a short-term, interest-free loan, the repayment of which was required two years following the project completion date of December 31, 2021. The loan was eligible to be forgiven under certain conditions:

...in the event the Developer completes the last required or otherwise undertaken phase of the Project on or before the Project Completion Date and uses best efforts to have the first and second floors of the building upon the Property fully leased for a period of two continuous years immediately thereafter, and if no "Default" under Section 7.1 of this Agreement by the Developer has then occurred and is continuing, the Redevelopment Loan shall be deemed fully paid and discharged.

Status of the Renovation

The developer has completed all of the Phase I and II work. The scope of Phase III was never specifically defined, so the parties propose to close out that phase as of the project completion date for the purposes of designating expenses that may be submitted for reimbursement (i.e., eligible expenses incurred prior to December 31, 2021). The developer may, of course, continue to make improvements to the exterior, but those expenditures would not be eligible for reimbursement under this agreement.

The developer has been working for almost two years to renovate and configure the east bay and part of the center bay on first floor and a small portion of the basement for the Sakura Japanese Restaurant. A challenging part of this effort has been the need to install bathrooms for restaurant patrons that could also be accessible to future occupants of the remainder of the first floor.

The configuration of the restaurant is not the same as what was anticipated in the Redevelopment Agreement, which contemplated a commercial kitchen on the basement level to serve the first floor restaurant. This proved to be impractical. The restaurant has received its first inspection by the health department and is ready for its final inspection. It is anticipated to open in August.

Proposed Amendment to the Redevelopment Agreement

The redevelopment has been challenging for a variety of reasons. As reflected in the discussion of the scope of Phase IV above, the definition of the phases was not always achievable. While certain base building requirements were well understood at the outset of the project (e.g., the need for an ADA-compliant elevator serving the entire building), others are still being scoped in response to the needs of prospective tenants. In general, the configuration of the space on the basement and first floor levels is not as well-suited to the demands of potential occupants as was originally thought, which has made attracting tenants challenging.

Additionally, the developer wants to utilize historic preservation tax credits. A critical step in that effort was to create the Downtown Historic District, and this project was a driving force to getting that done. The requirements for preservation tax credits were also not fully understood at the outset, and have created additional hurdles for the developer. As an example, the work required to have a kitchen in the basement would not have worked from a historic preservation standpoint.

From the City's perspective, we have determined that this type of redevelopment agreement is not desirable in the future for a number of reasons. First, it requires a lot of staff time to administer properly over a long period of time. Second, the scope of some of the phases was prematurely and/or loosely defined, which has led to altering the scope of certain phases and adding to the administrative burden. Finally, the benefits to the City are all aspirational – e.g., the developer can earn incentives up to \$185,000 without ever having a tenant actually in place to generate the primary benefits anticipated by the redevelopment agreement in the form of sales and/or food and beverage taxes. Therefore, we propose several changes in order to finalize the scope of this agreement. Staff is open to discussing a future, stand-alone redevelopment agreement related to this building if the scope is well-defined and the benefits to the City are achievable.

In the proposed amendment, the parties have redefined the scope of Phase IV to reflect what will actually be completed by December 31, 2021 to support the tenancy of the Sakura Restaurant. This reduces the overall maximum reimbursement to the developer from \$166,000 to \$98,425; the new maximum is only available in the event that all conditions are met. The potential maximum reimbursement has been recast as a base amount (15% of \$379,500 or \$56,925) plus two annual incentives to get the business open and keep it operating (15% of \$276,500 or \$41,475 spread over two years at \$20,750 each year).

Recommendation

Staff recommends that the Committee of the Whole approve the proposed amendment and forward it on to the full Council with a recommendation for approval.

Attachment: Draft Ordinance

ORDINANCE NO. 2021-0X-00XX

AN ORDINANCE APPROVING AN AMENDMENT TO A REDEVELOPMENT AGREEMENT WITH D & E ENTERPRISES, LLC 136 MAIN STREET SERIES (COHEN BUILDING – 136 W MAIN ST)

WHEREAS, the City of Urbana (“City”) and D & E Enterprises, LLC-136 Main Street Series (the “Developer”) entered into a Redevelopment Agreement on March 1, 2017 for the purposes of facilitating the renovation and leasing of the real property located at 136 West Main Street; and

WHEREAS, the Parties now desire to amend certain provisions of the Redevelopment Agreement as reflected in the attached First Amendment to a Redevelopment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1. That a First Amendment to a Redevelopment Agreement between the City of Urbana and D & E Enterprises, LLC 136 Main Street Series in substantially the form of the copy of said Amendment attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code. Upon approval of this Ordinance, the City Clerk is directed to record a certified copy with the Champaign County Office of the Recorder of Deeds and transmit one copy of the recorded Ordinance to the petitioner. This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the City Council this _____ day of _____, 2021.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2021.

Diane Wolfe Marlin, Mayor

FIRST AMENDMENT TO A REDEVELOPMENT AGREEMENT

This First Amendment (the “**Amendment**”) is entered into for the purpose of amending a **Redevelopment Agreement** (the “**Agreement**”) dated March 1, 2017 between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the “**City**”) and **D & E Enterprises, L.L.C.-136 Main Street Series**, an Illinois limited liability company (the “**Developer**”). This Amendment shall become effective upon the date of the last of the City and the Developer to execute and date this Amendment and deliver it to the other (the “**Effective Date**”).

RECITALS

WHEREAS, the City and the Developer entered into the Agreement whereby the City would provide loan assistance to facilitate the Project (as defined in the Agreement), which has an estimated cost of \$2,500,000 with the goal of achieving full commercial and/or residential use of the Property; and

WHEREAS, the City and the Developer agree that the required phases of the Project (i.e., Phases I, II, and III) were commenced timely and completed before the Project Completion Date (as defined in the Agreement); and

WHEREAS, the City and the Developer agree that optional Phases V and VI of the Project were not commenced timely and are not eligible for Redevelopment Loan Financing (as defined in the Agreement) and any references remaining to those phases following this Amendment are merely artifacts of the Agreement; and

WHEREAS, the City and the Developer desire to redefine the scope of Phase IV, inasmuch as the full scope of work that was contemplated under the Agreement will not be completed by the Project Completion Date.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree to amend the Agreement as follows.

A.

ARTICLE I DEFINITIONS

Replace subparagraph (iv) of the definition of Project with the following:

(iv) a tenanted restaurant/bar in the east and center bays of the first floor of the building upon the Property and the necessary related common areas, as shown on Exhibit A of this Amendment (“**Phase IV**”),

B.

ARTICLE IV
CITY'S COVENANTS AND AGREEMENTS

1. Replace subsection 4.1(a)(iv) with the following:

iv. Phase IV: an amount equal to fifteen percent (15%) of the Eligible Redevelopment Costs attributable to Phase IV up to a maximum amount of Fifty-Six Thousand Nine Hundred Twenty-Five Dollars (\$56,925);

2. Replace subsection 4.1(b) with the following:

(b) Loan Forgiveness. As of the date of this Amendment, the Parties agree that the Developer has completed Phases I, II, and III prior to the Project Completion Date. Therefore, anything to the contrary in the Loan Documents notwithstanding, as long as the Developer uses best efforts to have the first and second floors of the building upon the property fully leased for a period of two continuous years after the Project Completion Date, and if no "Default" under Section 7.1 of this Agreement by the Developer has then occurred and is continuing, the Redevelopment Loan as to Phases I, II, and III shall be deemed fully paid and discharged.

As long as the Developer completes Phase IV by the Project Completion Date, loan forgiveness for Phase IV shall be eligible on the same terms as above.

3. Add the following new subsection 4.1(c):

(c) Developer's Incentive. The Parties recognize the importance of maintaining an operating restaurant in the Phase IV designated space on the first floor of the building. An operating restaurant will be defined for this purpose as a restaurant that is open for full service business a minimum of five days per week and six hours per day. Provided that, once operation of the restaurant commences, the restaurant is in full operation as defined above for a period of one continuous year, the Developer will be eligible for another 15% of Eligible Redevelopment Costs attributable to Phase IV up to an additional amount of Twenty Thousand Seven Hundred Fifty Dollars (\$20,750). If the restaurant remains operational for a second full year, the Developer will be eligible for another 15% of Eligible Redevelopment Costs attributable to Phase IV up to an additional amount of Twenty Thousand Seven Hundred Fifty Dollars (\$20,750).

C. All other provisions of the Agreement not amended herein shall remain in full force and effect, except for all references and provisions relating to Phases V and VI that have been nullified as those phases were not commenced timely pursuant to the Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused this Amendment to be executed by the duly authorized officer(s) or manager(s) as of the date set forth below.

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

Date: _____

**D & E ENTERPRISES, L.L.C.
136 MAIN STREET SERIES**

By: _____
Daniel Maloney, Manager

Date: _____

EXHIBIT A

Phase IV Floor Plans

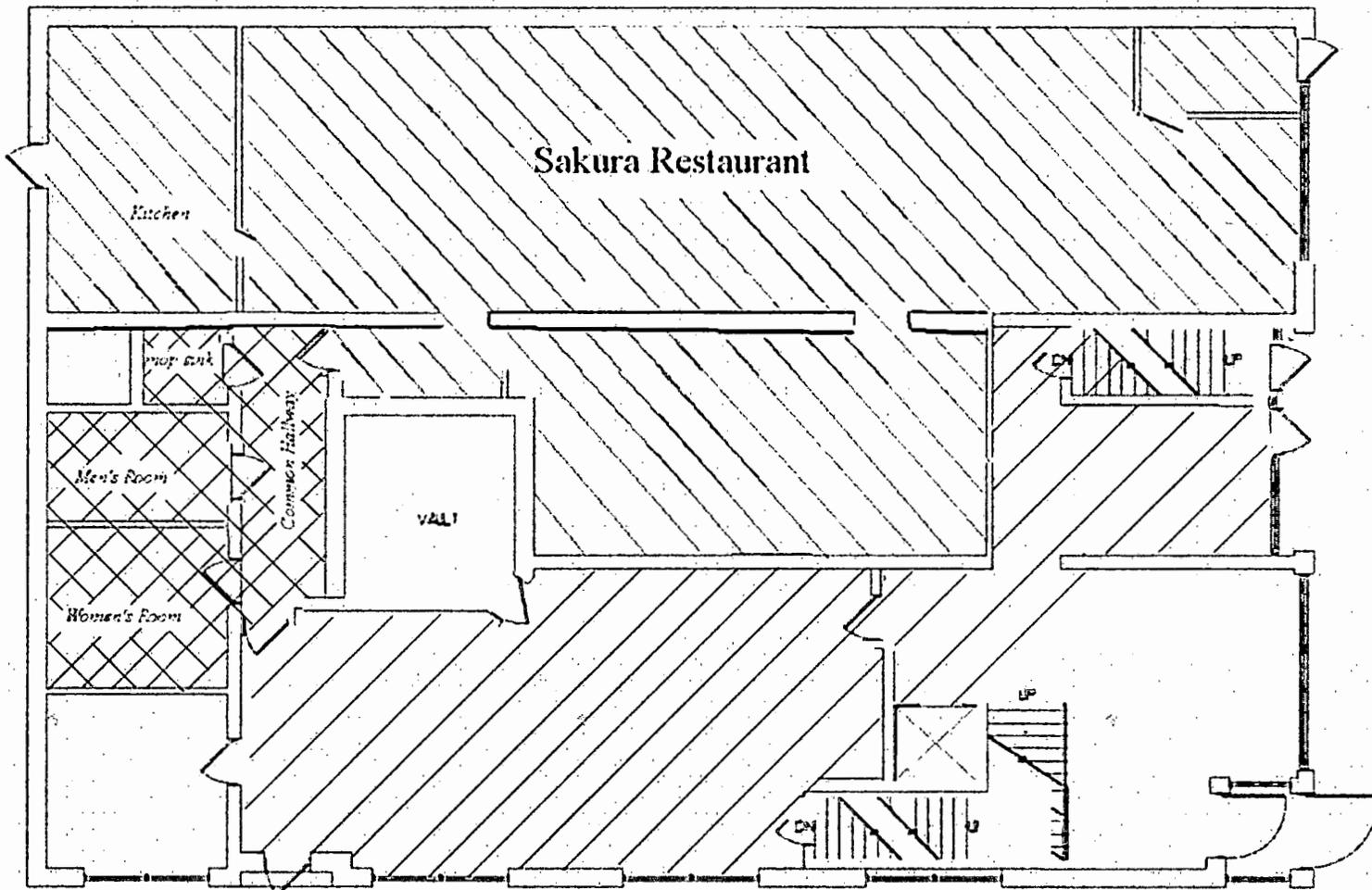


Figure 1. First Floor Cohen Building.

Legend

Restaurant Only Space:

Space for mutual access/egress:

Shared Space:



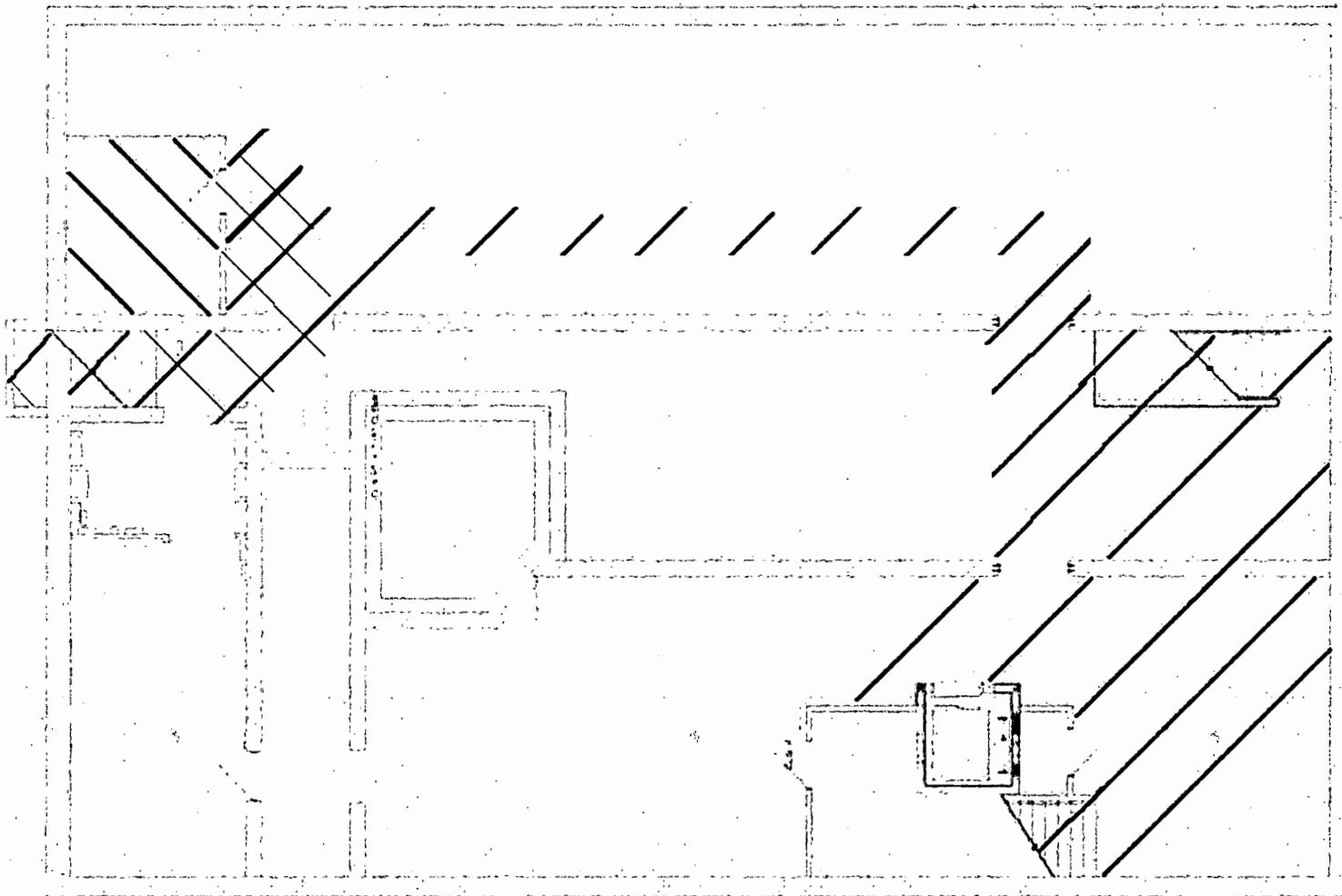


Figure 2. Basement Cohen Building.

Legend

Restaurant Only Space:

Space for mutual access/egress:

Shared Space:

