COURT ORDER
2014-0353

Tax Abatement Request for 1210 S. Lamar Residential Development

On a motion made by Commissioner Dr. Theresa M. Daniel, District 1, and seconded by Commissioner John Wiley Price, District 3, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 2/18/2014
FUNDING SOURCE: n/a

Be it resolved and ordered that the Dallas County Commissioners Court, per Section 381.004 (g) of the Local Government Code, does hereby authorize the provision of a 75%, ten-year abatement on real property to 1210 South Lamar, LP for the construction of 270 housing units at 1210 S. Lamar (Dallas), effective no later than January 1, 2017, subject to the project having completed the aforementioned 270 housing units and having increased the County's tax base by at least $25 million by the effective date.

It is further resolved and ordered that the County Judge is authorized to sign the related tax abatement agreement for this project which will help redevelop an area immediately south of downtown Dallas that has largely been by-passed by the economic growth that has occurred since 1970.

Done in open court March 18, 2014, by the following vote:

IN FAVOR: Honorable Clay Lewis Jenkins, County Judge
Commissioner Dr. Theresa M. Daniel, District 1
Commissioner Mike Cantrell, District 2
Commissioner John Wiley Price, District 3
Commissioner Dr. Elba Garcia, District 4
OPPOSED: None
ABSTAINED: None
ABSENT: None

Recommended by: Rick Loessberg
Originating Department: Planning and Development

COMMISSIONERS COURT BRIEFING

DATE: 2/18/2014

SUBMITTING DEPARTMENT: Planning and Development

THROUGH:

SUBJECT: Tax Abatement Request for 1210 S. Lamar Residential Development

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BACKGROUND:
Matthews Southwest, which has previously developed the Omni convention center hotel and converted a former Sears mail order complex into 457 housing units, has announced plans to build a new $39 million, 4-story, 270-unit residential development in the Cedars area of Dallas. To help facilitate the construction of this new project, the County has been asked to provide a 90%, ten-year abatement on real property.

DESCRIPTION OF PROJECT:
The Cedars is located directly south of downtown Dallas; yet, despite its proximity to downtown Dallas and the convention center, the area did not experience much investment during the high-growth 1970s and 1980s. As a result, the Cedars became quite shabby and has primarily been characterized by low-value industrial uses, vacant lots, and fragmented property ownership.

Although some redevelopment has occurred in the past fifteen years (the aforementioned conversion of the Sears complex, the new Dallas Police headquarters, etc.), this activity has still not been substantial enough to reverse the area's overall economic condition (as an example, the Cedars TIF district—which contains the proposed project site—has only had its assessed valuation increase by about $40 million over the past twenty years).

The project will be constructed at a site that is directly across the street from Gilley's and just north of the Dallas Police headquarters. Representing a total investment of about $39.6 million, it is estimated that this project will increase the County's tax base by about $25 million-$30 million and provide another important component in the effort to redevelop the area.

Rents will average about $1260-$1500 per month. Construction is expected to begin this year and to be completed about twenty months later.

OPERATIONAL IMPACT:
Under the County's abatement policy, a residential project located in the Cedars area must produce at least 100 housing units and increase the County's tax base by at least $5 million in order to be eligible for consideration. Projects meeting these criteria are then eligible to receive an abatement of up to 75% for ten years.

RECOMMENDED BY:	Planning and Development	**PREPARED BY:**	Rick Loessberg
		APPROVED BY DEPT HEAD:	Rick Loessberg

As the proposed 1210 S. Lamar project will produce 270 new housing units and increase the County's tax base by $25 million-$30 million, the project is eligible for consideration. It is also proposed that because of its size and because of its potential to help create the critical mass of economic activity that is needed for the Cedars, the project should receive the maximum abatement possible—75%—for ten years.

FINANCIAL IMPACT:
Generally, tax abatements are not provided in a TIF district as the provision of such an incentive would reduce the district's ability to produce increment from a specific site. However, because of the needs of this particular project, it is thought that the proposed abatement will have more of a financial impact on the project than a TIF improvement. Also, the City has determined that since the Cedars TIF district currently has no outstanding financial obligations, granting an abatement will not jeopardize the district's ability to repay. Accordingly, the City has formally authorized the provision of a 90% abatement for this project.

The proposed County abatement for this project would begin no later than January 1, 2017. Providing this 75% abatement would result in the County annually foregoing about $46,000 in taxes that do not presently exist while allowing the County to collect about $15,000 in new revenue. It will also increase the projected total amount of property that will be abated in 2017 from approximately $426 million to $445 million. However, while the total amount of property that will be abated will increase due to this project, the percentage of the County's tax base that will be abated in 2017 will remain at the current projected level of about 0.3 percent.

LEGAL IMPACT:
n/a

PROJECT SCHEDULE:
n/a

M/WBE PARTICIPATION:
W/MBE information pertaining to Matthews Southwest has previously been provided to the Court.

STRATEGIC PLAN COMPLIANCE:
As the County's strategic plan specifically recommends that the County use targeted tax incentives to generate economic development, providing a tax abatement so that substantial investment and new housing can occur in an economically under-utilized area is consistent with this plan.

RECOMMENDATION:
It is recommended that the County provide a 75%, ten-year abatement, effective no later than January 1, 2017, for the construction of 270 housing units at 1210 S. Lamar.

TAX ABATEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This Tax Abatement Agreement ("*Agreement*") is made and entered into as of the 18th day of MARCH, 2014, by and between Dallas County, Texas ("*County*"), duly acting by and through its Commissioners Court, and 1210 South Lamar, LP ("*Owner*"), duly acting by and through its authorized officers, for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, the County has adopted a Tax Abatement Policy ("*Policy*"), by the passage of Court Order 2013-1138 on the 2nd day of July, 2013, that contains the guidelines and criteria used to determine the provision of economic development assistance from the County under Chapter 381 of the Texas Local Government Code; and

WHEREAS, Owner anticipates undertaking certain economic activity on or about the Property (as hereinafter defined), including, without limitation, the construction of 270 new housing units in accordance with Court Order 2013-1138 and all applicable laws; and

WHEREAS, the County finds that the Owner's contemplated use of the Property and the contemplated real property improvements on or about the Property are feasible and practical and will be of significant benefit to the County and its citizens; and

WHEREAS, Court Orders 2013-1138 and 2014-0353 authorize the County to enter into this Agreement with Owner.

NOW THEREFORE, the County, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the enhancement of the County's tax base and the creation of residential housing in the area south of downtown Dallas which will further encourage the location of new residents and businesses in this portion of the County; and the Owner, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the tax abatement set forth herein below, as authorized by Court Orders 2013-1138 and 2014-0353 do hereby contract, covenant, and agree as follows:

AGREEMENT:

SECTION I.
DEFINITIONS

Wherever used in this Agreement, the following capitalized terms shall have the meanings ascribed to them:

1. "*Economic Activity*" shall mean the following acts undertaken by or on behalf of Owner: (i) the use of the Property primarily for residential housing; (ii) the construction of new housing

and a supporting parking garage on the Property; and (iii) the investment of funds associated with the aforementioned uses and improvements to the Property or used in connection with operations on the Property such that at least 270 units of residential housing are produced and located on the Property no later than January 1, 2017.

2. "*Eligible Real Property Value*" shall mean the value, as annually established by Dallas Central Appraisal District ("*DCAD*"), of all Property and Improvements within the Property less the Property's Base Value, as defined herein and as established by DCAD.

3. "*Base Value*" shall mean the appraised value of the respective Property as determined by DCAD as of January 1, 2014.

4. "*Property*" shall mean that parcel of land located at 1210 South Lamar Street, Dallas, Texas and more fully described in Exhibit "A".

5. "*Improvements*" shall mean those certain improvements constructed on or about the Property that include at least 270 units of residential housing and a supporting parking garage. The Improvements shall be used in connection with the Economic Activity undertaken by Owner.

6. "*Owner*" shall mean and refer to the parties to this Agreement who are the respective owners from time to time of the Property that is subject to tax abatement hereunder or who will be the owner of the Property at the time that the Economic Activity contemplated by this Agreement is initiated and to any Successor Entity.

7. "*Successor Entity*" shall mean (i) any entity which is a successor or assign to Owner by merger, consolidation, assignment or reorganization; or (ii) a purchaser of the Property.

SECTION II.
GENERAL PROVISIONS

1. The County has adopted guidelines and criteria governing tax abatement agreements such that it is authorized to enter into this Agreement.

2. The Property is not located in an improvement project financed by tax increment bonds.

3. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the County.

4. The Property is not owned or leased by any member of the Dallas County Commissioners Court.

5. Owner covenants and agrees that the construction of the Improvements and use of the Property subject to this Agreement will be in accordance with all applicable state and local laws and regulations.

6. During the Tax Abatement Period (hereinafter defined), Owner shall be subject to all County taxation not specifically abated or exempted.

7. Owner shall have the right to protest and/or contest DCAD appraisals of the Property, the Improvements over and above the respective Base Value of the Property and the Improvements, as the case may be, under the procedures in place by the Tax Code of the State of Texas. The Tax Abatement (as hereinafter defined) shall be applied to the amount of taxes finally determined by DCAD to be due as a result of any such protest and/or contest by Owner.

SECTION III.
RATE AND CONDITIONS OF TAX ABATEMENT

1. Owner shall commence receiving the Real Property Tax Abatement (hereinafter defined) upon satisfaction of the conditions set forth in Section III(1)(a)-(b). For purposes of this Agreement, the Real Property Tax Abatement shall be referred to herein as the "*Tax Abatement*". Owner shall receive a seventy-five percent (75%) abatement of the taxes assessed on the Eligible Real Property Value (the "*Real Property Tax Abatement*") from the County for each qualifying year during the Tax Abatement Period subject to the terms of this Agreement.

(a) No later than January 1, 2017, Owner shall have completed no less than 270 residential housing units on the Property and the Eligible Real Property Value of the Property is at least $25 million. The completion of said residential housing units shall be evidenced by the submission to the County of either a Certificate of Occupancy from the City of Dallas or a copy of AIA Document 702 that is signed and certified by the project's general contractor.

(b) Owner shall file an annual exemption application (the "*Exemption Application*") form with DCAD for the Tax Abatement that it believes it is eligible to receive under this Agreement.

SECTION IV.
ABATEMENT PERIODS

The Tax Abatement provided under this Agreement shall be for a period of up to ten (10) years and will begin no later than January 1, 2017 (the "*Tax Abatement Period*"). Owner and the County shall have no further obligations under this Agreement upon expiration of the Tax Abatement Period, except as otherwise provided herein.

SECTION V.
RECORDS AND AUDITS

1. At all times throughout the Tax Abatement Period, the County shall have reasonable access during normal business hours to the Property by County employees (upon one-week prior notice to Owner) for the purpose of inspecting same to ensure that the Property is being used for the required Economic Activity in accordance with the specifications and conditions of this Agreement; provided that Owner shall have the right to accompany County employees on any such inspection. In no event shall such inspections interfere with Owner's use, benefit, enjoyment and operation of the Property.

2. The Property at all times during the Tax Abatement Period shall be used in a manner consistent with Court Orders 2013-1138 and 2014-0353 and shall be consistent with the general purpose of encouraging economic development within the County.

SECTION VI.
DEFAULT

1. Subject to the cure provisions of this Section VI, a default under this Agreement occurs in the event that the Owner collectively or individually: (i) allows its ad valorem real property taxes owed to the County from the Property associated with this Agreement as well as from other property the Owner may own within the County to become delinquent during the Tax Abatement Period and fail to timely and properly follow the legal procedures for protest and/or contest of any such taxes; (ii) fails to file an annual Exemption Application; (iii) fails to provide investment sufficient to generate an Eligible Real Property Value of at least $25 million by January 1, 2017; (iv) fails to complete 270 residential housing units on the Property by January 1, 2017; or (v) fails to materially comply in with any of the terms or conditions set forth in this Agreement. In the event that Owner individually or collectively defaults in its performance as set forth in any of (i)-(ii) and/or (v) above, the County shall give Owner written notice of such default, and if Owner has not cured such default within ninety (90) days of said written notice, an event of default (an "*Event of Default*") shall exist and this Agreement shall terminate. In the event that Owner cures any such default within the applicable cure period or prior to termination of this Agreement, no Event of Default shall exist and this Agreement shall continue in full force and effect, without penalty to Owners.

2. This Agreement inures to the benefit of and is enforceable by the County. The County has the right to prosecute or take appropriate action, at law or in equity, against the Owner to enforce any other covenant or provision contained within this Agreement. If the County substantially prevails against Owner in legal proceedings to enforce the terms of this Agreement, the County shall further be entitled to recover reasonable costs and attorney's fees. Any payment due to the County under normal and ordinary ad valorem tax protocol, including interests and penalties, and which are not forgiven under this Agreement, shall be a lien which attaches to the Property on the first day after which such taxes due and payable.

SECTION VII.
EFFECT OF SALE, ASSIGNMENT, OR LEASE OF PROPERTY

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Owner, including but not limited to any Successor Entity, may assign its rights and responsibilities under this Agreement including the right to receive the Tax Abatement to any corporation, partnership, joint venture, limited liability company or other entity without prior approval of the Commissioners Court. Should Owner or any Successor Entity assign such rights and responsibilities under this Agreement, the County must be notified of such assignment within sixty (60) calendar days of its occurrence.

SECTION VIII.
NOTICE

Notices required or provided for per this Agreement shall be duly given when delivered in writing via (i) certified mail, return receipt requested and postage prepaid; or (ii) nationally recognized overnight delivery service. Notices may also be tendered in person or via personal courier, with confirmed delivery receipt. Regardless of the delivery method employed, all such notices shall be delivered to the respective parties as follows:

COUNTY:

Director of Planning & Development
Dallas County Commissioners Court
411 Elm Street, 3rd Floor
Dallas, Texas 75202

OWNER:

1210 South Lamar, L.P.
c/o TDI
600 E. Las Colinas Blvd.
Suite 1800
Irving, TX 75039
Attn: Kirk Motsenbocker

SECTION IX.
COUNTY AUTHORIZATION

This Agreement is authorized by Court Orders 2013-1138 and 2014-0353 and approved at the Commissioners Court meeting of the 18th day of March, 2014.

SECTION X.
OWNER AUTHORIZATION

Owner hereby warrants that lawful authorization to execute this Agreement has been given and will provide County such written proof as required and requested by the County.

SECTION XI.
SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

SECTION XII.
ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which, if requested, will be addressed to a subsequent purchaser or assignee of Owner, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists, the nature of default and curative action which should be undertaken to cure same), the remaining term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party to receive the certificate.

SECTION XIII.
APPLICABLE LAW AND VENUE

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall exclusively be in the state courts of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

SECTION XIV.
SOVEREIGN IMMUNITY

This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and State law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver or any immunities from suit or from liability that the County has by operation of law. Nothing in this Agreement is intended to benefit any third party beneficiary.

SECTION XV.
AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

SECTION XVI.
INDEMNIFICATION

OWNER AGREES TO PROTECT, INDEMNIFY, AND HOLD THE COUNTY HARMLESS AGAINST AND FROM ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES, JUDGMENTS, OR EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT OR ANY FAILURE OF THE OWNER, ITS EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, INVITEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS HEREOF. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION XVII.
CONTRA PROFERENTEM

The doctrine of contra proferentum shall not apply to this Agreement. Both parties are presumed to have negotiated, read and fully understood each and every term hereof. To the extent that an ambiguity is later determined to exist, it shall not be construed against the party responsible for drafting this Agreement.

SECTION XVIII.
ENTIRE AGREEMENT

This Agreement, including all Exhibits, Attachments, and Addendums, constitutes the entire agreement between the parties and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, by and between Owner and the County.

SECTION XIX.
EFFECTIVE DATE OF AGREEMENT

This Agreement may be signed and executed in counterparts. However, this Agreement shall not become effective (the "*Effective Date*") until executed by the County Judge.

SECTION XX.
FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if a party's ability to satisfy any obligation under this Agreement, including but not limited to the substantial completion of the Improvements, is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by franchised utilities or their contractors, fire or other casualty, court injunction, necessary condemnation proceedings, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such performance shall be extended for a period of time equal to the period such party was delayed.

EXECUTED this the 18th day of March, 2014.

COUNTY:

X _____
Clay Lewis Jenkins
County Judge

OWNER:

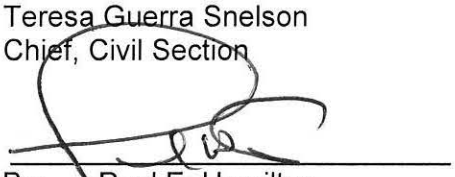
By: 1210 South Lamar GP, LLC,
a Texas limited liability company,
its general partner

_____
Kirk Motsenbocker
Senior Executive Vice President

Approved as to form*:

CRAIG WATKINS
DISTRICT ATTORNEY
DALLAS COUNTY

Teresa Guerra Snelson
Chief, Civil Section



By: Paul E. Hamilton
Assistant District Attorney

*By law, the District Attorney's office may only advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal Perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

EXHIBIT A

Legal description of land:

Being a 172,620 square feet or 3.9628 acre tract of land situated in the John Neely Bryan Survey, Abstract No. 149, City of Dallas, Dallas County, Texas, said tract being in City Block 420 and 446, and said being all of a tract of land conveyed to Bosson, LLC. by deed recorded in County Clerk Inst. No. 200503572442, Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a found 1/2 inch iron rod for a corner in the northwest line of South Lamar Street (an 80 foot right of way) said point being N 44°35'11" W, a distance of 150.0 feet from the intersection of the northeast line of South Lamar with the northwest line of Wood Drive (a 50 foot right of way), said point being the west corner of a tract of land conveyed to Malek M. Samadian by deed recorded in Volume 97114, Page 2328, Deed Records of Dallas County, Texas;

THENCE, N 49°35'15"W, with the northeast line of South Lamar Street, a distance of 275.00 feet to a found 1/2 inch rod for a corner, said point being the south corner of a tract of land conveyed to MLW Holdings, Ltd., by deed recorded in Volume 2005138, Page 12137, Deed Records of Dallas County, Texas;

THENCE, N 40°24'45"E, departing the northeast line of South Lamar Street, and with the southeast line of the said MLW Holdings, Ltd., tract, passing at a called distance of 260.0 feet the South corner of Lot 1, Block 1/420 of Cadiz Plaza Addition as recorded in Volume 83096, Page 1626, Deed Records of Dallas County, Texas; continuing in all a distance of 495.46 feet to a found 5/8 inch iron rod for a corner in the southwest line, a Union Pacific Railroad Company 50' right of way;

THENCE, S 55°39'50"E, with the southwest line of Union Pacific Railroad Company right-of-way, a distance of 424.92 feet to a found "x" cut of concrete pavement for a corner in the northwest line of Powhattan Street;

THENCE, S 40°09'02"W, with the northwest line of Powhattan Street, a distance of 268.45 feet to a found "x" cut of concrete pavement for a corner, said point being the east corner of the above Samadian tract;

THENCE, N 49°35'15"W, departing the northwest line of Powhattan Street, and parallel with the northeast line of South Lamar Street, a distance of 200.00 feet to a 3/4 in iron rod for a corner;

THENCE, S 40°09'02"W, parallel with the northwest line of Powhattan Street, a distance of 122.0 feet to a found PK nail for a corner;

THENCE, S 49°35'15"E, parallel with the northeast line of South Lamar Street, a distance of 50.00 feet to a found PK nail for a corner;

THENCE, S 40°09'02"W, parallel with the northwest line of Powhattan Street, a distance of 150.00 feet to the Point of Beginning.