

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR REDEVELOPMENT AUTHORITY CONSIDERATION

ITEM DESCRIPTION: Discussion and possible action on Assignment and Assumption of Ground Lease for Lino's Ristorante in the South Pier District.

REPORT PREPARED BY: Chad Pelishek, Director of Planning & Development

REPORT DATE: January 16, 2017

MEETING DATE: January 18, 2017

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The Redevelopment Authority holds an 85 year ground lease with M&H Development, the location of Lino's Ristorante on South Pier. Lino has an agreed upon purchase agreement with M&H Development to purchase the building. In order for the purchase to be final, the ground lease with the RDA needs to be assigned to Lino's Ristorante Italiano, LLC.

STAFF COMMENTS:

Staff has no objections to the proposed sale and assignment and recommends approval.

ACTION REQUESTED:

Motion to approve the assignment and assumption of ground lease between M&H Development, Lino Ristorante Italino, LLC and the Redevelopment Authority of Sheboygan.

ATTACHMENTS:

- I. Assignment and Assumption of Ground Lease

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

This Assignment and Assumption of Ground Lease (“Assignment”) is entered into on _____, 2017. The parties to this Assignment are Redevelopment Authority of the City of Sheboygan, Wisconsin, a public body corporate of the State of Wisconsin, whose address is 807 Center Avenue, Sheboygan, Wisconsin 53081 (“Landlord”); M&H Development, LLC, a Wisconsin Limited Liability Company, whose address is 3503 North 6th Street, Sheboygan, Wisconsin 53083 (“Assignor”); and Lino Ristorante Italiano, LLC, a Wisconsin Limited Liability Company, whose address is 422 S. Pier Drive, Sheboygan, Wisconsin 53083 (“Assignee”).

INTRODUCTORY STATEMENTS

- A. The Landlord, as lessor, and the Assignor, as tenant, entered into a Ground Lease dated November 1, 2009 (a copy of which is attached to this Assignment as Exhibit A) (the “Lease”) with respect to certain Property located at 422 S. Pier Drive, Sheboygan, Wisconsin (the “Property”), which Property is more particularly described in Exhibit B.
- B. The parties desire that Assignor assign its rights and interest in the Lease to Assignee under the terms and conditions set forth in this Agreement.

In consideration of the above Introductory Statements, and the promises and provisions set forth in this Assignment, the parties agree as follows:

- 1. Assignment. As of the Effective Date of this Assignment, as defined in Paragraph 5, Assignor assigns to Assignee all of Assignor’s right, title, and interest in and to the Lease. Assignor further assigns to Assignee any security deposit that is held by the Landlord. As a result of this Assignment, all rights of the Assignor to the security deposit shall belong to the Assignee, and the Landlord shall have no further liability or responsibility to the Assignor with respect to the security deposit.
- 2. Acceptance by Assignee; Indemnity. Assignee accepts the Assignment and all rights accruing to it under the Lease and assumes and agrees to make all payments and keep and perform all covenants and obligations of the Assignor under the Lease from and after this Assignment’s Effective Date. Assignee agrees to accept the Property in its “As Is” condition. Assignee further hereby indemnifies and agrees to defend and hold harmless Assignor from and against any and all liability, loss, damage and expense, including

without limitation, reasonable attorneys' fees, that Assignor may incur under the Lease by reason of any failure or alleged failure of Assignee to comply with or to perform, on or after the Effective Date, all of the obligations of the tenant under the Lease that arise on and after the Effective Date and are to be performed on or after the Effective Date.

3. Release of Assignor's Liability. By executing this Assignment, Landlord agrees that the Assignor is released from any and all obligations under the terms of the Lease from and after this Lease Assignment's Effective Date, provided Assignor is current in the payment of rent and not otherwise in default under the Lease's terms and conditions prior to the Effective Date, Landlord represents and warrants to both Assignor and Assignee that (a) a true and accurate copy of the Lease including all amendments, modifications, and extensions thereof, is attached as Exhibit A, and (b) Assignor is current in the payment of rent and not otherwise in default under the Lease's terms or conditions, and there has not occurred any event, act, or omission that with notice and/or lapse of time would be a default under the Lease, and (c) the Lease is in full force and effect.
4. Acceptance and Consent of Landlord. Landlord accepts and consents to this Assignment and acknowledges that all of Assignor's rights under the Lease shall inure to the benefit of Assignee from and after the Effective Date, including Assignor's rights with regard to any security deposit under the Lease.
5. Effective Date. This Assignment shall not be effective unless and until Assignor and Assignee have consummated a pending sale by Assignor to Assignee of Assignor's interest in the Ground Lease and have confirmed the sale's closing to Landlord in writing. The closing date of the sale shall be the Effective Date of this Assignment. If the sale's consummation does not occur by _____, 2017, this Assignment shall be terminated ab initio.
6. Amendment to Lease. This Assignment shall constitute an amendment to the Lease. If there is any conflict between this Assignment and the Lease, this Assignment shall govern.
7. Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Assignment by telecopier, facsimile, or electronic signature, shall be as effective as delivery of a manually executed signature page to this Agreement.

The parties have executed this Assignment as of the date listed below each party's signature.

SIGNATURES ON THE NEXT PAGES

ASSIGNOR
M&H Development, LLC
A Wisconsin limited liability company

Dated: _____

By: _____
Matthew Moeller
Its: Manager

State of Wisconsin
County of _____

This instrument was acknowledged before me this ____ day of _____, 2017, by Matthew Moeller, sole member of M&H Development, LLC, A Wisconsin limited liability company.

X _____
_____, Notary Public
_____ County, Wisconsin
Acting in _____ County
My Commission Expires: _____

ASSIGNEE
Lino Ristorante Italiano, LLC
A Wisconsin limited liability company

Dated: _____

By: **Lino Autiero**
Its: Manager

State of Wisconsin
County of _____

This instrument was acknowledged before me this ____ day of _____, 2017, by Lino Autiero, Manager of Lino Ristorante Italiano, LLC, A Wisconsin limited liability company.

X _____
_____, Notary Public
_____ County, Wisconsin
Acting in _____ County
My Commission Expires: _____

**LANDLORD
Redevelopment Authority of the City of
Sheboygan, WI**

Dated: _____

By: _____

Its:

Attest: _____

Its:

State of Wisconsin
County of _____

This instrument was acknowledged before me this ____ day of _____, 2017, by
_____.

X _____
_____, Notary Public
_____ County, Wisconsin
Acting in _____ County
My Commission Expires: _____

EXHIBIT A
Ground Lease

EXHIBIT B

Land situated in the State of Wisconsin, County of Sheboygan, described as follows:

The West seventy-eight and seventeen one-hundredths (78.17') feet of Lot 5, South Pier Plat, located in the southeast one-quarter (SE 1/4) of Section 23, Township 15 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin, reserving an easement for utility purposes along, under and through the North six (6') feet thereof.

Commonly known as: 422 S. Pier Drive, Sheboygan, Wisconsin

Parcel Number # 59281322029

Drafted By/Return To:

Robin E. Yono, Esq.
O'Reilly Rancilio, P.C.
12900 Hall Road, Suite 350
Sterling Heights, MI 48313
(586) 726-1000

INTENT TO SELL

December 22, 2016
Matthew Moeller
M & H Deve
3503 N 6th St
Sheboygan, WI 53083

Lino & Therese Autiero, Lino Ristorante Italiano LLC

This letter confirms our mutual intentions for M & H Development per our contract to sell the Premise (Lino Ristorante building) located at 422 South Pier Drive. This Premise is described as "SOUTH PIER THE W 78.17' OF LOT 5" with a Parcel Number as: 59281322029.

Purchase Price:

Per our contract the said above Premise would be sold to Lino Ristorante Italiano LLC for the agreed price of \$550,000.00 evidenced by cash or bank method of payment at closing.

Preparations for the closing shall be as follows:

- (1) Seller shall prepare the necessary conveyance documents to transfer its title to Lessee and forward them to Lessee for Lessee's review at least three (3) days before the scheduled date of the closing.
- (2) The closing shall be held at the office of the Title Company selected by Lessor unless the Parties mutually agree on some other location.
- (3) At Seller's expense, Seller shall provide Lessee with an owner's title insurance policy at the closing that shows that Seller has good and marketable title to the Premises subject to easements and restrictions of record.

Sincerely yours,

Matthew Moeller


M & H Development