

CITY of NOVI CITY COUNCIL

Agenda Item 3
March 26, 2012

SUBJECT: Consideration to Adopt First Amendment to Agreement Concerning Act 210 Commercial Rehabilitation Agreement (Suburban Collection Hotel/Convention Center) previously approved by City Council on October 24, 2011, in order to extend the date for the completion of the Hyatt Place Hotel from December 31, 2012, to July 1, 2013.

SUBMITTING DEPARTMENT: Economic Development, NBR

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

On October 24, 2011, the City Council approved an Agreement for a Commercial Rehabilitation Tax Abatement under Act 210 with TBON, L.L.C. The Agreement authorized issuance of a tax abatement exemption certificate to allow the construction of a hotel to be attached to the Suburban Collection Trade and Convention Center.

One of the provisions of the Agreement (Paragraph 4.a) established a time for completion of the hotel improvement of December 31, 2012. TBON has been pursuing the necessary approvals to begin construction on and complete the hotel as a Hyatt Place Hotel. The City Council recently (at its March 12, 2012 City Council meeting) considered and granted site plan approval for the Hyatt Place Hotel, and TBON has been undertaking meetings with the appropriate City staff to commence the construction process.

Here is the timeline of activities so far:

December 6, 2011	Pre-application Meeting
January 3, 2012	PSP (Preliminary Site Plan) submittal
January 18, 2012	PSP review letters sent out to applicant
January 25, 2012	Planning Commission consideration and recommendation
February 13, 2012	Shared Parking Study submittal
February 27, 2012	Shared Parking Study review letter sent to applicant
March 12, 2012	City Council consideration and approval of PSP

It is unlikely that TBON will complete the building by December 31, 2012. It has therefore asked for an extension until July 1, 2013. (See attached letter from Blair Bowman dated March 15, 2012).

The Agreement as originally approved did contemplate a possible extension of the completion date by the City Council, as it provided for a date of occupancy of December 31, 2012, "or such other date as the Council may extend."

Note also that the failure of TBON to complete the building by December 31, 2012, does not automatically mean that it loses its tax abatement. The City Council would have to take affirmative steps to revoke the certificate, following a public hearing and a determination by the City Council that revocation is appropriate under the circumstances.

Finally, after searching the minutes, it does not appear that a completion date was the result of any particular discussion by the City Council.

RECOMMENDED ACTION: Consideration to Adopt First Amendment to Agreement Concerning Act 210 Commercial Rehabilitation Agreement (Suburban Collection Hotel/Convention Center) previously approved by City Council on October 24, 2011, in order to extend the date for the completion of the Hyatt Place Hotel from December 31, 2012, to July 1, 2013.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

JOHNSON | ROSATI | SCHULTZ | JOPPICH

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Thomas R. Schultz
tschultz@jrsjlaw.com

March 19, 2012

Clay Pearson, City Manager
City of Novi
45125 W. Ten Mile Road
Novi, MI 48375

RE: Proposed First Amendment to Agreement Concerning Act 210 Commercial Rehabilitation Abatement

Dear Mr. Pearson:

Enclosed is a draft First Amendment to the City's PA 210 Agreement with TBON, L.L.C. related to its tax abatement for the Hyatt Place Hotel. The Amendment is only to the section that deals with the date by which TBON has to complete the Building Improvements and occupy the facility. Currently, the section provides that the Building Improvements have to be done and occupied by December 31, 2012. That appears to be extremely unlikely at this point. TBON is asking that the date be extended six month, to July 1, 2013. Our office sees no legal impediment to such an extension.

There a couple of reasons to conclude that this is a minor amendment. First, the failure to complete the building by December 31, 2012, does not necessarily affect the tax exemption certificate that will likely soon be issued by the State. The City would need to take some sort of affirmative action to revoke the certificate by virtue of the failure to complete the building on time. In order to do that, it would need to conduct a public hearing and make a determination thereafter whether the failure to complete the building on time was an appropriate basis for revocation.

Here is the language of the Agreement in full explaining that process:

The City Council retains all rights to revoke the Certificate by resolution as set forth in Section 12 of Act 210, if it finds that:

- a. Completion of the Building Investment has not occurred (i.e., the hotel and meeting space facility has not received occupancy permits) by December 31, 2012, (or such other date as the Council may extend).
- b. Company has not proceeded in good faith with the operation of the Building Investment (hotel and meeting space facility) in a manner

March 19, 2012

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consistent with the purposes of the Act and in the absence of circumstances that are beyond its control.

In addition, the City may revoke the Certificate by resolution if it finds that the Company is in default of any provisions of this Agreement, including of the Undertakings set forth in paragraph 2.

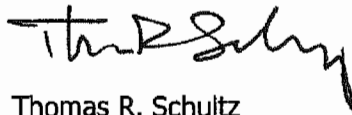
Revocation under this paragraph 4 shall not occur until the Company has been given an opportunity to cure the default after written notice by the City in accordance with paragraph 6 below. If it is unable to cure the default within 7 days, the Company may, within 14 days of the City's notice, petition ("Petition") the City Council to conduct a public hearing to determine if there are reasons, as may be presented by the Company to the City, that such revocation should not occur. The City Council shall conduct a public hearing within sixty (60) days from the date that the Petition is filed with the City Clerk.

In addition, extending the date for TBON to complete the building does not change the length of the exemption. As we understand it, under MCL 207.846(3), the "effective date of the certificate is the December 31 immediately following the date of issuance of the certificate." Assuming that the certificate is issued this year, the exemption will still be for the years 2013 through 2018.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Thomas R. Schultz

cc: Maryanne Cornelius, City Clerk
Victor Cardenas, Assistant City Manager
Glenn Lemmon, City Assessor
Ara Topouzian, Economic Development Director
Charlie Boulard, Community Development Director

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

FIRST AMENDMENT TO AGREEMENT
CONCERNING ACT 210 COMMERCIAL REHABILITATION ABATEMENT
(SUBURBAN COLLECTION HOTEL/CONVENTION CENTER)

The City of Novi ("City"), located at 45175 W. Ten Mile Road, Novi, Michigan 48375, and TBON, L.L.C. ("Company"), a Michigan limited liability company, located at 46100 Grand River Avenue, Novi, Michigan 48374 (collectively, "the Parties"), agree as follows:

RECITALS:

1. The City approved the Agreement Concerning Act 210 Commercial Rehabilitation Abatement for certain property located at 46100 Grand River Avenue, Novi, Michigan, on October 24, 2011.

2. Paragraph 4 of the Agreement as approved by the City states that the City may revoke the tax abatement exemption certificate issued by the State of Michigan if completion of the Building Investment (i.e., the hotel and meeting space facility to be constructed by the Company) has not been completed by December 31, 2012, "or such other date as the Council may extend."

3. The Company is currently undertaking the site plan review process and all other obligations needed to complete the Building Investment. However, it does not appear that the Company will likely complete the Building Investment by or before December 31, 2012.

4. Because the Company is making good faith efforts to complete the Building Investment, the Council has determined to extend the date set forth in Paragraph 4.a to July 1, 2013.

NOW, THEREFORE, the Parties hereby agree that Paragraph 4.a is hereby amended to read as follows in full:

The City Council retains all rights to revoke the Certificate by resolution as set forth in Section 12 of Act 210, if it finds that:

- a. Completion of the Building Investment has not occurred (i.e., the hotel and meeting space facility has not received occupancy permits) by December 31, 2012 (or such other date as the Council may extend).

The Parties further agree that in all other respects, the Agreement remains unchanged.

CITY OF NOVI

Dated: _____

Robert J. Gatt, Mayor

Dated: _____

Maryanne Cornelius, City Clerk

TBON, L.L.C.,
A Michigan limited liability company

Dated: _____

By:
Its: Managing Member

**AGREEMENT CONCERNING
ACT 210 COMMERCIAL REHABILITATION ABATEMENT**

**SUBURBAN COLLECTION
HOTEL/CONVENTION CENTER**

The City of Novi ("City"), located at 45175 W. Ten Mile Road, Novi, Michigan 48375, and TBON, LLC ("Company"), a Michigan Limited Liability Company, located at 46100 Grand River Avenue, Novi, MI 48374 (collectively, "the Parties"), agree as follows:

Recitals

1. After due notice and deliberation, and taking into consideration the statements received by the City Council at a hearing held on October 17, 2011, the City Council adopted a Resolution creating a Commercial Rehabilitation District (the "District") pursuant to Act 210 of the Public Acts of 2005, as amended (the "Act 210"), for the property described on the Legal Description attached and made a part of this Agreement (the "Property"), located at 46100 Grand River Avenue, Novi, Michigan.
2. The Company submitted an application ("Application") for issuance of a Commercial Rehabilitation Certificate ("Certificate") for the Property, as provided for in Act 210. The Application was formally received by the City on October 18, 2011. The Application is incorporated as part of this Agreement by reference.
3. The Company represented in its application that it will construct a hotel with additional meeting space as defined under Act 210 on the Property (the "Building Investment") and that (1) the Property is Commercial Property as defined in Act 210 and (2) the hotel and meeting space facility will be a Qualifying Facility as defined in Act 210.
4. The City and the Company desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which a Commercial Rehabilitation Exemption Certificate (Certificate) shall be approved and issued by the State Tax Commission for the Property proposed to be exempt from *ad valorem* real property taxes.

Therefore, in consideration of the foregoing, the Parties now enter into this Agreement.

Terms and Conditions

1. Subject to and in accordance with the Recitals set forth above, on October 24, 2011 the City Council adopted a Resolution approving the Company's Application for an abatement of real property taxes related to the Building Investment under Act 210 (the "Resolution") for a period not to exceed six (6) years, subject to the provisions of this Agreement. A copy of the Resolution is attached and is incorporated into this Agreement. At the end of the six (6) year abatement period, the Property shall be subject to full *ad valorem* taxation. There is no contemplation by the Parties that the six (6) year period will be extended. In the event the Company should construct an addition to the existing hotel and meeting space facility, this abatement may be terminated by the City on or after the date which the Company receives a formal Certificate of Occupancy for the addition area.

2. In consideration of a six (6) year abatement of real property taxes, for the 2013 through 2018 tax years (imposed based upon taxable values as of December 31, 2012 through December 30, 2017) (the "Abatement Period"), the Company represents and warrants that it will build and occupy the Building Investment for the entire abatement period, subject to the assignment provisions below. The Company further agrees as follows with respect to the Building Investment:
 - (a) that the cost of the construction of the Building Investment (i.e., the hotel and meeting space facility) will be a minimum estimated range of \$7,500,000 to 10,000,000, and that the design, elevations, materials, and quality of tenant/occupant (currently proposed to be a Hyatt Place) will be and remain of such quality or greater and as proposed and depicted in the Company's application materials; provided, however, that while such amount shall be the minimum amount of investment in the hotel/meeting facility building, the Parties acknowledge that it will not be determinative of value for purposes of the commercial rehabilitation tax, which shall be established by applicable valuation methods as provided by law and subject to challenge by the Company in accordance with the law; provided, however, that the Company shall be entitled to appeal the value established to the Michigan Tax Tribunal only if it exceeds the average per room taxable value of other hotel properties located in the City of Novi.
 - (b) that the Building Investment (hotel/meeting space facility) will be in compliance with the City's zoning ordinance (including any provisions allowing for waiver and variance relief) and other ordinance requirements, including (but not limited to) woodlands, wetlands, storm water management, and all site plan approval requirements;
 - (c) that a minimum of 24 full-time equivalent and part-time jobs will be created in connection with the Building Investment, including:

Four (4) full-time equivalent administrative positions
Eight (8) full-time equivalent maintenance/service positions

Twelve (12) part-time maintenance/service/housekeeping positions

(d) that the Company will continue to make reasonable efforts to use local suppliers, vendors, and contractors to the extent possible, if such suppliers, vendors, and contractors have substantially similar qualifications and are at or below the best price offered for a particular service, supply, or construction expertise as would otherwise be available to the Company, and provided further that the City may submit to the Company a list (if it maintains one) of such local suppliers, vendors, and contractors, but the Company shall not be obligated by this Agreement to use any particular supplier, vendor, or contractor;

(e) that property taxes for the Building Investment (hotel and meeting space facility) *and* for the existing convention and trade center will be timely paid (although nothing in this representation will prohibit the Company from contesting its property taxes in the Michigan Tax Tribunal, subject to the provisions of subsection (a) above), and that there will be no outstanding fines or liens by the company or any other entity with regard to the property at issue; and

(f) that the Building Investment and/or Property will bear its appropriate share, if any, for any existing or future payback or special assessments, as determined by the City;

(g) that the use of the Building Investment (hotel and meeting space facility) will not change during the term of the abatement except with the express prior approval of the City and any other required approvals.

Collectively, these representations (a) – (g) shall be referred to as the “Undertakings.”

3. No later than the 1st day of October of each year, beginning in the year 2013 through and including the year 2018, the Company shall submit a report (“Annual Report”) to the City Assessor stating (a) the current number of jobs retained or created by the Building Investment; (b) the name or other identification of the entities or “shows” that utilized the convention or trade center; (c) the name or other identification of the entities or “shows” that booked rooms at the hotel in connection with their use of the convention and trade center facility, and the number of rooms booked/occupied in connection with that use; (d) the name or other identification of all Novi suppliers, vendors, and contractors used. During the term of this Agreement, and through the 2018 tax year, the City may review and audit the information presented by the Company (but not its financial or accounting records related to the hotel or the convention and trade center) to determine compliance with this Agreement.
4. At the end of each calendar year from and after December 31, 2012 the City shall evaluate the Building Investment to determine whether the Company has defaulted on any obligations Act 210 or under this Agreement, including any of the Undertakings set forth in paragraph 2 above. .

The City Council retains all rights to revoke the Certificate by resolution as set forth in Section 12 of Act 210, if it finds that:

- a. Completion of the Building Investment has not occurred (i.e., the hotel and meeting space facility has not received occupancy permits) by December 31, 2012 (or such other date as the Council may extend).
- b. Company has not proceeded in good faith with the operation of the Building Investment (hotel and meeting space facility) in a manner consistent with the purposes of the Act and in the absence of circumstances that are beyond its control.

In addition, the City may revoke the Certificate by resolution if it finds that the Company is in default of any provisions of this Agreement, including of the Undertakings set forth in paragraph 2.

Revocation under this paragraph 4 shall not occur until the Company has been given an opportunity to cure the default after written notice by the City in accordance with paragraph 6 below. If it is unable to cure the default within 7 days, the Company may, within 14 days of the City's notice, petition ("Petition") the City Council to conduct a public hearing to determine if there are reasons, as may be presented by the Company to the City, that such revocation should not occur. The City Council shall conduct a public hearing within sixty (60) days from the date that the Petition is filed with the City Clerk.

5. Any other provision of this Agreement notwithstanding, if during the Abatement Period the Company abandons the facility, relocates the facility's operations outside the District, or closes or otherwise fails to occupy the facility as contemplated in this Agreement, the City may immediately revoke the Certificate, and the Company shall pay to the City the entire amount of the additional taxes, for the entire period that the Certificate was in effect, that the taxing jurisdictions would have received if the Certificate had not been issued. If the amount is not paid within sixty (60) days of receipt of a billing sent for same to the Company, the City may institute a civil action against the Company, and the City shall be entitled to recover the amounts stated in the billing described above. In addition, the Company shall pay all court costs and attorneys fees incurred by the City in connection with such civil action if the City prevails.
6. The City shall not revoke the Certificate under Section 4 or initiate any court action seeking a remedy under Section 5 until after both of the following have occurred:

- a. The City has given written notice to the Company declaring a default and specifying the manner in which the Company is in default. The notice shall include an offer to schedule a meeting of the representatives of the City and Company on a date no later than thirty (30) days after the date of said notice to discuss the claimed default and how it may be cured; and
 - b. Thirty (30) days after the written notice described in Subsection 6.a, above is received by the Company, if the Company has met with the City and is diligently pursuing a cure, the City shall grant the Company an additional period of thirty (30) days to cure the default, and the City may grant further extensions of this time period in its sole discretion.
7. Any all modifications or amendments to this Agreement must be made in writing and approved by the City Council and the Company.
8. The covenants and provisions set forth herein shall bind the successors and assigns of the parties. This Agreement is assignable and transferable by either party, provided that such assignment and transfer by the Company shall be subject to the approval of the City.
9. The Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the state of Michigan.
10. The Agreement constitutes the entire understanding of the Parties regarding the abatement of real property taxes in the District and supersedes any other prior writings, agreements, contracts, or understandings between the City and the Company regarding the abatement of real property taxes in the District.
11. The Parties acknowledge that each of them has consulted with attorneys and counselors regarding this Agreement and that the City and the Company have equally participated in the drafting of this Agreement. The Company acknowledges that the terms, conditions, requirements, and obligations of the Certificate and this Agreement are lawful and are reasonable in consideration for the benefits the Company has determined that it will achieve by issuance of the Certificate, and the Company agrees that it shall not be permitted to claim that the City is not authorized by law and/or equity to enforce any provision of this Agreement.
12. The Parties each represent that the undersigned individuals are authorized to execute this Agreement on behalf of the City and the Company.
13. In the event that any portion or provision of this Agreement is deemed to be unlawful or unenforceable, the unlawful or unenforceable provision shall be stricken and the remaining portions and provisions shall be fully enforced.

14. This Agreement shall become effective upon issuance by the Michigan State Tax Commission of an Certificate to the Company with respect to the Property and shall be null and void and of no force and effect whatsoever if no Certificate is issued by the Michigan State Tax Commission. A duly executed copy of this Agreement shall be filed with the Michigan Department of Treasury.
15. The Company agrees to pay all amounts due hereunder and under Act 210 and/or the Certificate in a timely manner and shall not allow any such amounts to become delinquent. Failure to pay amounts due hereunder and under Act 210 and/or the Certificate within thirty (30) days after the Company's receipt of a written notice of non-payment which refers to this Section 15 of this Agreement shall constitute a default and shall be grounds of revocation of the Certificate.
16. The company affirmatively states that it would not proceed with the construction of the Real Estate Investment if this abatement were not granted.
17. This Agreement shall inure to the benefit of the Parties' successors and assigns; provided, however, that the Agreement and the Certificate may not be transferred or assigned to a new owner of the Qualifying Facility without the approval of the City, which such approval shall not be unreasonably withheld.

The Parties have executed this Agreement as of the date of the last signature below (the "Effective Date").

TBON, LLC,
A Michigan Limited Liability
Company

By: _____

It: Managing Member

Date: November 10, 2011

CITY OF NOVI

By: _____

David Landry
Mayor

Date: November 10, 2011

and

By: _____

Maryanne Cornelius
Clerk

Date: November 10, 2011