BILL NO. R-17-04-16

RESOLUTION NO. R-________

A RESOLUTION approving a Waiver of Noncompliance for a Late-Filed Deduction Application for the Economic Revitalization Area Deduction on Real Property Improvements (Form CF-1/Real Property) for 5501 U.S. Highway 30 West (Sweetwater Holdings, LLC/Sweetwater Sound, Inc.) under Confirming Resolution R-90-15.

WHEREAS, Common Council has previously designated and declared by Declaratory Resolution and Confirming Resolution property at 5501 U.S. 30 West for Sweetwater Holdings, LLC/Sweetwater Sound, Inc. Confirming Resolution R-90-15 under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and I.C. 6-1.1-12.1; and

WHEREAS, the original Statement of Benefits and economic revitalization area designation application submitted by Sweetwater Holdings, LLC/Sweetwater Sound, Inc. and approved under Confirming Resolution R-90-15 was for $5,500,000 in real property improvements and $1,650,000 in personal property logistical distribution and information technology equipment improvements; and

WHEREAS, under Indiana law, for an owner to receive a deduction on real property improvements, the owner is required to submit a deduction application with the County Auditor within thirty (30) days after receipt of the increased tax assessment even though the owner may not yet be required to submit its Compliance with Statement of Benefits CF-1/Real Property form;

WHEREAS, representatives of Sweetwater Holdings, LLC/Sweetwater Sound, Inc. have informed the City of Fort Wayne that their application for deduction from assessed valuation of structures in economic revitalization areas (Form 322/RE) was not filed in a timely manner; and

WHEREAS, this oversight was an unusual occurrence for Sweetwater Holdings, LLC/Sweetwater Sound, Inc. which has made diligent efforts in good faith to make all required Indiana tax abatement filings on a timely basis; and

WHEREAS, the Common Council finds that Sweetwater Holdings, LLC/Sweetwater Sound, Inc. has fulfilled its pledge to invest funds in improvements to property located in an economic revitalization area; and

WHEREAS, the Common Council acknowledges that Sweetwater Holdings, LLC/Sweetwater Sound, Inc. has requested a waiver of non compliance which the Common

Council has the power and authority to approve, under I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3; and

WHEREAS, the Common Council intends that Sweetwater Holdings, LLC/Sweetwater Sound, Inc. receive the tax abatement benefits to which they would have been entitled had no non-compliance event occurred, so long as the waiver of non compliance and the granting of those benefits does not prejudice the City of Fort Wayne; and

WHEREAS, the Common Council has concluded that granting of the ERA deduction for 2016 payable 2017 tax year would not create a strain on the City of Fort Wayne's fiscal budget; and

WHEREAS, I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3 permit tax abatement non compliance events such as the untimely filing of deduction application paperwork to be waived; and

WHEREAS, the noncompliance event has been corrected and a public hearing of the Common Council has been held on the waiver.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That, Common Council hereby waives all clerical and technical errors and nonconformities that are waivable under State and local law, including without limitation those errors and nonconformities described in I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3.

SECTION 2. That, as authorized by I.C. 6-1.1-12.1-9.5(d), the Common Council will permit Sweetwater Holdings, LLC/Sweetwater Sound, Inc. to receive their real property economic revitalization area deductions for 2016 payable 2017 under Confirming Resolution R-90-15 and in accordance to the following schedule

Tax Year	Real Property Tax Deduction Amount
2016 pay 2017	$555,500
TOTAL	$555,500

The foregoing numbers represent deductions from assessed valuation from real property, not tax liability. The total deduction amounts set forth in the preceding table represent deductions Sweetwater Holdings, LLC/Sweetwater Sound, Inc. will lose in 2016 payable 2017.The Allen County Auditor shall be supplied with a copy of this Resolution, upon passage, and instructed to apply the deduction amounts.

SECTION 3. That, nothing herein shall relieve Sweetwater Holdings, LLC/Sweetwater Sound, Inc. from having to timely file any and all future documents required under Indiana law for the owner to continue to receive a property tax deduction, including, but not limited to, a Compliance with Statement of Benefits CF-1/Real Property form.

SECTION 3. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Admn. Appr.____________

DIGEST SHEET

TITLE OF RESOLUTION: **Resolution Approving a Waiver of Noncompliance for a Late-Filed Application for the Deduction from Assessed Valuation of Structures in Economic Revitalization Areas (Form 322/RE) for Sweetwater Holdings, LLC/Sweetwater Sound, Inc.**

DEPARTMENT REQUESTING RESOLUTION: **Community Development Division**

SYNOPSIS OF RESOLUTION: **This is to approve a waiver of noncompliance for late-filed real property deduction forms for Sweetwater Holdings, LLC/Sweetwater Sound, Inc.**

EFFECT OF PASSAGE: **Approval of this resolution and granting of a waiver of noncompliance will allow Sweetwater Holdings, LLC/Sweetwater Sound, Inc. to recoup their real property deduction due to late filed deduction forms.**

EFFECT OF NON-PASSAGE: **Potential loss of future development by Sweetwater Holdings, LLC/Sweetwater Sound, Inc.**

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): **No expenditures of public funds required.**

ASSIGNED TO COMMITTEE (CO-CHAIRS): **Geoff Paddock and Jason Arp**

Carson Boxberger

Andrew D. Boxberger
aboxberger@carsonboxberger.com

November 22, 2016

carsonboxberger.com

260 423-9411

The Harrison
301 W. Jefferson Boulevard, Suite 200
Fort Wayne, IN 46802

CITY OF FT WAYNE
NOV 22 2016
CR
COMMUNITY DEVL.

COMMUNITY DEVL.
NOV 22 2016
CITY OF FT WAYNE

via hand delivery

Carmen Young
Economic Development Specialist
Division of Community Development
City of Fort
Citizens Square, Suite 320
200 E. Berry Street
Fort Wayne, IN 46802

Re: Sweetwater Holdings, LLC

Dear Ms. Young:

Thank you for reaching out to me regarding the real and personal property tax abatements for Sweetwater Holdings, LLC ("Sweetwater"). As you are aware, according to Resolution R-90-15, Sweetwater (and the operations of Sweetwater Sound, Inc. on the property) were awarded real and personal property tax abatements. Sweetwater mistakenly failed to file with the Auditor the appropriate forms to claim the benefit of the tax phase-in related to the increase in property values. We do wish to proceed with this and correct this error with your assistance.

Please take this letter as a request to apply for a waiver of non-compliance in order to receive the requisite real and personal property tax abatements. Enclosed please find a check for $500.00 for the applicable filing fee. I am working with Sweetwater to quickly complete all of the necessary documentation and will submit those to you and the Auditor's Office as soon as possible. If you have any questions, please do not hesitate to contact me.

Respectfully yours,

CARSON BOXBERGER LLP

Andrew D. Boxberger

ADB:clc/enc.
F:\Sweetwater Holdings LLC 22585\General Business - 2\Correspondence; Emails\11 22 16 LTR--Community Development re waiver of non-compliance doc

APPLICATION FOR DEDUCTION FROM ASSESSED VALUATION OF STRUCTURES IN ECONOMIC REVITALIZATION AREAS (ERA)
State Form 18379 (R13 / 1-16)
Prescribed by the Department of Local Government Finance

20 16 PAY 20 17
FORM 322 / RE

SCANNED

INSTRUCTIONS:

1. *This form is to be filed in person or by mail with the County Auditor of the county in which the property is located.*
2. *To obtain this deduction, a Form 322 / RE must be filed with the County Auditor before May 10 in the year in which the addition to assessed valuation (or new assessment) is made, or not later than thirty (30) days after the assessment notice is mailed to the property owner if it was mailed after April 10. If the property owner misses the May 10 deadline in the initial year of assessment, he can apply between March 1 and May 10 of a subsequent year for the remainder of the abatement term. (See also IC 6-1.1-12.1-11.3 concerning the failure to file a timely application.)*
3. *A copy of the Form 11, the approved Form SB-1 / Real Property, the resolution adopted by the designating body, and the Form CF-1 / Real Property must be attached to this application.*
4. *The Form CF-1 / Real Property must be updated annually and provided to the County Auditor and the designating body for each assessment year in which the deduction is applicable.*
5. *Please see IC 6-1.1-12.1 for further instructions.*
6. *Taxpayer completes Sections I, II and III below.*
7. *If property located in an economic revitalization area is also located in an allocation area as defined in IC 36-7-14-39 or IC 36-7-15.1-26, an application for the property tax deduction may not be approved unless the Commission that designated the allocation area adopts a resolution approving the application (IC 6-1.1-12.1-2(k)).*
8. *Except for deductions related to redevelopment or rehabilitation of real property in a county containing a consolidated city, a deduction for the redevelopment or rehabilitation of real property may not be approved for the following facilities (IC 6-1.1-12.1-3):*
   - a. *Private or commercial golf course*
   - b. *Country club*
   - c. *Massage parlor*
   - d. *Tennis club*
   - e. *Skating facility, including roller skating, skateboarding or ice skating*
   - f. *Racquet sport facility (including handball or racquet ball court)*
   - g. *Hot tub facility*
   - h. *Suntan facility*
   - i. *Racetrack*
   - j. *Any facility, the primary purpose of which is (a) retail food and beverage service; (b) automobile sales or service; or (c) other retail; (unless the facility is located in an economic development-target area established under IC 6-1.1-12.1-7).*
   - k. *Residential, unless the facility is a multi-family facility that contains at least 20% of the units available for use by low and moderate income individuals, or unless the facility is located in an economic development target area established under IC 6-1.1-12.1-7, or the area is designated as a residentially distressed area which is required to meet conditions as cited in IC 6-1.1-12.1-2(c)(1 & 2).*
   - l. *Package liquor store [see IC 6-1.1-12.1-3(e)(12)]*

AUDITOR'S OFFICE
FILED
NOV 29 2016
Vera K. Klutz
AUDITOR OF ALLEN COUNTY

SECTION I - DESCRIPTION OF PROPERTY

The owner hereby applies to the County Auditor for a deduction pursuant to IC 6-1.1-12.1-5 beginning with the assessment date January 1, 20 16.

County: Allen	Township: FW- Washington	DLGF taxing district number: 073	Key number: 02-07-19-400-002.000-073
Name of owner: Sweetwater Holdings, LLC		Legal description from Form 11:	
Property address (number and street, city, state, and ZIP code): 5501 US Highway 30 West, Fort Wayne, IN 46818			Date of Form 11 (month, day, year): May of 2016
Type of structure: Construction of new making and merchandising department (See SB1)			Use of structure: Commercial
Governing body that approved ERA designation: Common Council of Fort Wayne		Date ERA designation approved (month, day, year):	Resolution number: R-90-15

SECTION II - VERIFICATION OF OWNER OR REPRESENTATIVE

Signature of owner or representative (I hereby certify that the representations on this application are true.)	Date signed (month, day, year): 11/29/16
Printed name of owner or representative: Andrew Boxberger	Address (number and street, city, state, and ZIP code): 301 W. Jefferson Suite 200, Fort Wayne, IN 46802

SECTION III - STRUCTURES

			AUDITOR'S USE
A. Rehabilitation structure	1. Assessed valuation AFTER rehabilitation	$	
	2. Assessed valuation BEFORE rehabilitation	$	
	3. Difference in assessed valuation (Line 1 minus Line 2)	$	
	4. Assessed valuation eligible for deduction (for the increase in A/V from the rehabilitation, not including the increase in A/V from the reassessment of the entire structure)	$	
B. New structure	1. Assessed valuation	$ 555,500.00	
	2. Assessed valuation eligible for deduction	$ 555,500.00	

SECTION IV - VERIFICATION OF ASSESSING OFFICIAL

I verify that the above described structure was assessed and the owner was notified on ____________, with the effective date of the assessment being January 1, 20 ______, and that the assessed valuations in Section III are correct.

Signature of assessing official	Printed name of assessing official	Date (month, day, year)

CONTINUED ON THE REVERSE SIDE

SECTION V - FOR AREAS EXCEPT FOR A RESIDENTIALLY DISTRESSED AREA WHERE THE STATEMENT OF BENEFITS WAS APPROVED BEFORE JULY 1, 2013 - DEDUCTION SCHEDULE PER IC 6-1.1-12.1-17

YEAR OF DEDUCTION / ASSESSED VALUE / PERCENTAGE / DEDUCTION*

(1) For deductions allowed over a one (1) year period:

1	20___ pay 20___	$________	100%	* ____%	$________

(2) For deductions allowed over a two (2) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	50%	* ____%	$________

(3) For deductions allowed over a three (3) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	66%	* ____%	$________
3	20___ pay 20___	$________	33%	* ____%	$________

(4) For deductions allowed over a four (4) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	75%	* ____%	$________
3	20___ pay 20___	$________	50%	* ____%	$________
4	20___ pay 20___	$________	25%	* ____%	$________

(5) For deductions allowed over a five (5) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	80%	* ____%	$________
3	20___ pay 20___	$________	60%	* ____%	$________
4	20___ pay 20___	$________	40%	* ____%	$________
5	20___ pay 20___	$________	20%	* ____%	$________

(6) For deductions allowed over a six (6) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	85%	* ____%	$________
3	20___ pay 20___	$________	66%	* ____%	$________
4	20___ pay 20___	$________	50%	* ____%	$________
5	20___ pay 20___	$________	34%	* ____%	$________
6	20___ pay 20___	$________	17%	* ____%	$________

(7) For deductions allowed over a seven (7) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	85%	* ____%	$________
3	20___ pay 20___	$________	71%	* ____%	$________
4	20___ pay 20___	$________	57%	* ____%	$________
5	20___ pay 20___	$________	43%	* ____%	$________
6	20___ pay 20___	$________	29%	* ____%	$________
7	20___ pay 20___	$________	14%	* ____%	$________

YEAR OF DEDUCTION / ASSESSED VALUE / PERCENTAGE / DEDUCTION**

(8) For deductions allowed over a eight (8) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	88%	* ____%	$________
3	20___ pay 20___	$________	75%	* ____%	$________
4	20___ pay 20___	$________	63%	* ____%	$________
5	20___ pay 20___	$________	50%	* ____%	$________
6	20___ pay 20___	$________	38%	* ____%	$________
7	20___ pay 20___	$________	25%	* ____%	$________
8	20___ pay 20___	$________	13%	* ____%	$________

(9) For deductions allowed over a nine (9) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	88%	* ____%	$________
3	20___ pay 20___	$________	77%	* ____%	$________
4	20___ pay 20___	$________	66%	* ____%	$________
5	20___ pay 20___	$________	55%	* ____%	$________
6	20___ pay 20___	$________	44%	* ____%	$________
7	20___ pay 20___	$________	33%	* ____%	$________
8	20___ pay 20___	$________	22%	* ____%	$________
9	20___ pay 20___	$________	11%	* ____%	$________

(10) For deductions allowed over a ten (10) year period:

1	20___ pay 20___	$________	100%	* ____%	$________
2	20___ pay 20___	$________	95%	* ____%	$________
3	20___ pay 20___	$________	80%	* ____%	$________
4	20___ pay 20___	$________	65%	* ____%	$________
5	20___ pay 20___	$________	50%	* ____%	$________
6	20___ pay 20___	$________	40%	* ____%	$________
7	20___ pay 20___	$________	30%	* ____%	$________
8	20___ pay 20___	$________	20%	* ____%	$________
9	20___ pay 20___	$________	10%	* ____%	$________
10	20___ pay 20___	$________	5%	* ____%	$________

NOTE: The deduction percentages shown in this section apply to a statement of benefits approved before July 1, 2013 that did not have an alternative deduction schedule adopted by the designating body. All other abatements shall use the percentages reflected in the abatement schedule adopted by the designating body per IC 6-1.1-12.1-17.

* The amount of the deduction shall be adjusted annually to reflect changes to the assessed valuation resulting from a reassessment or an appeal of the assessment per IC 6-1.1-12.1-4(b).

SECTION VI - FOR A RESIDENTIALLY DISTRESSED AREA WHERE THE STATEMENT OF BENEFITS WAS APPROVED BEFORE JULY 1, 2013 DEDUCTION SCHEDULE PER IC 6-1.1-12.1-17

TYPE OF DWELLING	DEDUCTION IS THE LESSER OF: [IC 6-1.1-12.1-4.1(b)]	DEDUCTION IS ALLOWED FOR A FIVE (5) YEAR PERIOD THAT INCLUDES YEARS:
☐ One (1) family dwelling	Assessed value (after rehabilitation or redevelopment) $________ or $74,880 AV	_____ pay _____ through _____ pay _____
☐ Two (2) family dwelling	Assessed value (after rehabilitation or redevelopment) $________ or $106,080 AV	_____ pay _____ through _____ pay _____
☐ Three (3) unit multifamily dwelling	Assessed value (after rehabilitation or redevelopment) $________ or $156,000 AV	_____ pay _____ through _____ pay _____
☐ Four (4) unit multifamily dwelling	Assessed value (after rehabilitation or redevelopment) $________ or $199,680 AV	_____ pay _____ through _____ pay _____

Assessed value limits for taxes due and payable prior to January 1, 2005 were $36,000, $51,000, $75,000, and $96,000 for one to four family dwellings, respectively.

SECTION VII - APPROVAL OF COUNTY AUDITOR *(COMPLETE ONLY IF APPROVED)*

This application is approved in the amounts shown above.

Signature of County Auditor	Printed name of County Auditor	Date signed *(month, day, year)*