



**TWO
RIVERS**
WISCONSIN

CITY COUNCIL WORK SESSION

Monday, March 28, 2022 at 6:00 PM

Council Chambers - City Hall, 3rd Floor
1717 E. Park Street, Two Rivers, WI 54241

AGENDA

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Councilmembers: Mark Bittner, Jeff Dahlke, Tracey Koach, Bill LeClair, Darla LeClair, Jay Remiker, Bonnie Shimulunas, Larry Thomas, Adam Wachowski

4. DISCUSSION ITEMS

- A. Discuss Proposed "Cash Grant and Developer's Performance Agreement" Between the City and 3000 Forest Ave, LLC
Recommended Action:
Discussion only

5. ACTION ITEMS

- A. Authorize Change of Agent for McPautz LLC, dba Tapped on the Lakeshore for Class "B" Beer/"Class B" Liquor Retail License from Jolene McMahon to Craig Pautz
Recommended Action:
Motion to approve change of Agent for McPautz LLC effective March 29, 2022
- B. Consider Possible Street Projects for Inclusion in Submittal to WisDOT for State Fiscal Year 2022 Funding
Recommended Action:
Motion indentifying projects for submittal to WisDOT
- C. Consider Possible Cooperative Arrangements for Parking and Related Matters: Community House and Cool City Brewing Company
Recommended Action:
Motion to direct staff to prepare appropriate cooperative agreement

6. CLOSED EXECUTIVE SESSION

The City Council reserves the right to enter into Closed Session, per Wisc. Stats 19.85(1)(e) deliberating or negotiating the purchasing of public properties, the investment of public funds, or conducting other specified public business, whenever competitive or bargaining reason require a closed session.

--Discuss possible assistance to West River Lofts affordable housing project on former Eggers West Property on the West Twin River

--Discuss possible City purchase of former CN Railroad Right-of-Way

7. RECONVENE IN OPEN SESSION

To consider possible actions on matters discussed in closed session.

8. ADJOURNMENT

Motion to dispense with the reading of the minutes of this meeting and adjourn

Please note, upon reasonable notice, efforts will be made to accommodate the needs to disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the Office of the City Manager by calling 793-5532.

It is possible that members of and possibly a quorum of governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no other action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

--MEMORANDUM--

TO: City Council

FROM: Gregory E. Buckley
City Manager

DATE: March 19, 2022

SUBJECT: TAX INCREMENTAL FINANCING CASH GRANT AND DEVELOPER'S
PERFORMANCE AGREEMENT WITH 3000 FOREST AVE, LLC

The Agreement that is on Monday's agenda for your consideration reflects financial terms previously approved by the City Council.

This proposed final Agreement is under review by the Developer—I was only able to get it to them this past Wednesday evening, although it is substantially similar to drafts that they have seen before. They were not able to complete a final review of this document with their attorney by Friday, but hope to do so on Monday.

I mention the above because at Monday's meeting I may need to report that the Developer has requested some changes in the language or needs more time to complete their review. If that is the case, I will recommend deferring final action until the Council meeting of March 28. I have also provided for discussion of this item in closed session at the end of the meeting, if there are issues raised that are best discussed in closed, prior to action on the Agreement.

That said, I thought it would be useful to provide a summary—for both the Council and the general public—of the project and the key provisions of this Agreement.

1. Agreement provides for City grant assistance, through Tax Incremental District No. 15 (TID 15), created by actions of the City Council and Joint Review Board in July 2021, to a project to redevelop the former Hansen the Florist property at 3000 Forest Avenue. That property has been sitting idle since 2004 and is identified as a "Priority Redevelopment Site" in the City's 2010 Comprehensive Plan.
2. Project consists of three new 15-unit apartment buildings, to provide 45 units of market-rate rental housing (33 2-bedroom, 12 1-bedroom). \$6.8 million estimated construction cost; \$4.2 million estimated assessed value upon completion (planned 3-year build-out, 2022-2024).
3. TIF assistance to consist of
 - A. \$650,000 *Developer Grant*, financed through City borrowing (20-year State Trust Fund Loan at 4 percent) and paid to Developer in installments as follows:
 - \$200,000 upon completion of footings and foundations for Building 1
 - \$125,000 upon Building 1 being completed and ready for occupancy
 - \$125,000 upon completion of footings and foundations for Building 2
 - \$200,000 upon Building 2 being completed and ready for occupancy

City loan used to fund the Developer Grant will be repaid from TID 15 over the next 20 years, using revenue from new property taxes paid by the development.

Payment of this City debt obligation will be the ***first priority*** for use of such TID 15 revenue. If such annual revenue falls short of the amount required for such debt service payments (\$47,755 annually), the Developer will be required to make a ***“Shortfall Payment”*** to the City, to make up the difference.

- B. \$650,000 ***TIF Grant***, to be paid in annual installments by the City to the Developer, from new property tax revenue created by the development and captured by TID 15, to the extent that such funds are available after first paying the annual debt service related to the Developer Grant. This \$650,000 TIF grant shall be considered an obligation of the City to the Developer and will accrue interest at a rate of 2 percent annually, starting April 1, 2022.

Based on the financial pro-forma for TID 15, prepared for the City by R.W. Baird, this development should generate sufficient tax incremental revenue (from new property taxes generated by the development) to cover debt service on the Developer Grant and to pay off this obligation in full by budget year 2043. Whether paid in full or not, the City’s obligation to the Developer under the TIF Grant will end in budget year 2043, per terms of the Agreement.

4. Safeguards for the City’s investment of TIF funds include:
- A. The annual requirement for a “Shortfall Payment” by the Developer, if necessary to meet annual debt service on the borrowing for the Developer Grant. (Failure to make timely payment of a Shortfall Payment results in a 12 percent interest penalty on the amount owed.)
 - B. Requirement for a “Clawback Payment” of any portion for the Developer Grant that has been paid out to the Developer, if the total Project is not completed by the Project Completion Deadline of October 1, 2024.
 - C. Provision that payments to the Developer under the TIF grant, which are to start in 2024 (by December 1, 2024) will not be made unless the project has been completed timely and is operating in compliance with the Agreement.
 - D. A City first mortgage on the Development, for purposes of securing the annual Shortfall Payments and Clawback Payment, should either be required. While the proposed mortgage provides that the City will not name the Project’s private lender in any foreclosure action, the City’s first position mortgage should provide significant protection for its financial interest in the project.

I hope that this information is helpful as you consider this Agreement.

TAX INCREMENTAL FINANCING AND CASH GRANT AND DEVELOPER'S
PERFORMANCE AGREEMENT

RE: MULTI-FAMILY DEVELOPMENT BY 3000 FOREST AVE LLC AT 3000 FOREST
AVENUE, CITY OF TWO RIVERS, WISCONSIN

This TAX INCREMENTAL FINANCING CASH GRANT AND DEVELOPER'S PERFORMANCE AGREEMENT (this "**Agreement**") is entered into as of the [] day of March, 2022 (the "**Effective Date**"), by and between THE CITY OF TWO RIVERS, WISCONSIN, a Wisconsin municipal corporation (the "**City**"), having offices located at 1717 East Park Street, Two Rivers, Wisconsin 54241, and 3000 FOREST AVE LLC, a Wisconsin limited liability company, having offices at 2201 S. Oneida Street, Suite 8 Green Bay, WI 53404 ("**Developer**").

WITNESSETH:

WHEREAS, Developer has entered into agreements to purchase two parcels of real property located on Forest Avenue in the City of Two Rivers, Wisconsin, which are described in **Exhibit A** attached hereto (the "**Development Site**"); and

WHEREAS, the City Council has adopted by the resolution dated July 12, 2021 Tax Incremental District (TID) No. 15 Project Plan ("**TID 15 Project Plan**"), to eliminate blight, encourage redevelopment of the Development Site and assist with expenditures within one-half mile of TID 15; and

WHEREAS, Developer has proposed to construct the "**Project**" described herein on the Development Site and has represented, and hereby affirms, that the Project is contingent upon certain "**City Assistance**" described herein; and

WHEREAS, the City Council has, by adopting the TID 15 Project Plan, determined that such City Assistance is necessary for the development of the Project to occur; and

WHEREAS, Section 66.1105 Wis. Stats., authorizes the City to incur project costs in the discretion of its City Council, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans; and

WHEREAS, the City believes that the Project, more fully described in this Agreement, will promote the revitalization and economic stability of the City.

NOW, THEREFORE, the parties hereto agree as follows:

1. PRELIMINARY MATTERS

A. Recitals. The above recitals are hereby incorporated by reference.

B. Certain Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms as used herein shall have the following meanings:

- (1) **"Annual Cost of Funds Payment"** means \$47,755. Such amount is the City's good faith estimate of its cost of funds for providing the Developer Grant, assuming a 20-year borrowing at 4.0% annual interest.
- (2) **"Available Tax Increment"** means, for any given Revenue Year, an amount equal to: (a) the Tax Increment; minus (b) any past-due Shortfall Payment amounts (or unpaid interest owed on any Shortfall Payment) as of January 1 of such Revenue Year. In the event of a negative number, the Available Tax Increment for such Revenue Year shall be \$0.
- (3) **"Base Taxes"** means the real property taxes payable for Tax Year 2022 based on the assessed value of the Development Site as of January 1, 2022.
- (4) **"City Assistance"** means the Developer Grant and the TIF Grant, all as more particularly described herein.
- (5) **"Clawback Payment"** means the amount payable by the Developer to the City as provided in Section 2.A. iii of this Agreement.
- (6) **"Development Site"** is defined in the Recitals above.
- (7) **"Developer Grant"** means a developer grant from TID 15, in the amount not to exceed Six Hundred and Fifty Thousand Dollars (\$650,000) as described herein.
- (8) **"Guaranteed Revenue"** means, for Revenue Year 2024 through Revenue Year 2048, annual receipt by the City of net property taxes attributable to the Development Site equal to the sum of (i) the Base Taxes PLUS (ii) the Annual Cost of Funds Payment. The parties agree that the Guaranteed Revenue bears a rational relationship with the City's estimated costs in connection with this Agreement. The Annual Cost of Funds Payment portion of the Guaranteed Revenue is only applicable until the City has been made whole for the Developer Grant, taking into account the City's borrowing cost.
- (9) **"Memorandum"** means a short form memorandum of this Agreement recorded in the real estate records. The parties agree that the form of memorandum attached hereto as Exhibit B is acceptable to both parties.
- (10) **"Minimum Construction Value"** means \$6,500,000.
- (11) **"Mortgage"** means a mortgage of the Development Site by Developer to secure the Shortfall Payment and Clawback Payment in the form attached hereto as Exhibit C.
- (12) **"Private Financing"** shall mean funding available to Developer for purposes of constructing the Project, from equity investors, conventional loan financing through a financial institution licensed to do business in the State of Wisconsin and any other

non-City sourced construction financing, as well as permanent phase financing to take-out any sources of financing limited to the construction-phase of the Project.

(13) **"Project"** means the construction of the Multi-family Development on the Development Site, along with related site improvements, including parking facilities and landscaped areas, on the Development Site, substantially consistent with the preliminary site plan attached hereto as **Exhibit D**.

(14) **"Project Commencement Deadline"** means May 1, 2022.

(15) **"Project Completion"** means the date on which the Project has been substantially completed in accordance with the plans and specifications previously approved by the City, except for minor punchlist items. Substantial completion shall include certification by the Project architect of substantial completion and full authorization for occupancy of the building(s) by the City's building inspector.

(16) **"Project Completion Deadline"** means October 1, 2024.

(17) **"Project Cost Breakdown"** means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect costs of development, construction and installation of the applicable phase of the Project in accordance with the Project plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.

(17) **"Project Plan"** means the Project Plan for Tax Incremental District 15, as adopted by the Joint Review Board and City Council. (18) **"Revenue Year"** means any calendar year in which the City is reasonably expected to receive the revenue for such calendar year by reason of the actual payment of real estate taxes. By way of example, 2023 is the Revenue Year for the 2022 Tax Year based on the real estate valuation as of January 1, 2022.

(19) **"Shortfall Payment"** means a payment, if any, to be made by Developer to the City, in the amount of the shortfall of the actual net property taxes received by the City as compared with the Guaranteed Revenue amount for any Revenue Year. The Shortfall Payment is only applicable in Revenue Years 2024 through 2048.

(20) **"Shortfall Payment Deadline"** means June 1 of each Revenue Year.

(21) **"Tax Increment"** means, for any given Revenue Year, an amount equal to: (a) the total gross real property taxes paid with respect to the Project and actually received and retained by the City in such Revenue Year, but excluding any Shortfall Payments; minus (b) the Guaranteed Revenue for such Revenue Year (or in the event Guaranteed Revenue is not applicable for such Revenue Year, then the Base Taxes). In the event of a negative number, the Tax Increment for such Revenue Year shall be \$0.

(22) **"Tax Year"** means each calendar year for which real and personal property taxes are levied.

(23) **“TIF Grant”** means a “pay as you go” grant of the Available Tax Increment for development of the Project in the amount of Six Hundred and Fifty Thousand Dollars (\$650,000). Interest on the unpaid balance of the TIF Grant shall accrue commencing on April 1, 2022 at the rate of two percent (2.0%) annual simple interest; provided, however, that no such interest shall accrue during any uncured default by Developer.

(24) **“TIF Grant Installment Amount”** for each Revenue Year (commencing in Revenue Year 2023) means the Available Tax Increment for such Revenue Year which has been appropriated by the City Council to payment of the TIF Grant or interest on the TIF Grant; provided, however, that in no event shall the cumulative total of all such TIF Grant Installment Amount payments exceed the total TIF Grant plus applicable interest.

(25) **“TIF Grant Payment Deadline”** means December 1, 2024, for Revenue Year 2024, and on each anniversary thereof for each subsequent Revenue Year.

C. **Effectiveness of this Agreement.** This Agreement shall be effective and its terms binding upon the occurrence of all of the following (collectively, the **“City Approvals”**): the City Council, shall have: (a) approved this Agreement; (b) created TID 15; (c) adopted the Project Plan; and (d) approved or authorized the other transactions contemplated herein, and all other agreements and/or transactions that require approval by the City. All of the City’s obligations under this Agreement are contingent upon the occurrence of all of the City Approvals and the City shall have no obligation to make the Developer Grant or the TIF Grant if all City Approvals have not occurred. In the event the City Approvals have not been received by the Project Commencement Deadline, this Agreement shall automatically terminate.

2. **OBLIGATIONS OF THE CITY**

A. **Developer Grant**

(i) The City, by approving the TID 15 Project Plan, supports the intended purpose for TID 15 which is the elimination of blight and the redevelopment of the Development Site. Eligible project costs identified in the TID 15 Project Plan include a developer cash grant to assist with the construction costs of multi-family housing on the Development site.

(ii) The City hereby agrees to provide the Developer with a cash grant in the amount of \$650,000 from TID 15, (the Developer Grant as defined above). Subject to the Developer's continued compliance with all terms and conditions herein, the City shall disburse the Developer Grant to Developer in four installments, upon written request by Developer to the City and upon the satisfaction of the conditions identified below.

Upon satisfaction of the following Conditions a. though h. below., Developer may request, and City shall pay Developer \$200,000 of the Developer Grant

a. Developer shall have acquired fee simple title to each parcel of the Development Site;

b. Developer shall have obtained and closed on all financing, including all Private Financing, for the construction of the Project;

c. Developer shall have provided a complete and accurate Project Cost Breakdown to the City and proforma;

d. Developer shall have obtained all necessary consents, permits, and approvals, including, but not limited to, zoning and plan approval and building permits, required by the City or any other governmental entity having jurisdiction over the Project;

e. Developer shall have demolished and cleared the building that is currently on the Development Site;

f. Developer shall have completed installation of footings and foundations for Building 1, and said footings and foundations shall have passed inspection by the City's Building Inspector;

g. Developer shall have recorded the Memorandum and Mortgage with respect to each parcel that constitutes the Development Site;

h. Developer shall have provided satisfactory documentation of all of the foregoing to the City, as determined by the City in its sole discretion.

Contingent upon Developer having met conditions a. through h. above, Developer shall be eligible to request, and City shall pay, the following payments comprising the balance of the Developer Grant:

- a. \$125,000 when Building 1 is completed and ready for occupancy and Developer has provided the City with documentation satisfactory to the City, showing that all costs associated with the construction of Building 1 have been paid and waivers or releases of contractor liens associated with such construction have been obtained;
- b. \$125,000 following installation of footings and foundations for Building 2 and after such footings and foundations have passed inspection by the City's Building Inspector;
- c. \$200,000 when Building 2 is completed and ready for occupancy and Developer has provided the City with documentation satisfactory to the City, showing that all costs associated with the construction of Building 2 have been paid and waivers or releases of contractor liens associated with such construction have been obtained.

(iii) If Project Completion is not achieved on or prior to the Project Completion Deadline, or if the Project is not constructed in substantial compliance, as determined by the City in its sole discretion, with the plans and specifications that Developer provided to the City pursuant to this Agreement or the consents, approvals or

permits issued by any governmental authority with respect to the construction of the Project, then the City may withhold any payments not yet made to Developer under the Developer Grant and may also demand payment from the Developer of the entire amount of the Developer Grant paid to the Developer. Developer shall pay such “Clawback Payment” to the City within ten (10) days after such demand. The City’s right to the Clawback Payment shall survive the termination of this Agreement, the transfer of the Development Site, or any portion thereof, or the assignment of this Agreement.

B. TIF Grant.

(i) Provided that: (a) Developer is not in default of its obligations under this Agreement; (b) Project Completion was achieved on or prior to the Project Completion Deadline; and (c) the Project is constructed in substantial compliance, as determined by the City in its sole discretion, with the plans and specifications that Developer provided to the City pursuant to this Agreement and the consents, approvals or permits issued by any governmental authority with respect to the construction of the Project, the City shall pay to Developer the TIF Grant in installments each Revenue Year beginning in 2024 based on the Available Tax Increment for such Revenue Year and subject to the terms and conditions below and in the remainder of this Agreement.

(ii) The TIF Grant shall be payable solely from each Available Tax Increment which has been received and retained by the City in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes and appropriated by the City Council to payment of the TIF Grant. The TIF Grant (plus any applicable interest) shall be payable in annual installments on or before the TIF Grant Payment Deadline of each Revenue Year, commencing with Revenue Year 2024 (based on the Available Tax Increment generated in 2023) and on each TIF Grant Payment Deadline thereafter (based on Available Tax Increment generated in the immediately preceding Tax Year) in an amount equal to the TIF Grant Installment Amount for the respective Revenue Year; provided, however, that the City may, at its option and in its sole discretion, prepay the TIF Grant in whole or in part at any time. If the total TIF Grant Installment Amount payments have been insufficient to pay the full TIF Grant (plus any applicable interest) after the scheduled installment payable on or before the TIF Grant Payment Deadline in Revenue Year 2043 (based on the Available Tax Increments generated in 2042), then the TIF Grant and all interest shall be deemed paid in full, the obligation of the City to make any further payment shall terminate, and Developer shall have no right to receive any additional payments. The City makes no representation or covenant, express or implied, that Available Tax Increments will be generated or that they will be sufficient to pay, in whole or in part, the TIF Grant and any applicable interest. All Tax Increments received by the City which are not appropriated to pay the TIF Grant may be used by the City for any legally permitted purpose, in its sole discretion.

(iii) As stated above, the application of Available Tax Increments to payment of the TIF Grant each year is subject to future annual appropriation by the City Council. The City makes no representation or covenant, express or implied, that any non-zero Available Tax Increment will be generated and/or appropriated in any given year, nor does the City make any representation or covenant as to any aggregate amount of

Available Tax Increments to be paid to Developer. Any Tax Increment which is not appropriated and allocated toward the Available Tax Increment may be used by the City for any legally permitted purpose, in its sole discretion.

C. No Additional Assistance. Developer understands and agrees that the City's assistance with the Project is limited to the City Assistance and other matters expressly provided herein. Developer shall be responsible for and shall pay directly any and all other costs associated with the development, construction and operation of the Project.

3. OBLIGATIONS OF DEVELOPER

A. Securing Private Financing. Developer shall secure all necessary Private Financing for the Project (including a firm commitment for permanent take-out financing for any construction financing), as defined herein, not later than the Project Commencement Deadline, and shall provide proof of such financing to the City along with the Project Cost Breakdown. For reference, Developer's preliminary Project budget is attached hereto as **Exhibit D**.

B. Construction and Operation of the Project.

(i) In addition to the Site and Architectural Plan Approval by the City's Plan Commission as provided in Section 11-1-10-C of City Ordinances, final design and site plans for the Project are subject to review and approval by the City Council, prior to issuance of the building permit for the Project.

(ii) Developer shall: (a) promptly and reasonably proceed to contract with a general contractor approved by the City in its reasonable discretion to commence construction of the Project following the approvals described in this Agreement; (b) subject to the force majeure provisions contained herein, achieve Project Completion in a manner consistent with this Agreement and with all federal, state and local plan approvals; and (c) the Project shall a multi-family residential development as described herein no later than the Project Completion Deadline.

(iii) Developer shall expend a minimum of \$6,500,000 on the Project including without limitation land acquisition and preparation, building construction and site improvements, and fixtures, furnishings and equipment and shall provide the City with documentation reasonably acceptable to the City of all Project construction costs, including construction lien waivers.

(iv) Developer will conform and comply with, will cause the Project to be in conformance and compliance with, and shall operate the Project in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, all environmental laws, rules, regulations and ordinances. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority in connection with the development, construction and operation of the Project.

(v) After Project Completion, the Project shall be a market rate multi-family development and the Developer shall not modify the use of the Project without the City's prior written consent. Developer shall maintain the physical condition of the Project and the Property in a reasonable manner. Developer shall not change the design of the project without the City's prior review. This subsection shall be in effect until the completion of the Guaranteed Revenue requirement.

C. Payment of Annual Property Taxes; Shortfall Payment. The parties hereto anticipate that the Project and the Development Site will be subject to property taxes, and Developer agrees to pay property taxes on the Project and the Development Site in a timely manner. In the event that the City does not receive the full Guaranteed Revenue amount for any applicable Tax Year, then Developer shall make any applicable Shortfall Payment no later than the Shortfall Payment Deadline of such Revenue Year. Such Shortfall Payments shall be required regardless of whether all or a portion of the Development Site should ever become exempt from property taxes. Any Shortfall Payment or portion thereof not paid when due shall bear interest at the rate of 12.0% per annum from due date until paid.

D. Memorandum. Developer agrees to promptly record the Memorandum with respect to each parcel of the Development Site at the closing of its purchase and acquisition of each parcel of the Development Site. In the event of any prior mortgage(s), such mortgage(s) shall be promptly subordinated to the Memorandum. Developer shall provide the City with evidence of the relative priority of the Memorandum which is reasonably acceptable to the City.

E. Mortgage. Developer shall execute and record the Mortgage with respect to the entirety of the Development Site prior to commencement of construction of the Project. The Mortgage shall be superior to all other mortgages recorded with respect to the Development Site and Developer shall provide the City with evidence of the same which is reasonably acceptable to the City.

4. REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties of the City. The City makes the following representations and warranties:

(i) The City has the requisite power and authority and legal right to enter into this Agreement and to perform the transactions contemplated hereby.

(ii) The individuals executing this Agreement on behalf of the City are duly empowered and authorized to execute this Agreement on behalf of the City and to deliver the same. Once this Agreement has been duly executed and delivered by all parties hereto, and becomes effective as set forth in accordance with this Agreement, it will constitute a binding obligation on behalf of the City subject to the terms and provisions hereof.

(iii) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of the City's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting the City or by which it is bound.

B. Representations and Warranties of Developer. Developer makes the following representations and warranties:

(i) The Developer has the full power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) The Developer is a Wisconsin limited liability company, duly organized, validly existing and in active status under the laws of that state. The execution of this Agreement as well as the performance of its obligations contained herein are not in violation of its organizational documentation. The individual executing this Agreement on behalf of the Developer is duly authorized to do so. This Agreement constitutes a binding obligation on behalf of the Developer subject to the terms and provisions hereof.

(iii) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of Developer's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting Developer or by which it is bound.

5. DEFAULT; REMEDIES; FORCE MAJEURE

A. Notice of Default and Right to Cure. In the event of any default in or any breach of this Agreement or any of its terms or conditions by any party hereto, the non-defaulting party shall give written notice of the default to the defaulting party. The defaulting party may then cure such default or breach within five (5) business days in the event of a monetary default or within thirty (30) calendar days in the event of a non-monetary default after receipt of such notice. In the event the particular non-monetary breach or default cannot reasonably be cured within said thirty calendar day period, the defaulting party shall not be in default hereunder if it timely commences to cure such default within said period of time and diligently pursues the cure and cures the same within a reasonable time thereafter. If the default or breach is not timely cured under this subsection, the non-defaulting party may exercise any right or remedy provided for herein.

B. Remedies. Subject to the notice of default and opportunity to cure provisions above, the parties may exercise any rights or remedies provided for by law or equity in the event of any default in or breach of this Agreement by the other party, including but not limited to termination of this Agreement, an action for specific performance and an action for the recovery of damages. All rights and remedies may be exercised independently or concurrently. The election of one remedy does not preclude the pursuit of other remedies, unless otherwise provided for by law.

C. Waiver. Any delay by a party in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or to limit such rights in any way. The parties intend by this provision that no party should be constrained in its efforts to resolve any issues that may arise, and hereby intend to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches or otherwise, or to be compelled to exercise such remedy at a time when it may still hope otherwise to resolve the issue

created by the default involved. No waiver in fact made by either party with respect to any specific default by the other party under this Agreement shall be considered or treated as the waiver of the rights of the non-defaulting party with respect to any other defaults by such defaulting party under this Agreement, or with respect to the particular default except to the extent specifically waived in writing.

D. Rights Cumulative. The rights and remedies of each party, whether provided by law, equity or this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either party.

E. Enforcement Costs. In the event any proceeding is commenced as a result of a default under this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys' fees) incurred in enforcing the terms and provisions of this Agreement.

F. Force Majeure. For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, acts of adjoining property owners, governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, and unusually severe weather; it being the parties' purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the particular party shall be extended for the period of the enforced delay.

6. TERM

The term of this Agreement (the "*Term*") shall be for a period commencing upon the Effective Date of this Agreement and expiring on the earlier of: (i) December 31, 2048; and (ii) the expiration of the term of existence of TID 15.

7. NOTICES AND DEMANDS

A notice, demand or other communication under this Agreement by either Party to the other Party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and:

In the case of Developer:	3000 Forest Ave, LLC 2201 S Oneida St, Ste 8 Green Bay, WI 53404 Attn: Tim Schuelke
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In the case of the City:	City of Two Rivers 1717 East Park Street Two Rivers, WI 54241
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Attn: City Clerk

8. ASSIGNMENT BY DEVELOPER

During the Term of this Agreement, Developer shall not have the right to assign this Agreement or directly or indirectly sell, assign, transfer or convey the Development Site (or any portion thereof) to any other party without the prior written consent of the City; provided, however, that Developer shall have the right, without the City's consent but with notice to the City, to transfer this Agreement and/or the Development Site to an entity controlled by or under common control with Developer and shall have the right to mortgage or otherwise encumber the Development Site to finance the construction of the Project, as provided herein. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement.

9. PUBLIC RECORDS RESPONSIBILITIES

To ensure that applicable laws are followed, both with regard to private rights, and with regard to public records laws, Developer agrees as follows: If the City receives public records requests for records that the City believes might be in the possession of Developer, the City will notify Developer of the request. Within three (3) days of such notification (subject to extension of time upon mutual written agreement), Developer shall either provide the City with the record that is requested, for release to the requestor; or Developer shall advise the City that it objects to the release of the requested information because it considers such information confidential or proprietary, and the basis for the objection. Regardless of any objection by Developer, however, if for any reason the City reasonably and in good faith concludes that the City is obligated to provide a record to a requestor that is in Developer's possession, Developer shall provide such records to the City promptly upon the City's request. Developer shall not charge for work performed under this section, except for the "actual, necessary and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law.

10. MISCELLANEOUS

A. Recording. Recording of this Agreement is prohibited except for the Memorandum.

B. Approvals. Whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the party's duly authorized representative. Except as otherwise set forth herein, wherever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld. All submissions given to the City to satisfy the conditions contained in this Agreement must be satisfactory in form and content to the City, in its reasonable discretion.

C. Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing.

D. Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

E. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.

F. Severability. If any provision of this Agreement is held invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement, which shall continue in full force and effect.

G. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective successors, transferees and permitted assigns. The obligations of the City and the Developer, including, without limitation, Developer's obligation to provide City with Guaranteed Revenue or the Clawback Payment as addressed herein, shall survive any sale transfer, assignment or conveyance of the Development Site (or a portion thereof), and shall survive mortgage foreclosure, and bind any subsequent owners in title to the Development Site.

H. Municipal Approvals; Compliance with Law. The provisions of this Agreement shall not vest any rights on the Developer to any municipal approvals required under applicable law. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

I. City's Right of Immunity. Nothing contained in this Agreement constitutes a waiver of the City's ability to assert its rights of immunity to tort claims under applicable law. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

J. Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Manitowoc County, Wisconsin.

K. Time is of the Essence; Deadlines. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

L. Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.

M. Captions and Interpretation. The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

N. Joint and Several Obligations. If Developer consists of more than one person/entity, each such person/entity shall be jointly and severally liable for the payment and performance of all obligations of Developer under this Agreement and the City may bring suit against each such person/entity, jointly or severally, or against any one or more of them.

O. Counterparts/Electronic Signature. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

DEVELOPER:

3000 FOREST AVE LLC

By: _____
Name: _____
Title: _____

CITY:

THE CITY OF TWO RIVERS, WISCONSIN

By: _____
Name: Gregory E. Buckley
Title: City Manager

By: _____
Name: Jamie Jackson
Title: City Clerk

EXHIBIT A

**LEGAL DESCRIPTION OF
THE DEVELOPMENT SITE**

Parcel Identification Numbers: 2351040616

Certified Survey Description: LOT 2 CSM V34 P29

Land Area: 4.429 acres

EXHIBIT B

FORM OF MEMORANDUM

→ to be inserted

EXHIBIT C
FORM OF MORTGAGE

EXHIBIT C

eWORD
 W.B.A. 428B (6/13) 11429
 © 2013 Wisconsin Bankers Association/Distributed by FIPCO®
 DOCUMENT NO.

REAL ESTATE MORTGAGE(Shortfall Payments)

(Use Only to Secure Business Transactions)

3000 FOREST AVE LLC, a Wisconsin limited liability company

("Mortgagor," or "Borrower," whether one or more), whose address is
 2201 S. Oneida Street, Suite 8 Green Bay, WI 53404

mortgages, conveys, assigns, grants a security interest in and warrants to
CITY OF TWO RIVERS, WISCONSIN ("Lender"),

whose address is
1717 East Park Street, Two Rivers, WI 54241, Attention: City Clerk

in consideration of the sum of the Development Agreement (see Paragraph 20(a))

Dollars

(\$), loaned or to be loaned to

Recording Area

Name and Return Address

City of Two Rivers
 1717 East Park Street
 Two Rivers, WI 54241
 Attn: City Clerk

("Borrower," whether one or more) by Lender, evidenced by Borrower's note(s) or agreement(s) dated _____, the real estate described below, together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, all existing and future improvements and all goods that are or are to become fixtures (all called the "Property") to secure the Obligations described in paragraph 5, including, but not limited to, repayment of the sum stated above plus certain other debts, obligations and liabilities arising out of past, present and future credit granted by Lender.

SINCE THIS MORTGAGE SECURES ALL OBLIGATIONS DESCRIBED IN PARAGRAPH 5, IT IS ACKNOWLEDGED AND AGREED THAT THIS MORTGAGE MAY SECURE OBLIGATIONS FROM TIME TO TIME IN A DOLLAR AMOUNT GREATER THAN THE DOLLAR AMOUNT STATED ABOVE.

☐ If checked here, and not in limitation of paragraph 5, this Mortgage is also given to secure all sums advanced and re-advanced to Borrower by Lender from time to time under the revolving credit agreement between Borrower and Lender described above.

See Exhibit A attached hereto..

Parcel Identifier No.

(This Property **IS NOT** the homestead of Mortgagor.)
 (is) (is not)

1. Description of Property.See Exhibit A attached hereto.

☒ If checked here, description continues or appears on attached sheet(s).

☒ If checked here, this Mortgage is a construction mortgage.

☐ If checked here, Condominium Rider is attached.

2. Title. Mortgagor warrants title to the Property, excepting only restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and a mortgage to **PRIVATE LENDOR** in the amount of not to exceed \$ **1** (the "Private Mortgage"). Lender agrees that, so long as the debt secured by the Private Mortgage does not exceed the amount set forth above, Lender shall not name the holder of the Private Mortgage in any foreclosure of this Mortgage or otherwise foreclose the Private Mortgage. Accordingly, any such transfer of the Property pursuant to foreclosure of this Mortgage would be subject to the Private Mortgage. This agreement not to foreclose the Private Mortgage shall extend to any mortgage securing the refinancing of such debt, so long as such refinancing does not exceed the amount set forth above.

3. Escrow Interest _____ be paid on accreted funds if an escrow is required under paragraph 8(a).
 (will) (will not)

4. Additional Provisions. This Mortgage includes the additional provisions on pages 2 and 3, which are made a part of this Mortgage.

Page 1 of 3

EXHIBIT C

ADDITIONAL PROVISIONS

5. Mortgage as Security. This Mortgage secures prompt payment to Lender of (a) any Shortfall Payments and Clawback Payments according to the terms of the Development Agreement (see Paragraph 20(a) below) the sum stated in the first paragraph of this Mortgage, plus interest and charges, according to the terms of the promissory note(s) or agreement(s) of Borrower to Lender identified in the first paragraph of this Mortgage, and any extensions, renewals or modifications of such promissory note(s) or agreement(s), plus (b) except as disclaimed below, all other debts, obligations and liabilities arising out of credit previously granted, credit contemporaneously granted and credit granted in the future by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor, plus all interest and charges, plus (c) all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage. **This Mortgage does not secure and Lender disclaims this Mortgage as security for any consumer credit transaction governed by the Wisconsin Consumer Act, any loan governed by Chapter 428, Wisconsin Statutes, and any loan governed by the Federal Truth-in-Lending Act.** Unless otherwise required by law, Lender will satisfy this Mortgage upon request by Mortgagor if (a) the Obligations have been paid according to their terms, (b) any commitment to make future advances secured by this Mortgage has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

6. Taxes. To the extent not paid to Lender under paragraph 8(a), Mortgagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, or upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

7. Insurance. Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, flood, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the unpaid balance of the Obligations or the full replacement value, whichever is less, and shall pay the premiums when due. The policies shall contain the standard mortgagee and lender loss payee clauses in favor of Lender, shall insure Lender notwithstanding any defenses of the insurer against Mortgagor and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Mortgagor is free to select the insurance agent or insurer through which insurance is obtained. Mortgagor shall promptly give notice of loss to insurance companies and Lender. All proceeds from such insurance shall be applied, at Lender's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property, and Lender may require that such proceeds of insurance be deposited with it for these purposes. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee. If Mortgagor fails to keep any required insurance on the Property, Lender may purchase such insurance for Mortgagor, such insurance may be acquired by Lender solely to protect the interest of Lender (it will not cover Mortgagor's equity in the Property), and Mortgagor's obligation to repay Lender shall be in accordance with paragraph 10.

8. Mortgagor's Covenants. Mortgagor covenants and warrants:

(a) **Escrow.** If an escrow is required by Lender, to pay Lender sufficient funds, at such times as Lender designates, to pay when due (1) the estimated annual real estate taxes and assessments on the Property, (2) all property and hazard insurance premiums, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, (5) the estimated costs to keep the Property in good and tenantable condition and repair, and to restore and replace damaged or destroyed improvements and fixtures if it is reasonably determined by Lender that Mortgagor has failed to comply with the covenant under paragraph 8(b) below, and (6) other items agreed to be included in the escrow. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagor for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagor in writing, and Mortgagor shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law;

(b) **Condition and Repair.** To keep the Property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;

(c) **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 2;

(d) **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;

(e) **Waste.** Not to commit waste or permit waste to be committed upon the Property or abandon the Property;

(f) **Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagor, Lender may deal with any transferee as to its interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or the Obligations;

(g) **Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without Lender's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;

(h) **Condemnation.** To pay to Lender all compensation received for the taking of the Property, or any part, by condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to the Obligations in the inverse order of their maturities (without penalty for prepayment);

(i) **Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it, and at Lender's option to repair or restore the Property and to conduct environmental assessments and audits of the Property;

(j) **Laws.** To comply with all laws, ordinances and regulations affecting the Property;

(k) **Subrogation.** That Lender is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement(s) identified in the first paragraph of this Mortgage; and

(l) **Leases.** To pay and perform all obligations and covenants under and pursuant to the terms of each lease of all or any part of the Property required of Mortgagor, and to not cancel, accept a surrender of, modify, consent to an assignment of the lessee's interest under, or make any other assignment or other disposition of, any lease of all or any part of the Property or any interest of Mortgagor in the lease and to not collect or accept any payment of rent more than one month before it is due and payable.

9. Environmental Laws. Mortgagor represents, warrants and covenants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks; (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

10. Authority of Lender to Perform for Mortgagor. If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, including without limitation, preserving and insuring the Property, not committing waste or abandoning the Property, keeping the Property free of liens or encumbrances other than those approved by Lender, keeping the Property in good and tenantable condition and repair, and complying with all laws, ordinances and regulations affecting the Property, Lender may after giving Mortgagor any notice and opportunity to perform which are required by law, perform the covenants or duties or cause them to be performed, or take such other action as may be necessary to protect Lender's interest in the Property and to secure and repair the Property. Such actions may include, without limitation, assessing the value of the Property, paying liens that become superior to this Mortgage and making any other payments required, signing Mortgagor's name, engaging an attorney, appearing in court and paying reasonable attorneys' fees, and entering the Property to make repairs, change locks, replace and board up doors and windows, drain water from pipes, eliminate building code violations and dangerous conditions and maintain appropriate utilities to the Property. Any such amounts expended by Lender shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagor.

11. Default; Acceleration; Remedies. If (a) there is a default under any Obligation secured by this Mortgage, or (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants, warranties or duties contained in this Mortgage, then, at the option of Lender each Obligation will become immediately due and payable unless notice to Mortgagor or Borrower and an opportunity to cure are required by applicable law or the document evidencing the Obligation and, in that event, the Obligation will become due and payable if the default is not cured as provided in the document evidencing the Obligation or as otherwise provided by law. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

EXHIBIT C

12. Waiver and Consent. Lender may waive any default without waiving any other subsequent or prior default by Mortgagor. Each Mortgagor who is not also a Borrower expressly consents to and waives notice of the following without affecting the liability of any such Mortgagor: (a) the creation of any present or future Obligations, default under any Obligations, proceedings to collect from any Borrower or anyone else, (b) any surrender, release, impairment, sale or other disposition of any security or collateral for the Obligations, (c) any release or agreement not to sue any guarantor or surety of the Obligations, (d) any failure to perfect Lender's security interest in or realize upon any security or collateral for the Obligations, (e) any failure to realize upon any of the Obligations or to proceed against any Borrower or any guarantor or surety, (f) any renewal or extension of the time of payment, (g) any determination of the allocation and application of payments and credits and acceptance of partial payments, (h) any application of the proceeds of disposition of any collateral for the Obligations to any obligation of any Mortgagor or Borrower secured by such collateral in such order and amounts as it elects, (i) any determination of what, if anything, may at any time be done with reference to any security or collateral, and (j) any settlement or compromise of the amount due or owing or claimed to be due or owing from any Borrower, guarantor or surety.

13. Assignment of Rents and Leases. Mortgagor conveys, assigns and transfers to Lender, as additional security for the Obligations, all leases of all or any part of the Property, whether oral or written, now or hereafter entered into by Mortgagor, together with any and all extensions and renewals of any leases, and all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Until the occurrence of an event of default under this Mortgage or any Obligation, Mortgagor has a license to collect the rents, issues and profits (the "Rents") from the Property. Upon or at any time after the occurrence of such an event of default and the expiration of any applicable cure period described in paragraph 11, and lapse of any applicable grace, notice or cure period provided in any document evidencing such Obligation, the license granted Mortgagor to collect the Rents shall automatically and immediately terminate and Mortgagor shall hold all Rents (whether paid before or after an event of default) in trust for the use and benefit of Lender, and Lender may, at its option, without any further notice, either in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, collect all of the Rents payable under the leases. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Obligations. This Assignment shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver or possession of the Property. Any entering upon and taking possession of the Property, and collection of Rents, and any application of Rents as allowed by this Mortgage shall not cure or waive any default or waive, modify or affect notice of default under this Mortgage or invalidate any act done pursuant to such notice, and not in any way operate to prevent Lender from pursuing any other remedy which it now or hereafter may have under the terms or conditions of this Mortgage, any document evidencing any Obligation or any other instrument securing the Obligations.

14. Power of Sale. In the event of foreclosure, Lender may sell the Property at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.

15. Receiver. Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations, Mortgagor agrees that the court may appoint a receiver of the Property (including homestead interest) without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents, issues and profits, when so collected, to be held and applied as the court may direct.

16. Foreclosure Without Deficiency Judgment. If the Property is a one-to-four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provisions of §846.101 Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate of 20 acres or less six months after a foreclosure judgment is entered. If the Property is other than a one-to-four family residence that is owner-occupied at the commencement of a foreclosure, a farm, a church or owned by a tax exempt charitable organization, Mortgagor agrees to the provisions of §846.103, Wis. Stats., and as the same may be amended or renumbered from time to time, permitting Lender, upon waiving the right to judgment for deficiency, to hold the foreclosure sale of real estate three months after a foreclosure judgment is entered.

17. Expenses. Mortgagor shall pay all reasonable costs and expenses before and after judgment, including, without limitation, attorneys' fees, appraisal fees, fees and expenses for environmental assessments, inspections and audits, and fees and expenses for obtaining title evidence incurred by Lender in protecting or enforcing its rights under this Mortgage.

18. Successors and Assigns. The obligations of all Mortgagors are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagor(s) and their respective heirs, personal representatives, successors and assigns.

19. Interpretation. The validity, construction and enforcement of this Mortgage are governed by the internal laws of Wisconsin except to the extent such laws are preempted by federal law. All references in this Mortgage to sections of the Wisconsin Statutes are to those sections as they may be renumbered from time to time. Invalidity of any provision of this Mortgage will not affect the validity of any other provision. This Mortgage is intended by Mortgagor and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Mortgage. This Mortgage may not be supplemented or modified except in writing.

20. Other Provisions. (If none are stated below, there are no other provisions.)

(a) Borrower and Lender have entered into that certain Tax Incremental Financing Cash Grant and Developer's Performance Agreement dated as of 1/1/2022, with respect to the Property (as may be amended, restated supplemented, modified and replaced from time to time hereafter, the "Development Agreement"). The "Obligations" secured by this Mortgage are the obligations of Borrower under the Development Agreement to make "Shortfall Payments" and "Clawback Payments" (as each term is defined in the Development Agreement) to Lender as such payment obligations accrue each year pursuant to the Development Agreement. As noted in Paragraph 11 above, Lender may exercise any remedy available at law or equity for Borrower's failure to pay a Shortfall Payment or a Clawback Payment, and if Lender chooses not to foreclose this Mortgage for any given default, this shall not be deemed a waiver by Lender to foreclose this Mortgage at a later time for Borrower's failure to pay one or more Shortfall Payments or Clawback Payments.

(b) In addition to any defaults described in Paragraph 11 hereof, the occurrence of a default under the Development Agreement shall also be a default hereunder. To the extent the terms of this Mortgage conflict with the terms of the Development Agreement, the terms of the Development Agreement shall govern.

The undersigned agrees to the terms of this Mortgage and acknowledges receipt of an exact copy of this Mortgage.

Signed and Sealed as of _____
(Date)

3000 Forest Ave LLC

By: _____
Name:
Title:

STATE OF WISCONSIN)
)ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2021, _____, to me known to be the person who executed the foregoing instrument and to me known to be the _____ of 3000 Forest Ave LLC, a Wisconsin limited liability company, and acknowledged that he executed the foregoing instrument as such authorized representative of said entity and with its authority.

Name: _____
Notary Public, State of Wisconsin
My Commission expires: _____

EXHIBIT E

PRELIMINARY PROJECT BUDGET

UPDATED 2-07-22		Summary			2/7/2022
TWO RIVERS					
Draw Spread Sheet - FOREST AVENUE APTS					
CATEGORY	TOTAL BUDGET	Prior Adjustments	Current Adjustments	Current Budget	OWNER EQUITY - Invoices & Closing Costs
15 UNIT BUILDING 1	1,285,954.00	66,229.30	0.00	1,592,966.62	
15 UNIT BUILDING 2	1,285,954.00	66,229.30	0.00	1,631,105.90	
15 UNIT BUILDING 3	1,285,954.00	66,229.30	0.00	1,703,923.12	
The above are cost of similar 15 unit buildings completed in 2021					
Sitework		0.00	0.00	562,482.54	
Soft Costs		0.00	0.00	127,686.64	
Contingency			0.00	0.00	
Detached Garages		0.00	0.00	0.00	
		0.00	0.00	0.00	
Land Costs & Closing	0.00	0.00	0.00	300,000.00	
TOTAL	3,857,862.00	198,687.90	0.00	5,918,164.82	0.00
Contingency (15%)			0.00	6,805,889.54	
			Loan Funds		

--MEMORANDUM--

TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: March 25, 2022

SUBJECT: APPLICATION TO WISDOT FOR FY 2022 LOCAL STREETS FUNDING
FROM BIPARTISAN INFRASTRUCTURE LAW

As Council members may recall from discussions at the Personnel/Finance and Public Works Committees, as well as some discussion at regular Council meetings, the State in late January announced two rounds of local streets project solicitations for investing the Bipartisan Infrastructure Law (BIL) funding that is flowing to WisDOT from Washington.

Because the State is under pressure to get Federal Fiscal Year 2022 monies “obligated” by September 30, projects submitted for that first round of funding (application deadline April 1) need to be simple projects, with design work already completed or able to be complete quickly. Accordingly, WisDOT will NOT help pay for project design work in this round, and will NOT fund projects that involve utility work, have right-of-way issues, have any environmental issues, or include sub-grade work. Basically, they are looking for asphalt resurfacing projects, either “mill and fill” or overlaying existing pavement.

(Note: a second round of applications is due by June 1, for projects in FY’s 2023-2026. Those projects can include engineering work as an eligible expense and can be more complicated projects that involve utility work and full street reconstruction. We will be back to talk with the City Council about those potential projects in April or early May.)

It should also be noted that this program is for “local streets” and therefore excludes the State Highway segments that pass through the City, as well as the more heavily-travelled City streets that are classified as “Collector streets.”) The street potentially eligible for funding are those shown in purple on the attached map.

While there are only a limited number of City streets where doing the type of work included in the FY 2022 round of funding makes sense (usually there is a good amount of underground utility work involved), we as a staff have taken a serious look at how this program might be used to Two Rivers’ benefit—after all, it’s 80 percent Federal funding for the construction work, and we suspect that this round of funding may be less competitive than the round for FY 2023-2026 projects.

Again, for this FY 2022 round of funding, applications are due by April 1, and the State expects to announce project selections in May. Plans and specifications will need to be delivered to the

State by August 1, for bidding as “State-let” projects in November 2022. Construction will happen during the 2023 construction season.

Based on review by Engineering and Water Utility staff, in consultation with my office, we have identified several street projects that might be worthwhile applications. We plan to review those projects with you at the work session on Monday night. Those projects basically fall into two categories, as follows:

1. Streets where lead water service laterals require replacement, but little or no other utility work is needed, where the City can target funds already awarded for 2022 “scattered site” lead lateral replacement (50 total) to get services replaced this year (and the street temporarily patched), in advance of resurfacing in 2023. Those streets include:
 - A. Jefferson Street from 22nd to 25th (includes estimated 24 lead laterals)
 - B. School Street from 10th to 14th (includes estimated 18 laterals)
2. Streets with no lead lateral issues, where an asphalt overlay would improve and extend pavement life. Those streets include:
 - A. Pierce Street through Neshotah Park, 22nd to Zlaknik (no utilities)
 - B. All of the paved streets off Memorial Drive, south of Columbus (no lead services in this area, which only got City water in the 1980’s)

As shown in the attached spreadsheet, we expect that these applications, if funded, would leverage \$1,471,192 in Federal funding for street paving, with the local cost for that paving estimated at \$375,008. Add in \$100,000 for design, plans and specs (more expensive than typical, as plans and specs will need to be done to WisDOT standards), and the local cost comes to an estimated \$475,000. That’s still about 75 percent Federal funding for the resurfacing work on these streets.

As for utility work on the two streets where service laterals are being replaced, it will come from funds already budgeted for the “scattered site” lateral replacements.

While some of the streets in the areas off Memorial Drive have decent pavement condition, overlays as proposed would probably buy another 20-25 years of life for these streets, since the underground utilities in this area are relatively new. If there were to be strong “push-back” against special assessments that would be required to cover the local cost of the street resurfacing in this area (assessments that would probably be in the range of \$15 to \$20 per front foot and could be repaid over 10 years, per City policy), then the application for these streets could be withdrawn.

I encourage you to drive the streets in question over the coming weekend, if you have time, in preparation for our discussion on Monday night.

WisDOT / DTIM
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January 19, 2022

Dear Local Government Partners,

Wisconsin Department of Transportation (WisDOT) is asking local governments to review existing local program project opportunities in a new statewide effort to use expected federal Bipartisan Infrastructure Law (BIL) funding. While the exact amount of additional funding is unknown, solid planning estimates show the increase will be significant. Once final funding amounts are known from the United States Department of Transportation, WisDOT will submit a funding distribution plan to the Wisconsin State Legislature for review and approval, or modification and approval.

Time is of the essence in planning for the use of 2022 federal funding. Accordingly, WisDOT announced at the Wisconsin County Highways Association Road School on 1/18/22 that solicitations for local program projects will begin this month to prepare for use of BIL funding.

WisDOT will start with two solicitations for supplemental local program projects – a January 2022 solicitation to generate a list of construction projects that might be able to utilize the Federal Fiscal Year (FFY) 2022 funding, and a February 2022 solicitation to generate a list of design and construction projects to utilize funding in FFY 2023 - 2026. The BIL is a five-year bill covering FFY 2022 through 2026.

What Must Be Done to Apply for FFY 2022 Funding – The January Solicitation

To apply for the January 2022 solicitation, local governments must move very quickly. The Federal Highway Association (FHWA) requires FFY 2022 funding to be “obligated” by September 30th, 2022. As such, to use the FFY 2022 funding, WisDOT will be soliciting for local program construction projects only; design will not be considered in the January solicitation. If a construction project is selected to use FFY 2022 funding, locals must submit project Plan, Specification, and Estimate (PS&E) packages no later than August 1, 2022 to facilitate project construction lettings that will meet federal obligation deadlines.

To meet the tight timelines to use FFY 2022 federal funding for construction, these projects must have designs completed or designs that could be completed quickly. Project applications submitted in the January 2022 solicitation must also be eligible for federal funding. As stated earlier, project design funding will not be considered until the February local program solicitation. The January solicitation will exclusively focus on construction projects. Examples of construction projects typically eligible for federal funding include:

- Preservation – mill & overlay
- Resurface
- Pavement Replacement
- Bridge Rehabilitation – deck repairs
- Bridge Replacement – replace deck, girders, or abutments



For the January 2022 solicitation, it is recommended to avoid projects with complexities that would add time to the construction readiness process. For example, it would be prudent to avoid projects with significant environmental work, real estate, utility, or railroad issues.

In January, WisDOT will be soliciting for projects in the following programs:

- Surface Transportation Program (STP)
- Local Bridge Improvement Assistance Program

WisDOT will be using the current Transportation Alternatives Program (TAP) and Congestion Mitigation and Air Quality Program (CMAQ) solicitation processes to evaluate project readiness for these two separate programs for FFY 2022. If you have questions about the FFY 2022 TAP or CMAQ programs, please contact WisDOT.

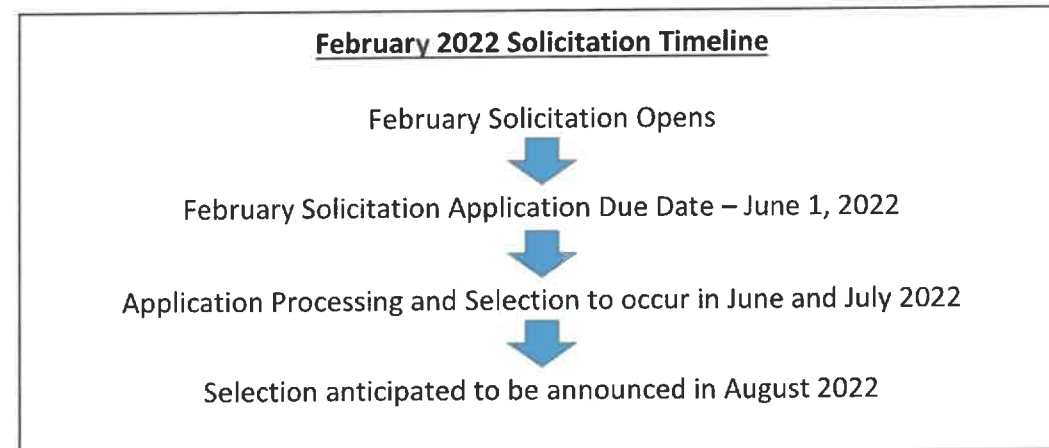
Please also note that while FFY 2022 Local Bridge projects will be included in the January solicitation, FFY 2022 BIL bridge funding does not have to be obligated by 9/30/2022, like it does for STP. Therefore, applicants have more time to submit bridge applications and could elect to utilize the February 2022 BIL supplemental local project solicitation for those bridge projects.

What Must Be Done to Apply for FFY 2023 Through 2026 Funding – The February Solicitation

The February 2022 supplemental solicitation will start the application process for local design and construction projects seeking to receive funding in FFY 2023 and beyond. Project applications will be considered in the following programs:

- Surface Transportation Program (STP)
- Local Bridge Improvement Assistance Program
- Transportation Alternatives Program (TAP)
- Congestion Mitigation and Air Quality (CMAQ)

Applications may be submitted for design and construction, or construction only. Projects must be eligible for federal funding.



WisDOT greatly appreciates your time and diligence in working on this call for supplemental local program projects. Both the January and February solicitations are meant to provide WisDOT with a list of candidate projects when the new BIL funding becomes available. It is expected that funding amounts will be posted to the WisDOT Local Programs website when WisDOT has the Wisconsin Legislature’s approval to utilize federal dollars. Project selections are expected to be announced between May and August, depending upon the solicitation. Notification of project selection will be in both follow up emails to local governments and on the WisDOT website. WisDOT will continue to release updated program information as it becomes available.

In the next week, more details will be posted on WisDOT’s website about the solicitations at www.wisconsindot.gov. We are working to best position Wisconsin to administer and use the federal dollars, when directed, to the best of our abilities. Working together with you, our local partners, we will improve the transportation network across Wisconsin.

Sincerely,

Jennifer Murray, AICP
 Director – Bureau of Transit, Local Roads, Railroads & Harbors
 Division of Transportation Investment Management



City of Two Rivers
Potential Street Projects
Utilization of DOT - Bipartisan Infrastructure Law Funds

STREET NAME	LIMITS	LENGTH OF PROJECT CL TO CL (FT)	# Laterals	DOT Program/ Year	PASER Rating (10=good)	Width	Roadway Material / Year	Roadway Cost			Public Lateral Cost	Private Lateral Cost	Total Project Cost
		QTY			Scale 1-10	Ft		DOT Fund	City Funds	Total Cost			
Pavement Resurfacing Streets (Mill & Resurface - Asphalt)										170			
Jefferson Street	22nd to 25th	1080	24	STP - L - 22	3,6	28	Asph/1978	\$ 146,880	\$ 36,720	\$ 183,600	\$ 228,000	\$ 204,000	\$ 615,600
Pierce Street	Zlatnik to 22nd	1230	0	STP - L - 22	7,5	29	Asph/1980	\$ 161,512	\$ 47,588	\$ 209,100	\$ -	\$ -	\$ 209,100
School Street	10th to 14th	1450	18	STP - L - 22	6	23	Asph/79/67	\$ 197,200	\$ 49,300	\$ 246,500	\$ 171,000	\$ 153,000	\$ 570,500
Sub Total	6	3760	42					\$ 505,592	\$ 133,608	\$ 639,200	\$ 399,000	\$ 357,000	\$ 1,395,200
Taylor Street	STH 42 to Terminus	740		STP - L - 22	2	22	Asph/1981	\$ 100,640	\$ 25,160	\$ 125,800	\$ -	\$ -	\$ 125,800
Jessie Street	STH 42 to Terminus	475		STP - L - 22	4	22	Asph/1981	\$ 64,600	\$ 16,150	\$ 80,750	\$ -	\$ -	\$ 80,750
Lakeview Avenue	Woodland Shores to Taylor	920		STP - L - 22	7,6,8	22	Asph/1981	\$ 125,120	\$ 31,280	\$ 156,400	\$ -	\$ -	\$ 156,400
Eleonor Street	STH 42 to Terminus	423		STP - L - 22	7	22	Asph/1981	\$ 57,528	\$ 14,382	\$ 71,910	\$ -	\$ -	\$ 71,910
Woodland Shores	STH 42 to Terminus	581		STP - L - 22	6	22	Asph/1981	\$ 79,016	\$ 19,754	\$ 98,770	\$ -	\$ -	\$ 98,770
Florence Street	STH 42 to Terminus	739		STP - L - 22	6	22	Asph/1981	\$ 100,504	\$ 25,126	\$ 125,630	\$ -	\$ -	\$ 125,630
Gardner Street	STH 42 to Terminus	528		STP - L - 22	7	22	Asph/1981	\$ 71,808	\$ 17,952	\$ 89,760	\$ -	\$ -	\$ 89,760
Davis Street	STH 42 to Terminus	845		STP - L - 22	8	22	Asph/1981	\$ 114,920	\$ 28,730	\$ 143,650	\$ -	\$ -	\$ 143,650
McKinley Street	STH 42 to Terminus	951		STP - L - 22	7	22	Asph/1981	\$ 129,336	\$ 32,334	\$ 161,670	\$ -	\$ -	\$ 161,670
Turner Street	STH 42 to Terminus	898		STP - L - 22	6	22	Asph/1981	\$ 122,128	\$ 30,532	\$ 152,660	\$ -	\$ -	\$ 152,660
Mem Dr SubTotal	10	7,100.00	0					\$ 965,600	\$ 241,400	\$ 1,207,000	\$ -	\$ -	\$ 1,207,000
Total - Resurface Street	16	10,860.00	42					\$ 1,471,192	\$ 375,008	\$ 1,846,200	\$ 399,000	\$ 357,000	\$ 2,602,200

--MEMORANDUM--

TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: March 25, 2022

**SUBJECT: PROPOSED COOPERATIVE AGREEMENT BETWEEN CITY AND
COOL CITY BREWING COMPANY, RELATIVE TO USE OF PARKING
AREAS AND RELATED MATTERS**

With the opening of Cool City Brewing Company scheduled for later this year in the former Wells Fargo Bank building on East Park Street, there has been dialogue between representatives of that business and the City regarding possible cooperation in the use of off-street parking areas, placement of dumpsters, etc.

Please refer to the attached summary of matters that might be the subject of a cooperative agreement between the City and Cool City Brewing Company. We would like to discuss these matters at Monday night's work session, and get Council direction regarding a possible cooperative agreement between the City and CCB. Jared Rohrer of Parks and Recreation will be present to assist in answering any questions you might have.

There are also matters related to parking and traffic on the public streets adjacent to CCB that will require the Council's attention

City Staff Recommendations Based on Meeting Between City Staff and Cool City Brewing Representatives 2/14/2022

--For City Council at March Work Session

- Allow CCB to place a 6-yard dumpster near the City's current dumpster location in Community House parking lot.
- Determine based on volume, frequency of pickups (Manitowoc Disposal)
- City dumpster will be locked; all CCB refuse to go in CCB dumpster.
- City to relocate shed to accommodate dumpster; shed to be placed in southwest corner of the CCB-owned parking lot on Adams Street.
- CCB to allow City to park vehicles in 10 designated spaces in CCB's Adams Street lot.
- City to allow CCB dedicated parking along east wall in Community House parking lot, currently occupied by City vehicles (10 spaces).
- Other Community House parking lot to be signed as public parking on evenings and weekends
- CCB and City to cooperate in working with contractor to stripe lots (each to pay the cost for striping their own lots)
- Signage designating CCB and Public parking, Community House and Adams Street lots— signs to be fabricated and installed by City, with cost of signs and installation split 50/50 with CCB.
- Work with City when Senior Center trips require long term parking)
- CCB plans to add signs to lot at NE corner of 18th/Adams lot, designating Employee only parking (City has no responsibilities relative to this lot).
- City to take care of all snow maintenance on Community House and Adams Street lots.
- Put in the form of a 5-year letter of agreement, with either party able to terminate the agreement at its sole discretion on 12 months notice.

Traffic and parking regulation matters on City streets adjacent to CCB, to be addressed separately by action of the City Council:

- Install "No Parking / Delivery-Loading Zone" signs along 18th adjacent to CCB Kitchen entry. Dedicated times M-F TBD.
- West Park (Project 365)
 - 11 parking spots planned – 2 Handicapped, suggest two most northernmost spots.
 - 2 Hour parking -5PM signs like downtown.
 - No Parking in front of CCB.
 - Speed Limit 15 MPH

