Village Board

Special Meeting Notice and Agenda

Village of Cross Plains
2417 Brewery Road, PO Box 97
Cross Plains, WI 53528
(608) 798-3241

Thursday, March 5, 2020
5:30 pm

I. Call to Order, Roll Call, and Pledge of Allegiance

II. Public Comment – This is an opportunity for anyone to address the Village Board on any issue NOT on the current agenda. *Please observe the time limit of 3 minutes.* While the Village Board encourages input from residents, it may not discuss or act on any issue that is not duly noticed on the agenda.

III. General Business

1. Discussion and Possible Action Regarding the Assignment for the Zander Place Developer's Agreement. PDF pg 3-16

2. Discussion and Possible Action Regarding the Temporary Limited Easement for Zander Place (Document No. 5179739). PDF pg 17-25

3. Discussion and Possible Action Regarding Amending the Environmental Corridor. PDF pg 26

IV. Adjournment

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No 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. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the Village Hall at (608) 798-3241 or bchang@cross-plains.wi.us.

Village of Cross Plains
PO Box 97, 2417 Brewery Road
Cross Plains, WI 53528
Phone: (608) 798-3241 ext. 107
Fax: (608) 798-3817

Memorandum

To: Village Board of Trustees
From: Bill Chang, Village Administrator/Clerk
Date: March 4, 2020
Re: Village Board Meeting – **March 5, 2020; 5:30 pm**

III. <u>General Business</u>

1. **Discussion and Possible Action Regarding the Assignment for the Zander Place Developer's Agreement.** – For approval. Zander Place is being sold to Zander 51, LLC and Zander 49, LLC. This document would assign the rights and responsibilities of the Developer's Agreement from the current owners to the buyers. The closing is on March 11th.

2. **Discussion and Possible Action Regarding the Temporary Limited Easement for Zander Place (Document No. 5179739).** – For approval. The Village received temporary easements from Zander Place for the construction of utilities during the Hwy 14 reconstruction, which were to expire at the conclusion of the project. Zander is asking that the Village execute the necessary paperwork to extinguish the easement per section 3 of the easement.

3. **Discussion and Possible Action Regarding Amending the Environmental Corridor.** – For approval. Staff has identified several areas within the Village's currently mapped Environmental Corridor that had been designated, but not for an environmentally sensitive area (i.e. wetland, flood plain, stream). These areas already have some type of development on it. Staff is requesting that the Village Board approve the Village Administrator the authority to officially request these areas to be removed from the Environmental Corridor. The Environmental Corridor can be found by clicking on this link.

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("***Assignment***") is dated and effective as of March 5, 2020, by and among Tukka Properties, Inc., a Wisconsin corporation ("***Assignor***"); Zander 51, LLC, a Wisconsin limited liability company; and Zander 49, LLC, a Wisconsin limited liability company (collectively, the "***Assignee***"). The Village of Cross Plains, Wisconsin (the "***Village***") joins in executing this document for the purpose of consenting to the Assignment.

RECITALS:

WHEREAS, the Village and West Gateway, Inc., a Wisconsin corporation ("***West Gateway***"), entered into that certain Development Agreement dated July 28, 2014, regarding West Gateway's, or its assigns, agreement to construct a multifamily residential apartment complex located at 1300 Main Street, in the Village of Cross Plains, Dane County, Wisconsin (the "***Property***"), as assigned pursuant to that certain Assignment dated January 26, 2017, by and among Planning Adelphia LLC, a Wisconsin limited liability company; West Gateway, and the Village (collectively, the "***Development Agreement***," a copy of which is attached hereto as **Exhibit A**); and

WHEREAS, Assignor has informed the Village that it desires to assign its interests under the Development Agreement to Assignee and Assignee hereby desires to accept and be bound by the terms and conditions of the Development Agreement; and

WHEREAS, the Village is willing to consent to the assignment of the Development Agreement from Assignor to Assignee.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and such other good and adequate consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows

AGREEMENT:

1. Recitals Incorporated. The Recitals set forth above are incorporated into and made part of this Assignment.

2. Assignment. As of the effective date of this Assignment, Assignor hereby assigns to Assignee all of its rights and obligations under the Development Agreement.

3. Assumption. As of the effective date of this Assignment, Assignee hereby accepts the foregoing assignment of, and hereby assumes from Assignor, all rights and obligations under the Development Agreement.

4. Development Incentive Payment. For avoidance of doubt, any portion of the Development Incentive Payment previously paid by the Village to West Gateway or Assignor shall be retained by those parties.

5. General.

(a) No term or provision of this Assignment may be amended, waived or terminated orally, but only by an instrument signed by the parties hereto.

(b) This Assignment may be executed in one or more counterparts and each of such counterparts shall be deemed an original, and all of such counterparts shall together constitute one and the same instrument. Each set of executed counterparts shall be an original. Executed counterparts may be delivered by email or facsimile transmission.

(c) This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(d) This Assignment shall be governed by and construed in accordance with the laws of the State of Wisconsin.

[SIGNATURES ON NEXT PAGE FOLLOWING]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

TUKKA PROPERTIES, INC.,
a Wisconsin corporation

By: _____
Thomas R. Pientka, President

ASSIGNEES:

ZANDER 51, LLC,
a Wisconsin limited liability company

By: _____
Thomas R. Pientka, Sole Member

ZANDER 49, LLC,
a Wisconsin limited liability company

By: _____
James M. Pientka, Sole Member

CONSENT TO ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

The Village of Cross Plains hereby consents to the assignment by Assignor of all of its rights and obligations under the Development Agreement, and acknowledges that Assignee henceforth shall assume all rights and obligations under the Development Agreement, and the Village releases Assignor from all obligations under the Development Agreement.

VILLAGE OF CROSS PLAINS

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

[SIGNATURE PAGE FOR ASSIGNMENT AND ASSUMPTION OF DEVELOPER'S AGREEMENT]

<u>EXHIBIT A</u>

DEVELOPER'S AGREEMENT

[See attached]

DEVELOPMENT AGREEMENT

BETWEEN

VILLAGE OF CROSS PLAINS, WI

AND

WEST GATEWAY, INC.

THIS AGREEMENT entered into this 28th day of July, 2014 by and between the Village of Cross Plains, WI (hereinafter referred to as VILLAGE) whose principal place of business is 2417 Brewery Road, Cross Plains, WI 53528, a Wisconsin municipal corporation, and West Gateway, Inc., or its assigns (hereinafter referred to as DEVELOPER) whose principal place of business is 901 Deming Way, Suite 102, Madison, WI 53717, a Wisconsin Corporation.

RECITALS

WHEREAS, Developer intends to purchase Parcel #0707-032-4473-5 (1206 Main Street, Cross Plains, WI), Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI), Parcel #0707-032-4393-1 (1300 Main Street, Cross Plains, WI), Parcel #0707-032-4412-8 (1306 Main Street, Cross Plains, WI), Parcel #0707-032-4425-1 and Parcel #0707-032-4421-1 (collectively 1310 Main Street, Cross Plains, WI) collectively the "Development Property";

WHEREAS, Developer desires to construct a 68,885 square foot (approximate), 45-unit, three-story apartment building, and associated site improvements, on the Development Property (hereinafter sometimes referred to as the "Facility");

WHEREAS, the Village desires to assist Developer in the construction of the Facility as shown in the attached Exhibit B and incorporated herein by reference;

WHEREAS, the Village has created Tax Incremental Financing District #3 pursuant to Wis. Stat. § 66.1105, which provides authority and establishes procedures by which the Village may exercise powers necessary and convenient to carry out the purposes of the Tax Increment Law, including Developer Incentives and which includes a Project Plan, which Project Plan, as so approved, and as may be amended from time to time, is hereby incorporated by reference into this Agreement and which is on file at the Village;

WHEREAS, development of the Facility within the boundaries of TID#3 will benefit the community through the elimination of blight, unhealthy, or unsafe conditions; increased property values and tax revenue; diversifying the Village's housing supply; and the promotion of economic opportunity;

WHEREAS, said Facility cannot occur without the assistance of the Village, as set forth in this Agreement;

WHEREAS, the Village believes that improvements to the Development Property within TID#3 is in the best interests of the Village and its residents and in accordance with the public purposes and conditions of applicable State and local laws;

WHEREAS, the Village believes that improvements to the Development Property within TID#3 is in the best interests of the Village and its residents and in accordance with the public purposes and conditions of applicable State and local laws;

WHEREAS, this Agreement is intended to outline the duties and responsibilities of the Village and Developer in order to facilitate the construction of the Facility within TID#3;

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each does hereby covenant and agree with the others as follows:

ARTICLE I DEFINITIONS

As used in this Agreement or in the Exhibits attached hereto, the following terms, shall have the following meanings:

AGREEMENT: The Development Agreement by and between the Village and Developer, which is this Agreement as amended and supplemented from time to time.

DEVELOPER: West Gateway, Inc. who intends to acquire Parcel #0707-032-4473-5 (1206 Main Street, Cross Plains, WI), Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI), Parcel #0707-032-4393-1 (1300 Main Street, Cross Plains, WI), Parcel #0707-032-4412-8 (1306 Main Street, Cross Plains, WI), Parcel #0707-032-4425-1 and Parcel #0707-032-4421-1 (collectively 1310 Main Street, Cross Plains, WI) collectively the "Development Property".

DEVELOPMENT COST: Those costs authorized pursuant to Wis. Stat. §66.1105 and as enumerated in the development budget set forth in Section E of Exhibit A.

DEVELOPMENT INCENTIVE: Shall have the meaning as applied in the Project Plan of Tax Increment Financing (TIF) District #3, and subsequent amendments.

DEVELOPMENT INCENTIVE PAYMENT: A payment made by the Village to the Developer as an incentive to construct the Facility on the Development Property.

DEVELOPMENT PROPERTY: The real property described in Exhibits A & B to this Agreement, including land and improvements, known as Parcel #0707-032-4473-5 (1206 Main Street, Cross Plains, WI), Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI), Parcel #0707-032-4393-1 (1300 Main Street, Cross Plains, WI), Parcel #0707-032-4412-8 (1306 Main Street, Cross Plains, WI), Parcel #0707-032-4425-1 and Parcel #0707-032-4421-1 (collectively 1310 Main Street, Cross Plains, WI).

EXHIBIT A. Tax Incremental Financing Application, 2014-02, as submitted by Developer, and approved by the Village.

EXHIBIT B. The Specific Development Plan (SDP) as allowed under the Planned Development District-Residential Zoning District and as approved by the Village of Cross Plains Village Board for the Facility and the Development Property.

FACILITY: The construction of a 68,885 square foot (approximate), 45-unit, three-story apartment building, and associated site improvements, by the Developer within the Village Tax Increment District #3 described in Exhibits A and B.

SITE IMPROVEMENTS: The plan for site and building improvements to the Development Property described in Exhibit A and Exhibit B.

TID#3: Village of Cross Plains Tax Increment District #3 and Project Plan adopted by the Village, as certified by the Wisconsin Department of Revenue.

VILLAGE: The Village of Cross Plains, Wisconsin, a Wisconsin municipal corporation.

ARTICLE II VILLAGE OBLIGATIONS

In order to assist with the construction of the Facility and as an incentive to the Developer, the Village agrees to undertake the following obligations:

A. PROPERTY ACQUISTION. The Village agrees to purchase Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI) for a purchase price not to exceed $52,104.00, and close on the sale on or before July 1, 2014.

B. LAND TRANSFER. The Village agrees to sell to Developer Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI) for the sum of $1.00 on or before December 31, 2014.

C. DEVELOPMENT INCENTIVE PAYMENT. As a Development Incentive, the Village agrees to pay to Developer a onetime payment of $ $1,130,000. This Agreement and the Developer Incentive Payment herein shall be a special and limited obligation of the Village and not a general obligation of the Village.

D. ENVIRONMENTAL REMEDIATION GRANT AND BROWNFIELDS FUNDING. The Village agrees to assist the Developer in coordinating application of grant funding through the Wisconsin Economic Development Corporation for environmental remediation of the Development Property. All environmental remediation grant and/or brownfields funding received by the Village or Developer in support of environmental remediation of the Development Property shall be paid to the developer. The developer will lead this effort with support from the Village and his Consultants. The Village will have no obligation for consultant expenses.

E. PAYMENT DATES. Payments under Article II, Section C shall be due on or before September 30, 2014.

F. PUBLIC IMPROVEMENT. The Village shall construct as a public improvement a pedestrian bridge across Black Earth Creek to connect the Development Property to the trail system within Zander Park upon receipt of Developer's contribution detailed in Article III, Section F.

G. PROPERTY ASSESSMENT. The Village agrees to uniformly apply tax assessment procedures and practices with respect to the Development Site and the Development Property in accordance with state law regarding property tax assessments.

ARTICLE III DEVELOPER OBLIGATIONS

In consideration of the obligations of the Village as set forth herein, the sufficiency and receipt of which is hereby acknowledged, Developer shall:

A. PROPERTY ACQUISTION. The Developer shall acquire Parcel #0707-032-4473-5 (1206 Main Street, Cross Plains, WI), Parcel #0707-032-4393-1 (1300 Main Street, Cross Plains, WI), Parcel #0707-032-4412-8 (1306 Main Street, Cross Plains, WI), Parcel #0707-032-4425-1 and Parcel #0707-032-4421-1 (collectively 1310 Main Street, Cross Plains, WI). Proof of land ownership shall be provided to the Village prior to receiving Development Incentive Payments described in Article II, Section C of this Agreement.

B. LAND TRANSFER. The Developer agrees to purchase Parcel #0707-032-4484-2 (1214 Main Street, Cross Plains, WI) from the Village for the sum of $1.00 for redevelopment of the property.

C. ENVIRONMENTAL REMEDIATION. The Developer shall be responsible for all costs and work to demolish the existing structures on the Development Property and for all environmental remediation required to demolish the existing structures and construct the Facility as described in Exhibit B.

D. ENVIRONMENTAL REMEDIATION GRANT AND BROWNFIELDS FUNDING. The Developer agrees to assist the Village in coordinating application of grant funding through the Wisconsin Economic Development Corporation for environmental remediation of the Development Property. Any environmental remediation grant and/or brownfields funding received by the Developer shall be paid to the Developer. The Developer will lead this effort with support from the Village and his Consultants. The Village will have no obligation for consultant expenses.

E. CONSTRUCT PRIVATE DEVELOPMENT. Before January 1, 2016, Developer shall complete the construction of the Facility according to the plans (Exhibits A & B), which are incorporated herein by reference. The Developer shall expend Development Costs resulting in the assessed value (land + improvements) of the Development Property of not less than $4,000,000.00 (including personal property). Failure by the Developer to purchase the Development Property and complete the construction of the Facility according to the plans (Exhibits A & B) shall be deemed a breach of this Agreement and the Developer shall repay to the Village all previous Development Incentive Payments.

F. PUBLIC IMPROVEMENT PAYMENT. Developer will provide to the Village a lump sum not to exceed payment of $50,000.00 to be used for the construction of a pedestrian bridge over Black Earth Creek as detailed in Article II, Section F.

G. FINANCING. The Developer shall provide to the Village proof of loan and financing approval from State Bank of Cross Plains for purchase of the Development Property and the construction of the Facility.

H. PENALTIES AND FEES. If the Developer does not construct or cause to be constructed the Facility and associated improvements that result in at least $4,000,000.00 of assessed value of land and improvements (including personal property) on the Development Property by January 1, 2016 or at any time during the term of this Agreement the Development Property does not maintain at least a $4,000,000.00 of assessed value of land and improvements (including personal property), the Developer agrees to provide the Village a payment equal to the difference between the projected tax revenues from all taxing jurisdictions anticipated if the $4,000,000.00 of land and improvements assessed value guarantee on the Development Property had occurred less the actual amount of tax revenues generated from the land and improvements on the Development Property. The penalty and fee shall continue to be enforced in each calendar year the Development Property does not maintain at least a $4,000,000.00 of assessed value of land and improvements (including personal property). The Facility and associated improvements shall be completed before January 1, 2016. The penalty shall first apply to the 2016 property assessment, 2017 property tax payments, and continue each year thereafter until termination of this Agreement. If the Facility and associated improvements result in an assessed value of land and improvements exceeding $4,000,000, taxes paid on the amount exceeding $4,000,000 will offset, by a corresponding amount, any future penalty and fee.

I. PAYMENT OF PROPERTY TAXES & FEES. The Developer shall timely pay all annual property taxes in full for the Development Property. Any fees imposed on the Developer as described in Article III, Section H of this Agreement, shall be paid to the Village by December 31st in any year in which the penalty and fees applies. Failure by the Developer to pay annual property taxes or fees shall be deemed a breach of this Agreement and the Developer shall repay to the Village all previous Development Incentive Payments.

J. USE OF DEVELOPMENT SITE. The Developer shall obtain all necessary zoning, building, or engineering permits and approvals from the Village, and applicable state or federal agencies. The Facility and use of the Development Property shall at all times conform to the Village Zoning Code, Building Code, and all other Village ordinances, together with applicable state and federal laws and regulations.

K. OBLIGATION TO MAINTAIN AND REPAIR FACILITY. Developer shall at all times after construction of the Facility, or any part thereof, keep and maintain the Facility in good repair and maintenance. Developer shall also make or cause to be made from time to time all necessary repairs thereto so as to maintain the Facility in its intended use and usable form, absent ordinary wear and tear.

L. INSURANCE. Developer, its successors and assigns, shall purchase or cause to be purchased and continually maintain in effect, insurance against such risks, both generally and specifically, with respect to the Facility in such amounts to allow Developer to reconstruct the Facility in the event of damage or destruction and which shall include, but not be limited to: Casualty Insurance, Comprehensive General Liability Insurance, Physical Damage Insurance, Builder's Risk Insurance, and all other forms of insurance required by the State of Wisconsin for entities such as the Developer from time to time during construction and operation of the Facility. In the event the Facility is damaged or partially or fully destroyed, Developer shall cause the insurance proceeds from such loss to be used to promptly repair, replace, reconstruct, and restore the Facility to its original condition.

M. INDEMNIFICATION/HOLD HARMLESS. The Developer, during the term of this agreement, shall defend, indemnify and hold the Village, its elected and appointed officials, officers, employees, authorized representatives or volunteers and each of them harmless from and against all losses, suits, actions, damages, demands, interest, attorney fees, claims, liabilities, expenses and costs of whatsoever kind or nature whether arising before, during or after completion of the Facility and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive, of Developer or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement or in any way related to the Facility or Development Property.

N. PAYMENT OF PROFESSIONAL FEES. Developer shall pay the actual cost incurred by the Village for all professional fees and costs related to the review and approval of the Facility (Exhibit B), Tax Incremental Financing Application (Exhibit A), and this agreement. The Village expects this amount not to exceed $10,000.00.

O. TRANSFER RESTRICTION DURING TERM OF THIS AGREEMENT. In addition to any other limitation on assignment or sale of the Development Property or any portion thereof, if prior to termination of this Agreement, Developer intends to sell, transfer or convey the Development Property or any portion thereof to any person or entity in any manner which would render the Development Property exempt from property taxation, the Developer shall repay to the Village all previous Development Incentive Payments to the Village on or before the date of sale. Developer shall obtain the prior express written consent of the Village for such sale, transfer or conveyance. Should Developer sell, transfer or convey the Development Property or any portion thereto prior to the termination of this Agreement, Developer's obligations herein shall not be released unless the Village has entered into an agreement with the purchaser acceptable to the Village.

P. RIGHT OF ACCESS. The Developer shall grant the Village right of access and utility easements to the Development Property, at no cost to the Village, for the purposes of installing public utility improvements, sidewalks, trails, or bridges as described in Exhibit B.

ARTICLE IV BINDING EFFECT/COMPLETE AGREEMENT

This Agreement shall inure to the benefit of and shall be binding upon the Village, the Developer and their respective successors and assigns. This Agreement represents the entire Agreement between Developer and the Village and shall not be amended, changed or modified except as provided herein. This Agreement shall not be affected, modified or impaired on the happening from time to time of any event, including without limitation, the following:

A. Failure to give notice to any party of default under the terms of the Agreement.

B. The waiver of payment or performance of any obligations contained in this Agreement.

C. The extension of time for payment of any amount or performance of any obligation under this Agreement.

D. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, compromise with creditors or readjustment of, or similar proceedings affecting Developer or its assets, any allegation or contest as to the validity of the Agreement in any such proceeding.

E. To the extent permitted by law, the release or discharge of Developer from the obligations or observation of any obligation, covenant or agreement contained in this Agreement or arising by operation of the law.

ARTICLE V AMENDMENT, CHANGES, MODIFICATIONS

This Agreement may be amended or any of its terms modified only by a written document duly authorized, executed and delivered by the Village and the Developer.

ARTICLE VI FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS

The Village and Developer agree that they will, from time to time, execute, acknowledge, deliver or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of this Agreement.

ARTICLE VII EXECUTION AND COUNTERPARTS

This Agreement may be simultaneously executed in several counterparts, each of which shall be original and all of which shall constitute one and the same instrument. Each party to this Agreement hereby expressly represents and warrants that it executes the Agreement with full and complete authorization of their respective entities.

ARTICLE VIII DEFAULT

A. REMEDIES ON DEFAULT. In the event of any default in or breach of this Agreement or any of its terms or conditions, by any party hereto or any successor in interest to such party, such party shall cure or remedy such default or breach within 60 days of written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same and specify the time period of not less than 60 days in which the default may be cured by the defaulting party. In case such action is not taken or is not diligently pursued or the defaulted breach cannot be cured or remedied within the aforesaid time, the non-defaulting party may institute such proceedings as may be necessary or desirable in its opinion to cure the default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. If such a proceeding is commenced, the prevailing party in such proceeding shall be entitled to recover from the other party its reasonable costs incurred in such proceeding, including attorney fees.

B. RIGHTS AND REMEDIES. The rights and remedies of the parties to this Agreement whether provided by law or provided by the Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any such remedies for the same event of default or breach or any other party. No waiver or breach of any term or condition of this Agreement shall operate as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

ARTICLE IX TERMINATION

This Agreement shall terminate and be of no further force and effect upon the earlier of:

A. Closure of TID#3 by the Village of Cross Plains, or,

B. December 31st, 2035, or,

C. By mutual agreement of the Village and Developer.

ARTICLE X MISCELLANEOUS

A. TRANSFER OF AGREEMENT. This Agreement shall be assignable by Developer with the consent of the Village Board of the Village of Cross Plains which consent shall not be unreasonably withheld. Should Developer sell, transfer or convey the Facility and Development Property prior to the termination of this Agreement, all subsequent owners of the Facility and Development Property shall be bound by the terms and conditions of this Agreement. It shall be the responsibility of the seller to notify the buyer of said Agreement, and conditions of transfer, prior to transfer of ownership. The Village hereby consents to the assignment of this Agreement to the State Bank of Cross Plains, or any subsequent Lender, as collateral for financing the purchase and development of the property.

B. ENFORCED DELAY. No party shall be considered in breach or default of its obligation in the event of enforced delay in the performance of such obligations due to causes beyond its control and without its fault including, but not restricted to: Acts of God, acts of the public enemy, acts of the Federal government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and severe weather. In the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the party shall be extended for the period of the enforced delay as determined by the other party, provided that the party seeking the benefit of the enforced delay shall have first notified the other party thereof and the cause or causes thereof and requested an extension of the period of the enforced delay.

C. WISCONSIN LAW/VENUE. This Agreement shall be deemed to have been made in the State of Wisconsin, and its validity, construction, performance, breach and operation shall be covered by law of the State of Wisconsin. Venue for any dispute involving this Agreement or any other document executed pursuant to this Agreement shall be in Dane County Circuit Court, Wisconsin.

D. NOTICES, DEMANDS. All notices, demands or other communications under this Agreement shall be sufficiently given or delivered when hand delivered or when mailed by first class mail, postage prepaid, as indicated below:

Village: Matt Schuenke
Village Administrator/Clerk-Treasurer
2417 Brewery Road
Cross Plains, WI 53528

Developer: Tom Pientka, President
West Gateway, Inc.
901 Deming Way, Suite 102
Madison, WI 53717

E. ENVIRONMENTAL. Nothing in this Agreement is intended to, nor shall result in, any alteration or modification of Developer's responsibility or liability for environmental clean-up or costs in accordance with applicable law.

F. SEVERABILITY. If any, part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or un-enforceability shall not affect the validity of any other part, term or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

G. NOT PRIVATE RIGHT OR CAUSE OF ACTION. Nothing contained herein shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

H. Nothing contained in this Agreement constitutes a waiver of the Village's sovereign immunity under applicable law. Moreover, nothing contained herein shall waive the rights and defenses to which the Village may be entitled under law, including all of the immunities, limitations, and defenses under Wis. Stats. §893.80 or any subsequent amendments thereof.

I. The Village does not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with the Developer.

J. The Village may record a copy of this Agreement, or a memorandum thereof, in the Register of Deeds Office. All costs of recording shall be paid by Developer.

ARTICLE XI EXECUTION

A. EFFECTIVE DATE. This Agreement shall be effective as of the date and year first written below.

IN WITNESS WHEREOF, the parties have executed this Agreement, or caused it to be duly executed, and effective this 31st day of JULY, 2014.

DEVELOPER
West Gateway, Inc.:

Tom Pientka, President

7.31.14, Date

STATE OF WISCONSIN)
)
DANE COUNTY)

Personally came before me this 31st day of July, 2014, the above-named persons to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin
My Commission (is)(expires): June 7, 2015

MICHAEL T. WALTERS NOTARY PUBLIC STATE OF WISCONSIN

VILLAGE OF CROSS PLAINS:

Pat Andreoni, President

7/30/2014, Date

Attest:
Matt Schuenke, Administrator/Clerk-Treasurer

Personally came before me this 30th day of July, 2014, the above-named persons to me known to be the persons who executed the foregoing instrument and acknowledged the same.

STATE OF WISCONSIN)
)
DANE COUNTY)

THOMAS MALONE NOTARY PUBLIC STATE OF WISCONSIN

Notary Public, Wisconsin
My Commission (is)(expires): 7-31-16

Reserved For Recording

Name & Return Address
Axley Brynelson, LLP
P.O. Box 1767
Madison, Wisconsin 53701-1767
Attn: D. Clarke Sugar

Parcel No: 113/0707-032-4501-1

TERMINATION OF EASEMENT

WHEREAS, Zander Place LLC, a Wisconsin limited liability company (the "***Owner***") is the owner of certain real property, a portion of which is subject to that certain Temporary Limited Easement dated June 2, 2015, and recorded in the office of the Register of Deeds of Dane County on August 27, 20215 as Document No. 5179739 (the ***"Easement"***); and

WHERAS, the Easement according to its terms applies to the parcel of land described on **Exhibit A** attached hereto and incorporated herein (the ***"Parcel"***); and

WHEREAS, the undersigned parties to the Easement (***"Parties"***) now wish to terminate the Easement.

NOW, THEREFORE, the Parties agree as follows for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each of the Parties:

1. Termination of Easement. The undersigned parties agree that the Easement is hereby terminated, all rights under the Easement are hereby waived and relinquished, and the Easement is of no force or effect.

2. Binding Effect. This Termination of Easement may be recorded in the office of the register of deeds for Dane County, shall be binding on all successors and assigns of the Parties, and shall not be further amended or modified without the signature of each of the Parties.

3. Counterparts. This Termination of Easement may be executed in any number of counterparts, each of which shall be deemed an original.

This Termination of Easement is dated this ____ day of March, 2020.

[SIGNATURES AND ACKNOWLEDGMENTS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Agreement is effective as of the date set forth above.

VILLAGE OF CROSS PLAINS

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss:
COUNTY OF DANE)

Personally came before me this _____ day of March 2020, the above named _____, _____ of the Village of Cross Plains, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

`

_____
Print Name: _____
Notary Public, State of Wisconsin
My commission expires:_____

IN WITNESS WHEREOF, this Agreement is effective as of the date set forth above.

ZANDER PLACE, LLC

By: _____
Thomas R. Pientka Managing Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss:
COUNTY OF DANE)

Personally came before me this _____ day of March 2020, the above named Thomas R. Pientka, the Managing Member of Zander Place, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

`

_____
Print Name: _____
Notary Public, State of Wisconsin
My commission expires:_____

Drafted by:

D. Clarke Sugar
AXLEY BRYNELSON, LLP
2 East Mifflin Street
Post Office Box 1767
Madison, WI 53701-1767
(608) 260-2481

EXHIBIT A

LEGAL DESCRIPTION

LOT ONE (1), CERTIFIED SURVEY MAP NO. 14060 RECORDED AUGUST 27, 2015, VOLUME 94 OF CERTIFIED SURVEY MAPS, PAGE 170, AS DOCUMENT NO. 5149740, THAT PART OF VACATED CENTER STREET, AND PART OF VACATED WATER STREET, LOTS 1, 2 AND 3, BLOCK 6, AND LOTS 1, 2, 3 AND 4, BLOCK 7, FOXVILLE, LOTS 1, 2 AND 3, CERTIFIED SURVEY MAP NO. 4912, LOCATED IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 03, TOWNSHIP 07 NORTH, RANGE 07 EAST, VILLAGE OF CROSS PLAINS, DANE COUNTY, WISCONSIN.

8897285
Tx:8691617

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
5179739
08/27/2015 8:47 AM
Trans. Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 4

TEMPORARY LIMITED EASEMENT

RE: That part of vacated Center Street, and part of vacated Water Street, Lots 1, 2 and 3, Block 6, and Lots 1, 2, 3 and 4, Block 7, Foxville, Lots 1, 2 and 3, Certified Survey Map No. 4912, located in the southwest quarter of the northwest quarter of Section 03, Township 07 North, Range 07 East, Village of Cross Plains, Dane County, Wisconsin ("the Property").

Name and Return Address: AND DRAFTED BY
Paul A. Johnson
Boardman & Clark LLP
PO Box 256
Lodi, WI 53555

0707-032-4393-1, 4412-8, 4421-1, 4425-1, 4474-1 and 4484-2 (parts)
Parcel Identification Number(s)

WHEREAS, Zander Place LLC, a Wisconsin Limited Liability Company ("Zander"), is the owner of the above-referenced Property; and

WHEREAS, as part of the development of the Property, Zander desires to grant to the Village of Cross Plains, and the Village of Cross Plains desires to receive from Zander two Temporary Limited Easements; and

WHEREAS, the Temporary Limited Easements are to allow the Village to continue maintaining sewer and stormwater facilities that currently exist on the Property.

NOW, THEREFORE, Zander and the Village of Cross Plains do hereby agree as follows:

1. Sanitary Sewer Temporary Limited Easement. Zander does hereby grant to the Village of Cross Plains a 16 foot wide Sanitary Sewer Temporary Limited Easement over the existing sanitary sewer as currently constructed and situated on the Property. This 16 foot wide Sanitary Sewer Easement shall be centered on the existing sanitary sewer as constructed.

2. Storm Sewer Temporary Limited Easement. Zander does hereby grant to the Village of Cross Plains a 16 foot wide Storm Sewer Temporary Limited Easement over the existing storm sewer as currently constructed and situated on the Property. This 16 foot wide Storm Sewer Easement shall be centered on the existing storm sewer as constructed.

3. The Temporary Limited Easements as identified in paragraphs 1 and 2 above shall expire upon the completion of the Main Street (US Highway 14) reconstruction project. At such time, the Village of Cross Plains shall execute any and all documents necessary to extinguish the Temporary Limited Easements granted pursuant to this document.

4. The terms and conditions of these Temporary Limited Easements shall run with the land, shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and assigns.

Dated this 2nd day of JUNE, 2015.

ZANDER PLACE LLC

By: _____
Thomas R Pientka, Authorized Member

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this 2 day of June, 2015, the above-named Thomas Pientka, Authorized Member of Zander Place LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Member of the above-named Limited Liability Company/Corporation and acknowledged that he/she has executed the foregoing instrument as the deed of said LLC by its authority.

LORI SCHIEK NOTARY PUBLIC STATE OF WISCONSIN

_____
Lori Schiek
PRINT NAME OF NOTARY – USE BLACK INK
Notary Public, Dane County, WI.
My commission expires: 10-6-18

VILLAGE OF CROSS PLAINS

By: J. Patrick Andreoni, President

Matthew G. Schuenke,
Clerk/Administrator-Treasurer

AUTHENTICATION

The signatures of J. Patrick Andreoni and Matthew G. Schuenke, in their capacities indicated above, hereby authenticated this 4 day of June, 2015.

Paul A. Johnson
SBN: 1021492

CONSENT OF MORTGAGEE

State Bank of Cross Plains, as Mortgagee of the Property, consents to the foregoing Temporary Limited Easements.

Dated this 5th day of June, 2015.

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Personally came before me this 5th day of June, 2015, the above-named Kevin J Mahaney, its _____, to me known to be the person who executed the foregoing Mortgagee's Consent and to me known to be such officer of the above-named Corporation and acknowledged that he/she executed the foregoing instrument as the deed of said Corporation, by its authority.

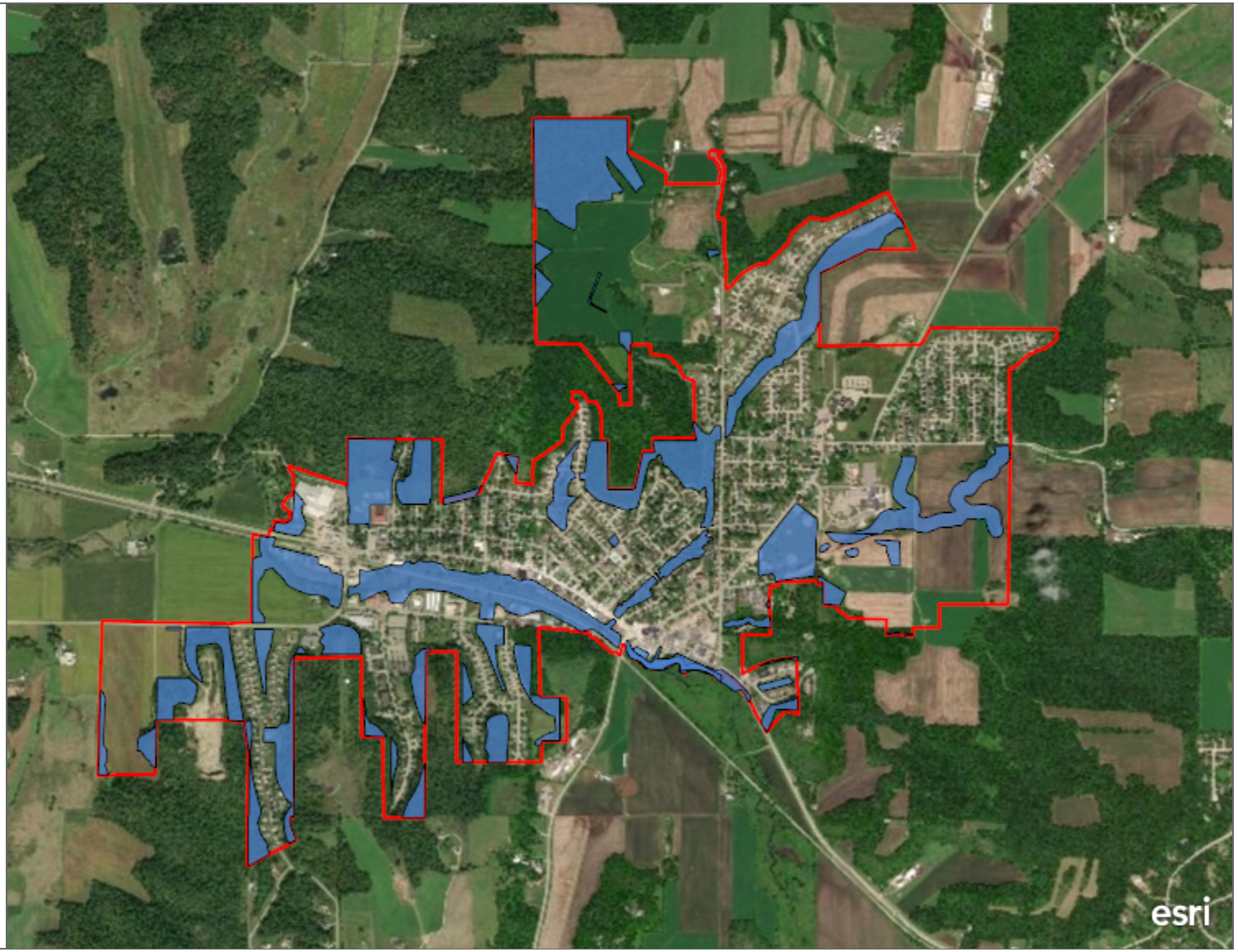
WENDY R. MARTIG NOTARY PUBLIC STATE OF WISCONSIN

Wendy R Martig
Wendy R Martig
PRINT NAME OF NOTARY – USE BLACK INK
Notary Public, Dane County, WI
My Commission expires: 7-17-16

Dane County Environmental Corridors and Sewer Service Area Boundaries

Environmental Corridor

Sewer Service Area



Dane County Environmental Corridors and Sewer Service Area Boundaries

0.4mi

USDA FSA, DigitalGlobe, GeoEye, CNES/Airbus DS