



SPECIAL MEETING
CITY OF BARABOO COMMON COUNCIL AGENDA
 Council Chambers, 101 South Blvd., Baraboo, Wisconsin
Tuesday, September 29, 2020, 7:00 P.M.

This meeting is open to the public. Because of the COVID-19 pandemic, the public is encouraged to view the meeting remotely by watching Channel 982. The City requests anyone appearing in person wear a mask and follow social distancing protocols.

Special Meeting of the City of Baraboo Common Council, Mayor Mike Palm presiding.

Notices Sent To Council Members: Wedekind, Kolb, Plautz, Kent, Petty, Ellington, Sloan, Kierzek, and Thurow.

Notices Sent To City Staff, Media And Other Interested Parties: Interim Admin. Geick, Atty. Truman, CDA Dir. Cannon, Clerk Zeman, DPW Dir./Engineer Pinion, Finance Dir. Haggard, Fire Chief Stieve, Library Dir. Bergin, Parks & Rec. Dir. Hardy, Police Chief Schauf, Street Super. Gilman, Utility Super. Peterson, Treasurer Laux, the Baraboo News Republic, WBDL, 99.7FM, Citizen Agenda Group, Media Agenda Group, *Tom Clark*

1. **CALL TO ORDER.**

2. **ROLL CALL.**

3. **APPROVAL OF AGENDA.** *(Roll Call) (Note: Agenda modified from regular format because of Special Meeting)*

4. **COMPLIANCE WITH OPEN MEETING LAW NOTED.**

5. **PUBLIC INVITED TO SPEAK.** (Any citizen has the right to speak on any item of business that is on the agenda for Council action if recognized by the presiding officer.)

6. **MAYOR'S BUSINESS.**

- The Mayor would like to congratulate Tom Clark, Captain of the Fire Department and Fire Inspector, for his 20th Anniversary with the City of Baraboo.

7. **COMMITTEE OF THE WHOLE.**

Moved by _____, seconded by _____, to enter Committee of the Whole to discuss:

1. The City retaining Baker Tilly to assist the City in applying for federal grant funds to be used for a Citywide Economic Development Study and, if the grant is awarded, to authorize City staff to continue to work with Baker Tilly on the Study. *(Cannon)*
2. The City entering into a Development Agreement with Rapid River Apartments, LLC, for 325 Lynn Street and to sell 325 Lynn Street to Rapid River Apartments, LLC, for the sum of \$1.25. *(Cannon/Pinion)*
3. The Council approving the Baraboo Young Professional's Night Market Special Event License application and corresponding Picnic License application. *(Geick/Stieve)*

Moved by _____, seconded by _____, to rise and report from Committee of the Whole and return to regular session.

8. **RESOLUTIONS.**

NBR-1...Consider entering into an agreement with Baker Tilly for Baker Tilly to assist the City with an application for federal grant funds to be used for a Citywide Economic Development Study and, if the grant is awarded, to authorize City staff to continue to work with Baker Tilly on the Study pursuant to the terms of the agreement. *(Cannon) (Attachments will be distributed prior to meeting)*

NBR-2...Consider entering into a Development Agreement with Rapid River Apartments, LLC, for 325 Lynn Street for the purpose of the development of a 66-unit apartment complex and authorizing the sale of 325 Lynn Street from the City to Rapid River Apartments, LLC, for the sum of \$1.25. *(Cannon/Pinion) (Attachments will be distributed prior to meeting)*

NBR-3...Consider approving the Baraboo Young Professional's Night Market Special Event License application and corresponding Picnic License application. *(Geick/Stieve)*

9. **ADJOURNMENT.** *(Roll Call)*

Brenda Zeman, City Clerk

For more information about the City of Baraboo, visit our website at www.cityofbaraboo.com

PLEASE TAKE NOTICE - Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires the meeting or materials at the meeting to be in an accessible location or format should contact the City Clerk at 101 South Blvd., Baraboo, WI or phone (608) 355-2700 during regular business hours at least 48 hours before the meeting so reasonable arrangements can be made to accommodate each request.

Agenda Posted by D. Munz 09/25/2020

NBR - 1

RESOLUTION NO. 2020 -

Dated: September 29, 2020

The City of Baraboo, Wisconsin

Background: The City has been approached by Baker Tilly regarding possible grant funding under the CARES Act for economic development purposes. After a preliminary discussion with representatives from the federal Economic Development Authority (EDA), the City has been encouraged to submit a scope of project and budget for their review and comments. If the City's proposal obtains a positive recommendation, we will then need to submit an application for the project, which will be subject to EDA's approval.

The City's proposed project is to complete an Economic Development Study for the entire City and to also look specifically at the South Blvd./West Side (the City completed a study of the East Side several years ago).

Baker Tilly's proposed agreement is for them to provide two phases of services to the City: 1. To assist the City with the EDA grant application, and 2. If the grant is awarded to the City, to continue on and assist with the planning process of the Economic Development Study.

Staff is recommending that the Council authorize the City Administrator and City Clerk to sign an agreement with Baker Tilly authorizing them to provide the services described in their proposal, which is attached to this resolution.

Fiscal Note: Not Required Budgeted Expenditure Not Budgeted
Comments: There are funds available for this expenditure from the City's Economic Development Fund

Resolved, by the Common Council of the City of Baraboo, Sauk County, Wisconsin:

The Common Council hereby authorizes the City Administrator and City Clerk to execute an agreement on behalf of the City with Baker Tilly for Baker Tilly to work with staff to submit a grant application to the EDA and, if the grant is awarded, for staff to continue working with Baker Tilly pursuant to the terms of the agreement.

Offered by: Committee of the Whole
Motion:
Second:

Approved: _____

Attest: _____

NBR - 2

RESOLUTION NO. 2020 -

Dated: September 29, 2020

The City of Baraboo, Wisconsin

Background: On October 8, 2019, the City and Three Amigos, LLC, entered into a Pre-Development Agreement regarding the potential redevelopment of City owned property located at 325 Lynn Street. The proposed intended use of the property was, and remains, the construction and management of an approximately 66-unit apartment building with at least a \$5 million dollar assessed value.

Since entering into the Pre-Development Agreement, City staff has been in negotiations with the developer – now named Rapid River Apartments, LLC – to complete the final Development Agreement which will define the economic development incentive and project time table. With the creation of TID 10, it is staff’s opinion that the development of this project and the guaranteed minimum assessed value by the developer will be sufficient funding to complete the economic development incentive program.

City staff is recommending Council authorized the City Administrator and City Clerk to execute the proposed Development Agreement with Rapid River Apartments, LLC, and to sell the property located at 325 Lynn Street to Rapid River Apartments, LLC, for the sum of \$1.25.

Fiscal Note: Not Required Budgeted Expenditure Not Budgeted
Comments:

Resolved, by the Common Council of the City of Baraboo, Sauk County, Wisconsin:

The Common Council hereby authorizes the City Administrator and the City Clerk to execute on behalf of the City the Development Agreement between the City of Baraboo and Rapid River Apartments, LLC, and to execute the corresponding quit claim deed for the property located at 325 Lynn Street, Baraboo, WI, on behalf of the City.

Offered by: Committee of the Whole **Approved:** _____

Motion:

Second:

Attest: _____

DEVELOPMENT AGREEMENT
Between
THE CITY OF BARABOO
And
RAPID RIVER APARTMENTS, LLC

THIS AGREEMENT is entered into by the City of Baraboo, a Wisconsin municipal corporation with a mailing address of 101 South Blvd., Baraboo, WI 53913, and Rapid River Apartments, LLC, a Wisconsin limited liability corporation with a mailing address of 9447 Jancing Avenue, Sparta, WI 54656.

RECITALS

WHEREAS, the City and Three Amigos, LLC, entered into a Pre-Development Agreement dated October 8, 2019, regarding the potential to redevelop a parcel of land owned by the City located at 325 Lynn Street, Baraboo, WI (“Property”); and

WHEREAS, the proposed and intended use of the Property is the construction and management of approximately a 66-unit luxury apartment building with at least a \$5 million dollar assessed value (“Project”); and

WHEREAS, upon the completion of the Project, the Developer guarantees the minimum assessed value of the Property to be \$5 million dollars, which is anticipated to yield approximately \$126,579.10 in total real estate taxes annually, based on the current (2019 property tax) mill rate of \$.02531582 per \$1,000 of assessed value;

WHEREAS, Three Amigos has since changed their name to Rapid River Apartments, LLC, and has transferred their rights under the Pre-Development Agreement to Rapid River Apartments, LLC, which is acceptable to the City; and

WHEREAS, the City has been notified by the Developer that the Developer is satisfied with the steps taken by the City pursuant to the terms of the Pre-Development Agreement, and that the Developer now desires to enter into this Development Agreement with the City; and

WHEREAS, pursuant to the terms of the Pre-Development Agreement, upon the execution of this Agreement, the Pre-Development Agreement is terminated; and

WHEREAS, the Developer will be obligated to pay all real estate taxes levied against the Property under this Agreement; and

WHEREAS, the City has established Tax Incremental District No. 10 of the City of Baraboo (the “District” or “TID No. 10”) as evidenced by the Project Plan Tax Incremental District No. 10 City of Baraboo, Wisconsin, dated September 30, 2020 (“TIF Plan”); and

WHEREAS, the TIF Plan permits the payment of development incentive payments and municipal improvements for the Project, to be reimbursed from the property tax increments for the Project; and

WHEREAS, the City is authorized by the TI Act, to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of a project plan for the District; and

WHEREAS, the City has determined that to promote redevelopment, eliminate blight and expand the tax base of the City; to provide for job creation and retention; and to improve the quality of development in the City, it is necessary to provide incentives for development to the Developer in order to enable said Developer to construct a 66-unit luxury apartment building; and

WHEREAS, the City and Developer have agreed to an Economic Development Incentive Plan that would make an annual payment to the Developer based upon the continued value of the property; and

WHEREAS, prudent fiscal management by the City requires that this assistance to the Developer be provided with appropriate assurances to the City that the Project will be developed substantially as presented to the City.

NOW, THEREFORE, for the mutual consideration contained herein, the City and the Developer hereby agree as follows:

TERMS

SECTION 1. DEFINITIONS. All terms used below and not otherwise defined herein shall have the following meanings, unless the text expressly or by necessary implication requires otherwise:

- (a) “Agreement” means this Development Agreement.
- (b) “Available Tax Increment” means the amount of the Tax Increments actually received by the City generated by any increase of value of the Property above the base value and attributable to development within the tax incremental finance district, during the 12 month period preceding a payment date that has not been previously used to may payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.
- (c) “City” means the City of Baraboo, Sauk County, Wisconsin, a Wisconsin municipal corporation with a mailing address of 101 South Blvd., Baraboo, WI 53913.
- (d) “Developer” means Rapid River Apartments, LLC, a Wisconsin limited liability corporation with a mailing address of 9447 Jancing Avenue, Sparta, WI 54656.
- (e) “District” or “TIF District” means Tax Incremental District No. 10 of the City of Baraboo.
- (f) “Economic Development Incentives” means Pay Go unless otherwise specified herein.

- (g) “Events of Default” – see Section 11.1 of this Agreement.
- (h) “Minimum Project Improvements” – see the definition for “Project.”
- (i) “Municipal Development Costs” means costs incurred directly by the City in connection with the Project.
- (j) “Party” or “Parties” respectively means the City or the Developer, singularly, or the City and Developer, jointly.
- (k) “Private Improvements” means the improvements to be constructed on the Property that are no Public Improvements.
- (l) “Project” means the intent of the Developer to construct and manage approximately 66-unit luxury apartment complex on the Project Site with a minimum of \$5 million dollar assessed value, substantially conforming to the Approved Project Plans and Specifications, and including the Minimum Project Improvements described in Exhibit 1.
- (m) “Project Site” means the land upon which the Project, including the Minimum Project Improvements, will be constructed, as more fully described on Exhibit 1.
- (n) “Pay Go” means a TIF incentive, and is further defined in Section 3 of this Agreement.
- (o) “Public Improvements” means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service including, but not limited to: road and pedestrian improvements; sanitary sewer, storm sewer and storm water management facilities; telephone and related technology infrastructure; natural gas, electrical power and other public utilities; any anticipated and intentional corrections to property affected by public improvements, including grading; any related engineering including erosion control and landscaping.
- (p) “Site Plan” means the identification and location of the Project improvements on the Project Site, as identified on Exhibit 1.
- (q) “Special Assessment” means any special assessment levied against the Property by the City pursuant to §§ 66.0701 – 0733, Wis. Stats., the Baraboo Municipal Code, and any other applicable law.
- (r) “TI Act” means §66.1105, Wis. Stat., as amended from time-to-time.
- (s) “TIF Incentives” means the payment of development incentive payments and municipal improvements for the Project by the City to the Developer that are allowed to be reimbursed from the property tax increments for the Project as allowed by the TIF Plan.

- (t) “Tax Increment” means taxes levied by all overlying taxing jurisdictions on the difference in value of a property’s current assessed value and its base value (assessed value as of January 1st of the year the project is commenced).
- (u) “TIF Plan” means the Project Plan Tax Incremental District No. 10 of the City of Baraboo, Wisconsin, dated September 30, 2020, and attached as Exhibit 2.
- (v) “Unavoidable Delays” – see Section 11.8 of this Agreement.

SECTION 2. FINDINGS AND DETERMINATIONS. The City hereby finds and determines that:

- 2.1 The private development of the Project is consistent with the public purposes, plans and objectives respectively set forth in the TIF Plan; and
- 2.2 The expenditures by the City would act as an inducement for the private development of the Project, thereby making more likely accomplishment of the public purpose objectives set forth in the TIF Plan and TI Act; and
- 2.3 The construction of the Project is consistent with the overall objectives of the City and would provide employment, expand the tax base of the City, and generally enhance the quality of the building stock in this area of the City.
- 2.4 All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

SECTION 3. REPRESENTATIONS BY THE CITY. The City makes the following representations as the basis for the undertaking on its part herein contained:

- 3.1 The City is a public body corporate and politic duly organized and existing under the laws of the State of Wisconsin.
- 3.2 The City proposes to provide assistance to the Developer in accordance with the provisions of the Agreement.
- 3.3 The activities of the City are undertaken for the purposes defined in the TI Act.
- 3.4 To finance the costs of the activities to be undertaken by the City or by the Developer for the benefit of the City, the City proposes to use the Tax Increment generated in the District by the Minimum Project Improvements, as set forth on Exhibit 1.
- 3.5 The parties signing below on behalf of the City have been fully authorized to execute this Agreement on behalf of those entities.

SECTION 4: REMAINING SITE PREPARATION COSTS.

- 4.1 The City agrees to reimburse the Developer up to a total amount of one hundred thousand dollars (\$100,000) for the Developer to complete the remaining site preparations, including the remaining site grading and foundation work that is necessary to start building construction, subject to the City Engineer's review and approval and subject to the Developer completing the remaining site preparation work within twelve months of the full execution of this Agreement.
- 4.2 Upon the City Engineer's approval, the City shall reimburse the Developer up to the maximum amount of one hundred thousand dollars (\$100,000) within three weeks of said approval.
- 4.3 The City may reimburse costs that exceed the estimated maximum of one hundred thousand dollars (\$100,000) provided the City approves of any excess costs in writing, the approval of which may not be unreasonably withheld.
- 4.4 The reimbursement of site preparation costs is an economic development incentive that is considered separate from the Pay Go Incentive.
- 4.5 City to provide and allow the developer to dump any excess soils that are contaminated or not contaminated at a nearby location.
- 4.6 During construction of the Project, the City will be responsible for replacing the existing alleyway with 24-foot wide alleyway with a concrete curb on along the north and east sides, provided the Developer dedicates sufficient right-of-way adjacent to the existing right-of-way to accommodate this improvement.

SECTION 5: TAX INCREMENT DISTRICT AND TIF INCENTIVE.

- 5.1 TID Funding. The City intends to fund its TID No. 10 Economic Development Fund Project Costs to the private development through annual Property Tax payments paid to the TID.
- 5.2. Guaranteed Assessed Value. The Developer hereby guarantees that the assessed value of the Project upon issuance of final Occupancy Permit will be a minimum of \$5,000,000.00. The Developer further agrees to a guarantee tax increment from the Project commencing with the calendar year following the year in which the initial Economic Development Incentive Payment is disbursed to Developer, and for each calendar year thereafter in an amount specified in Exhibit 3.
- 5.3 Use of Tax Increments. The Tax Increments and Revenue Projections identified on Exhibit 3 are projected to be generated from the Project, after construction and placing in service of the Minimum Project Improvements. Pursuant to the Current TIF Plan and this Development Agreement, the City, subject to annual appropriations, will first pay the Tax Increment toward the payment of Tax Increment Payments. All of these payments shall be as defined in this Agreement, and the documents referenced herein.

5.4 Pay Go Reimbursement. The City shall provide an additional TIF Incentive as a pay-as-you go (Pay Go) obligation of the City, which is further defined as follows:

- (a) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures shall be reimbursed to Developer.
- (b) Commencing the first year after the final Occupancy Permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property as of January 1 of the year in which construction commenced. The difference in assessed values shall be known as the Incremental Property Value.
- (c) Incremental Property Value multiplied by the assessed mill rate shall be known as the Available TIF Increment.
- (d) The City shall make available up to sixty percent (60%) of the available TIF Increment to the Developer (“Pay Go Reimbursement”) based on the guaranteed minimum Tax Increment of \$5,000,000 and up to one hundred percent (100%) of the available TIF Increment for any additional Tax Increment in excess of \$5,000,000.
- (e) Pay Go Reimbursement Payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, if the first occupancy permit is issued on September 1, 2021, the TIF Increment would be determined as of January 1, 2022 and the Pay Go Reimbursement would first be payable in 2023.
- (f) Developer represents that but for the Pay Go Reimbursement, the Developer will have inadequate funds to complete the Project.

5.5 TIF Incentive Qualified Expenditures. The TIF Incentive shall only fund, in order of priority:

- (a) Public Improvements and environmental remediation as may be required by local, state and federal law; then
- (b) Private Improvements specifically approved by the City as stated in Exhibit 4; then
- (c) Any other activity specifically approved by the City.

5.6 TIF Incentive Limitations. The TIF Incentive available to Developer for the Project is limited as follows:

- (a) The TIF Incentive in any year shall not exceed sixty percent (60%) of the available TIF Increment to the Developer (“Pay Go Reimbursement”) based on the guaranteed minimum Tax Increment of \$5,000,000 and one hundred percent (100%) of the available TIF Increment for any additional Tax Increment in excess of \$5,000,000.
- (b) The City shall not be obligated to pay TIF Incentive in excess of twenty percent (20%) of the total estimated \$8,500,000 of Qualified Expenses incurred and paid by Developer.
- (c) Only the available Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.
- (d) Provided Developer qualifies for the TIF Incentive and provides adequate proof to the City that Developer has incurred and paid Qualified Expenditures, and provided Developer and all transferees have paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year by July 31, TIF Incentive payments shall be made on or before September 1 of each year; provided, however, in no event shall TIF Incentive payments exceed twenty percent (20%) of the total estimated \$8,500,000 of Qualified Expenses incurred and paid by Developer or a maximum cumulative amount of \$1,700,000.
- (e) The City’s obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City’s constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the available Tax Increment.
- (f) The City, as appropriate and in its sole discretion, may also apply for such other grants and credits in regard to the Project as they shall deem appropriate for the benefit of the Project and as may be required to achieve necessary financing for the Project, provided, however, the City make no representations or warranties about the availability of such grants and credits or whether any such grants or credits that may be available will be awarded.

SECTION 6: RIGHT TO MORTGAGE

- 6.1 Right to Mortgage: Developer shall have the right to mortgage the Property with a first priority lien in order to secure a construction loan, or a refinancing thereof, for its improvements, with the prior written approval from the City, which shall not be unreasonably withheld.

SECTION 7: CITY'S RESERVATION OF ASSESSMENT RIGHTS

- 7.1 Reservation of Assessment Rights. In addition to the Remedies for Default provided to the City by this Agreement, the City reserves the right, with 14-calendar days prior written notice to the Developer, to impose special assessments or charges for any amounts to which it is entitled by virtue of this Development Agreement and otherwise consistent with the special assessment statute, §§ 66.0701, et seq., Wis. Stats. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges. (Special Assessments are not considered to be part of the guaranteed Minimum value of \$5,000,000 and are therefore not subject to any "pay go" calculations.) This provision constitutes the Developer's Waiver of Notice and Consent to all special assessment or special charges proceedings, which may be required by law to the extent of an amount equal to the then-remaining balance of Tax Increment Payments. This provision shall survive any rescission, termination or expiration of this Agreement until the completion of the Economic Development Incentives.

SECTION 8: INSURANCE

- 8.1 Developer, its contractors, lessees, successors and assigns, shall, during their occupancy or ownership of the Property, purchase or cause to be purchased and continuously maintained in effect, insurance against such risks, both generally and specifically, with respect to the private development, as are customarily insured against in developments of like size and character including, but not limited to: Casualty Insurance, Comprehensive General Liability Insurance, Physical Damage Insurance, Builders' Risk Insurance and all other forms of insurance reasonably required generally by the State of Wisconsin for entities such as the owner and Lessee from time to time during the construction and operation of the Property. Such insurance shall be maintained in amounts and with terms of coverage generally customary to such Property. Such insurance shall name City as an additional insured as its interest may appear.
- 8.2 In the event the Property is damaged or partially or fully destroyed, Developer shall cause the insurance proceeds from such loss to be used to promptly repair and restore the Property to its developed condition. If, in the sole discretion of Developer, it is determined that it is not economically or otherwise feasible to rebuild the Property, Developer agrees that the Economic Development Incentive payments will no longer be required. These payments will terminate with the next forth coming property tax payment due from the Developer.

SECTION 9: DEVELOPER OBLIGATIONS.

- 9.1. Improvements and Ongoing Maintenance. The Developer agrees to make improvements to the Project as shown in Exhibit 1 on the approved plans and in accordance with the amenities described in Exhibit 1. The Developer agrees to, at their sole expense, maintain the Project in good repair for as long as it owns the property.
- 9.2. Water and Sewer. The Developer will make connections to existing public water and sewer mains as needed to City specifications. The Developer agrees to repair all sidewalk, curb and gutter, and street and restore all landscape areas within the public right-of-way upon making those connections.
- 9.3. Curb Cuts and Aprons. The Developer will remove curb cuts and aprons where existing driveways will not be utilized as part of the Project and replace the curb cut with a full curb section to match the existing curb detail. The Developer will landscape the terraces upon apron removal.
- 9.4. Permits. The Developer agrees to obtain all permits required to develop the Property as required by the approving agencies. The Developer as appropriate, must apply for and receive site plan approval and building permit approval from the City and, as applicable, the State. The City will not unreasonably withhold any local permits.
- 9.5. Storm Sewer. The Developer will use due care when constructing near the existing storm sewers. If at any time the structure of the storm sewer is damaged by the driveway over the storm sewer, the Developer will restore the storm sewer so as to provide adequate structure to allow vehicular traffic the storm sewer without reducing the capacity of the storm sewer.
- 9.6. Completion Schedule. Once the Minimum Project Improvements, as set forth in Exhibit 1, are determined by approval of the Approved Plans and Specifications, and after satisfaction of all contingencies in this Agreement, the Developer shall, subject to Unavoidable Delays promptly commence, diligently pursue and complete the Project, including the Minimum Project Improvements, on or before the timetable contained in Exhibit 4, and in any case, by June 30, 2022; provided however, that if the Developer has promptly commenced and diligently pursued the completion of the Project, the City may extend the time for completion of the Project until December 31, 2022.
- 9.7. Construction Completion in Accordance with Approved Plans and Specifications. The Developer shall construct the Project in accordance with the Approved Plans and Specifications in compliance with all codes, and applicable rules and laws.
- 9.8. Minimum Improvement Value. The Minimum Project Improvements, when completed, must constitute a permitted use under the zoning ordinance of the City and upon completion must have a minimum assessed value (including land) of five million dollars (\$5,000,000) as determined by the City's Assessor using methodology from the Wisconsin Assessment Manual. Failure to achieve initially

the greater of either this minimum assessed value or improvements producing increment equal to or greater than the City's Tax Increment Payments shall allow the City to withhold the Economic Development Incentive payments to the extent of any shortfall in valuation and in the amount of the difference in lost tax revenue between the actual assessed value and the guaranteed minimum assessed value of \$5,000,000.

- 9.9 Land Dedication & Construction Easements. Developer shall provide such land dedication and construction easements and reasonable access to the Project Site to complete the work identified as Municipal Development Costs herein, and to make reasonable inspections to confirm the work on the Project Site is being completed as required herein.
- 9.10 Contingency. The Developer's obligations hereunder shall also be contingent upon the Developer taking title to the Project and upon the approval of the Project plans by the City of Baraboo.
- 9.11 Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within one hundred twenty (120) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within one hundred twenty (120) days of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible. Termination of this Agreement pursuant to this section must be accomplished by written notification by the Developer to the City within thirty (30) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its rights to terminate this Agreement due to such occurrence or event.
- 9.12 Estoppel Certificate. City agrees to provide a certificate to Developer and Developer's lender, if requested, certifying that any particular contingency has been satisfied and that there is no uncured default under this Development Agreement and the Agreement, which certificate may be relied on by Developer and such lender.

SECTION 10: CONTINUING OBLIGATIONS.

- 10.1 Certificate of Compliance. When a final Occupancy Permit has been issued on the full Project, Developer shall apply to the City for a Certificate of Compliance with the requirements of this Development Agreement, which, when issued, shall be recorded in the Office of the Register of Deeds of Sauk County, Wisconsin, and may be relied on by third parties as evidence that the requirements of those sections of this Development Agreement have been complied with.

- 10.2 Continuing Obligations. Notwithstanding the issuance of the Certificate of Compliance identified in 10.1, above, certain obligations of Developer hereunder shall be continuing obligations consist of the following:
- (a) Obligation to Maintain Property in Good Condition. Developer, and its successors and assigns, shall maintain the improvement on the Project Site, and shall operate such improvements in compliance with the terms of this Development Agreement, and all local, state and federal laws and regulations.
 - (b) Sale or Lease of Project. No portion of the Project Site may be sold or leased to any party without the prior written consent of the City until the termination of this Development Agreement.
 - (c) Insurance. Developer, and its successors and assigns, shall maintain an industry standard amount of insurance on the Property.
 - (d) Indemnification. Developer, and its successors and assigns, shall continue to indemnify the City as provided for in this Agreement.
- 10.3 Warranty of Entity; Non-Transferability. The City has entered into this Development Agreement with Developer, on the basis of the identity of the Developer and on the strength of their experience. Therefore, Developer hereby warrants and represents to City that the Owners of All Interests in Developer are as shown on Exhibit 5. Developer may not transfer: (a) any interest in the Land; (b) any interest in the Project; (c) its rights under either this Development Agreement; (d) any interest in Developer, at any level in excess of 10% of the issued and outstanding membership interests in Developer; or (e) control of Developer without the prior written consent of the City. Further, there shall be no transfer in control of Developer without the prior written consent of City; provided, however, that any current owner of a membership interest in Developer may be allowed to purchase membership interests in either entity amongst themselves. Owner shall not change management companies without the prior written consent of the City, which consent shall not be unreasonably withheld; provided, however, that Developer may transfer management of the Project to a company controlled by Developer as a preapproved management company provided written notice is given to the City within thirty (30) days of the date of transfer. Any prohibited transfers under this Section 10.3 which have been made without securing the prior written consent of the City, or if Developer materially amends its operating agreement without the prior written consent of the City shall be considered an Event of Default hereunder. In any event, any permitted transferee hereunder must agree to be bound by the terms of this Development Agreement.
- 10.4 Taxable Entity. The Developer warrants that the Project shall be purchased by entities that are not exempt from real estate taxes, and it shall be a condition of this Development Agreement that ownership or occupancy of any portion of the Project Site may not be transferred to an entity that is exempt from real estate taxes, without the prior written consent of the City, which consent may be conditioned upon the execution by such new owner or occupant of an agreement

to make payments in lieu of taxes in an amount equal to the then-existing property assessment. This obligation shall survive until the termination of TID No. 10. In the event Developer receives an exemption from general real estate taxes, then such may be deemed an event of default hereunder and, further, City may exercise its rights under the Guaranty reference in this Agreement.

- 10.5 City Assessor Obligation. The City Assessor or his/her designee may not use this Agreement or any provision herein as the sole basis to determine the value of the Project.

SECTION 11: DEFAULT.

- 11.1 Events of Default. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean whenever it is used in this Agreement any one or more of the following events:
- (a) Failure by the Developer to cause substantial and material completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement or to fulfill any obligation, condition, agreement or covenant under this Agreement.
 - (b) Developer’s failure to procure and maintain the insurance coverage required by this Agreement.
 - (c) Any Assignment for the benefit of the Developer’s creditors, or commission of any other act amounting to a business receiver.
 - (d) The filing, by or against the Developer, of a petition under any chapter of the U.S. Bankruptcy Code or for appointment of a receiver.
- 11.2 City’s Rights Upon Default. If Developer defaults in the performance of its obligations hereunder, then the City shall have the right to exercise any right or remedy available under applicable law as a result of such defaulting, including without limitation, the right to specifically enforce Developer’s obligations under this Agreement or to terminate this Agreement as provided for herein.
- 11.3 Reimbursement of City Costs. In the event that Developer defaults under the terms and conditions of this Agreement, the Developer shall reimburse the City for any charges or claims of reimbursement made by the State of Wisconsin or any agency or subdivision thereunder or for any bondholder or other third party for reimbursement of any of the monies issued by the City under the Agreement.
- 11.4 Litigation. If any litigation is commenced to enforce the rights of the City under this Agreement, then the Developer shall reimburse the City if the City is the prevailing party for all expenses incurred by the City in connection with any such litigation or other proceeding, including, without limitation, reasonable attorneys’ fees and court costs. Such obligation shall survive any termination of the Agreement.

- 11.5 Procedure upon Default. Failure of the Developer to observe or perform any other covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement within thirty (30) days after receipt of written notice of default from the City specifying such default, provided however that if the nature of the default is such that immediate harm may result from such default, then it shall be an Event of Default if such default is not cured within five (5) days of such written notice. Further, if the nature of the default is such that it cannot be cured, then the Event of Default shall be declared upon the giving of notice by the City to the Developer, with no time to cure. If the nature of the default is such that it cannot reasonably be cured within such thirty (30) day cure period, then, as long as Developer is promptly commencing and diligently pursuing a cure, the City may grant an extension of time to cure the default, by written notice.
- 11.6. Remedies on Default. Whenever any Event of Default is continuing, the City may take any one or more of the following actions:
- (a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.
 - (b) In the case of an Event of Default which occurs prior to completion of the Project, the City may terminate this Agreement by providing notice to the Developer.
 - (c) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Developer under this Agreement, including securing an injunction to prevent harm.
- 11.7 No Remedy Exclusive. No remedy herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- 11.8 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
- 11.9 Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observances of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand thereof,

pay the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

- 11.10 Unavoidable Delays. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are caused directly by war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of the public enemy; epidemics; quarantine restrictions; or freight embargoes (together “Unavoidable Delays”). An extension of time for completion for such Unavoidable Delay shall only be for the period that action is actually prevented by the Unavoidable Delay. Times of performances under this Agreement may also be extended in writing by the parties hereto.

SECTION 12: INDEMNIFICATION.

- 12.1 The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the “Indemnified Parties”) shall not be liable for and Developer agrees to jointly and severally indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, or from any cost or claim, including reasonable attorney fees, which may result from Developer’s default under this Development Agreement, provided, however, that the foregoing indemnification shall not be effective for any actions of the Indemnified Parties that are not contemplated by this Agreement or which result from grossly negligent acts of the Indemnified Parties in fulfilling the obligations of the City, or its agents as set forth under this Agreement. Developer further agrees to indemnify and hold the Indemnified Parties harmless from and against any violations or claims of violation of any state or federal law, rule or regulations, including, but not limited to, any law, rule or regulation relating to prohibited discrimination in housing or employment.
- 12.2 Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project.

SECTION 13: EFFECTIVE DATE AND TERMINATION DATE.

- 13.1 Effective Date. The effective date of this Agreement shall be the date of full execution of this Agreement by all necessary and authorized signatories for the City and the Developer.
- 13.2 Termination Date. This Agreement shall terminate and be of no further force and effect upon the completion of the Economic Development Incentive payments as outlined in this Agreement unless this Agreement is earlier terminated as provided for in this Agreement.

SECTION 14: MISCELLANEOUS

- 14.1 Counterparts. The Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.
- 14.2 Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof.
- 14.3 Amendments. This Agreement may not be amended, or modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the parties to be bound thereby.
- 14.4 Time is of the Essence. The transmission by facsimile of a signed counterpart of this Agreement to a party, at its facsimile number indicated above shall have the same binding effect as the hand delivery of an originally signed counterpart hereof. Time is of the essence as to all dates and deadlines in this Agreement.
- 14.5 Venue. The venue for any disputes relating to this Agreement shall be the Sauk County Circuit Court. The laws of the State of Wisconsin shall govern this Agreement and any ancillary agreements.
- 14.6 Severability. If any provisions of this agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable, the invalidity of any one or more phrases, sentences, clauses or sections contained in this agreement shall not affect the remaining portions of this Development Agreement, or any part thereof.
- 14.6 Binding Agreement. The City and the Developer acknowledge and agree that they intend this Agreement to be a binding and enforceable agreement subject to the terms and conditions set forth in each of them.
- 14.7 Notice. All notices under this Agreement shall be in writing. All notices and payments under the Agreement shall be deemed properly given or made if mailed by first class mail postage prepaid, or by personal delivery. A notice or payment that is mailed shall be effective upon deposit in the U.S. Mail.

City's Address: City of Baraboo

City Clerk
101 South Blvd.
Baraboo, WI 53913

With a copy to:

City of Baraboo
City Attorney
101 South Blvd.
Baraboo, WI 53913

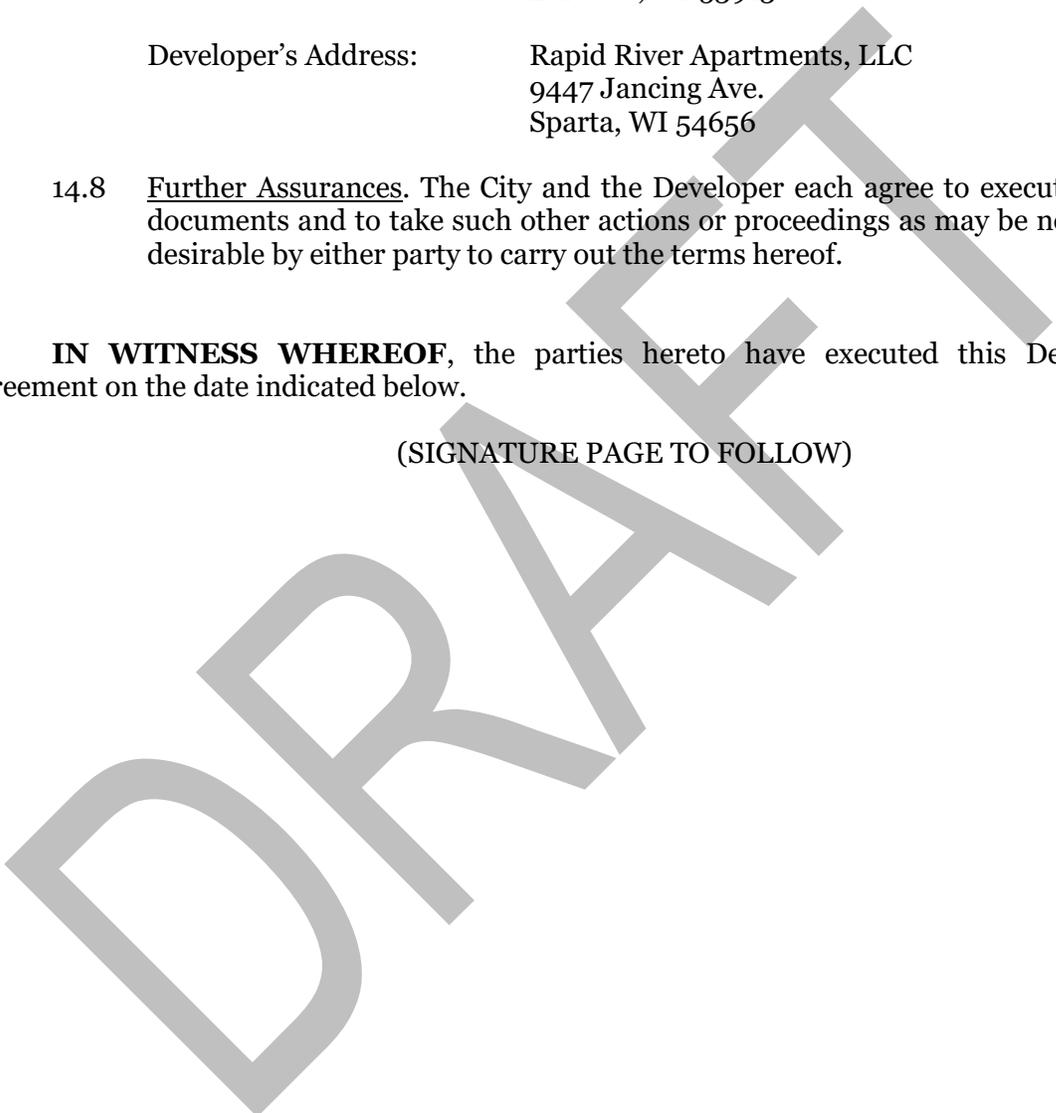
Developer's Address:

Rapid River Apartments, LLC
9447 Jancing Ave.
Sparta, WI 54656

14.8 Further Assurances. The City and the Developer each agree to execute all other documents and to take such other actions or proceedings as may be necessary or desirable by either party to carry out the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the date indicated below.

(SIGNATURE PAGE TO FOLLOW)



RAPID RIVER APARTMENTS, LLC

Signature: _____ Date: _____
Print: _____
Title: _____

Signature: _____ Date: _____
Print: _____
Title: _____

CITY OF BARABOO, WISCONSIN

Ed Geick, City Administrator Date _____

Brenda Zeman, City Clerk Date _____

Approved as to Form:

City Attorney

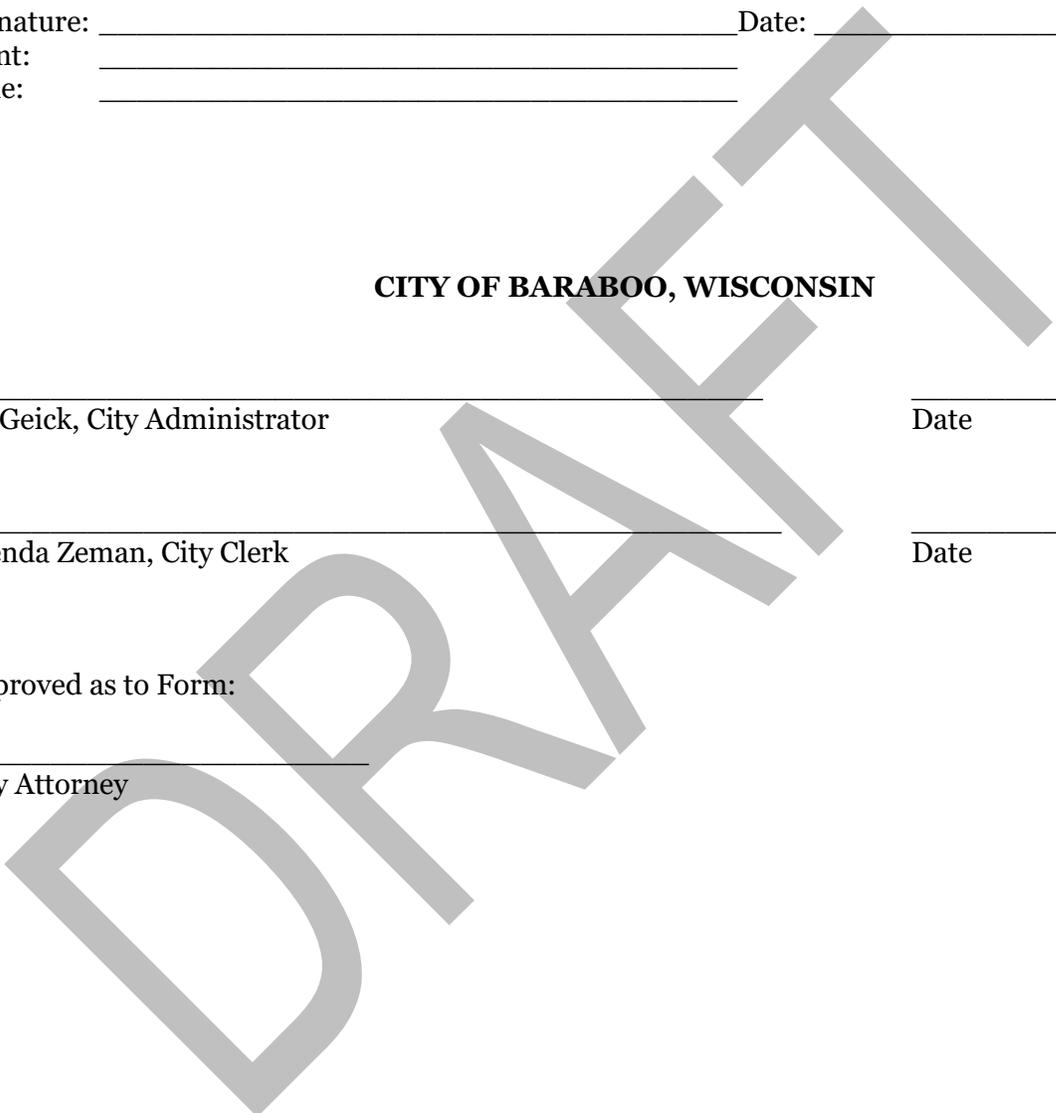


EXHIBIT LIST

- 1 Approved Project Plans and Specifications, and including the Minimum Project Improvements
- 2 TIF Plan
- 3 TIF Incentives
- 4 Project Time Table
- 5 Owners of All Interest in Developer

DRAFT

NBR - 3

RESOLUTION NO. 2020 -

Dated: September 29, 2020

The City of Baraboo, Wisconsin

Background: The Baraboo Young Professionals (BYP) have applied for a Special Event License and Picnic License for their annual Night Market, an open-air market featuring local vendors, food, live music and beer/wine. The desired event date is October 23, 2020.

While the Special Event License is typically reviewed and approved at the staff level, given the concerns regarding COVID-19 – coupled with the fact that the Picnic License requires Council approval – the decision is being deferred to Council.

At the last Common Council meeting, on September 22, 2020, both Licenses were approved contingent upon BYP providing Council with additional information at this Council meeting regarding their safety plans regarding COVID-19. Depending upon the information provided at this meeting, Council may take action including, but not limited to:

- Granting the Special Event License and Picnic Licenses without conditions,
- Granting the Special Event License and Picnic License with conditions,
- Granting the Special Event License only
- Denying the Special Event License and Picnic license because of the event would “present a grave or unreasonable danger to the health ... of the persons expected to attend the event” §12.04(11)(11)(a), Baraboo Municipal Code.

Note that the Baraboo Municipal Code requires the applicant for a Special Event License ensure the event complies with all of the terms of the license, plus applicable local and state laws. Failure to do so may result in citations and other applicable civil and criminal penalties. Additionally, the Code grants the City Administrator, Fire Chief, Police Chief and DPW Director the authority to terminate a Special Event License before or during the event if the “health, safety and welfare of the general public appears to be endangered...” §12.04(10), Baraboo Municipal Code.

Fiscal Note: [x] Not Required [] Budgeted Expenditure [] Not Budgeted
Comments:

Resolved, by the Common Council of the City of Baraboo, Sauk County, Wisconsin:

The Common Council hereby _____ (approves, approves with conditions, denies) the Baraboo Young Professionals application(s) for a _____ (Special Event License and/or Picnic License) for the Baraboo Night Market, to take place on October 23, 2020.

Offered by: Committee of the Whole
Motion:
Second:

Approved: _____

Attest: _____