



\*\*\* All present are expected to conduct themselves in accordance with our City's Core Values \*\*\*

## OFFICIAL NOTICE AND AGENDA

*of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or sub-unit thereof.*

**Meeting:** Economic Development Committee

**Date/Time:** Wednesday, July 5, 2023 at 5:15 p.m.

**Location:** City Hall, Council Chambers

**Members:** Sarah Watson (C), Chad Henke (VC), Lisa Rasmussen, Tom Kilian, and Carol Lukens

### AGENDA ITEMS FOR CONSIDERATION

*(All items listed may be acted upon)*

1. Approval of Minutes from June 6, 2023.
2. Discussion and possible action approving First Amendment to Development Agreement and Second Amendment to Master Ground Lease between City of Wausau and Federal Building Redevelopment Limited Partnership. *(Stratz)*
3. Discussion and possible action approving the request of Asch Properties, LLC (Infused) at 180 E. Wausau Ave., to extend one-year occupancy deadline and modify project plan. *(Fifrick)*
4. Discussion and possible action approving transfer of 703 Fulton Street from City of Wausau to Wausau Community Development Authority *(Stratz)*
5. Discussion and possible action approving subordination of loan to Abby Bank for Best Western Hotel at 201 N 17th Avenue *(Stratz)*
6. Update on The River concert venue *(Brodek)*
7. Adjourn.

It is likely that members of, and a quorum of the Council and/or members of other committees of the Common Council of the City of Wausau will be in attendance at the above-mentioned meeting to gather information. **No action will be taken by any such groups.**

**This Notice was posted at City Hall and emailed to the Media on 7/3/23**

Members of the public who do not wish to appear in person may view the meeting live on Channel 981 of Cable TV or the City of Wausau Meetings YouTube Channel at <https://tinyurl.com/WausauCityCouncil> (go to playlist and choose the meeting playlist desired). Any person wishing to offer public comment who does not appear in person to do so, may email [Liz.Brodek@ci.wausau.wi.us](mailto:Liz.Brodek@ci.wausau.wi.us) with "EDC public comment" in the subject line by 4:30 p.m. on the meeting day. All public comments received, either by email or in person, if agendized, will be limited to items on the agenda only. Messages related to agenda items received by 4:30 p.m. on the meeting day will be provided to the Committee Chair.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the City of Wausau will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities. If you need assistance or reasonable accommodations to participate in this meeting or event due to a disability as defined under the ADA, please call the ADA Coordinator at (715) 261-6622 or email [ADAServices@ci.wausau.wi.us](mailto:ADAServices@ci.wausau.wi.us) to discuss your accessibility needs. We ask your request be provided a minimum of 72 hours before the scheduled event or meeting. If a request is made less than 72 hours before the event, the City of Wausau will make a good faith effort to accommodate your request.

Other Distribution: Media, Alderpersons, Mayor, City Departments

# MINUTES

## Economic Development Committee Meeting

*Date / Time:* Tuesday, June 6, 2023, at 5:15 P.M. | *Meeting called to order by* Watson at 5:15 P.M.

### In Attendance

**Members Present:** Sarah Watson (C), Tom Kilian, Lisa Rasmussen, Carol Lukens

**Members Absent:** Chad Henke

**Others Present:** Shannon Graff, Tammy Stratz, Liz Brodek, Alder Doug Diny, Sean Wright – Executive Director Grand Theater, Tom Neal (Citizen), Atty. Anne Jacobson, Maryanne Groat (Webex), Mayor Katie Rosenberg, Anna Dybdahl and Joe Ellis – JEM, Robert Barteck

*In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner.*

**Public Comment:** Pre-registered citizen for matters appearing on the agenda.

*Sean Wright, Executive Director of Grand Theater*

*Tom Neal, former Alder, and Wausau resident*

### Agenda Item 1 – Approval of Minutes from May 2, 2023

*Rasmussen motioned to approve minutes from 5/2/23, seconded by Kilian **Approved Unanimously 4-0***

### Agenda Item 2 – JEM presentation on The River (*Ellis and Dybdahl*)

*JEM Presented*

### Agenda Item 3 – Discussion and possible action directing staff to begin negotiations on The River development (*Ellis and Dybdahl*)

*Rasmussen motioned to direct staff to continue negotiations on concept, etc. Seconded by Kilian. **Approved Unanimously 4-0***

### Agenda Item 4 – Discussion and possible action on First Amendment to Development Agreement and Second Amendment to Master Ground Lease between City of Wausau and Federal Building Redevelopment Limited Partnership. (*Stratz*)

Rasmussen motioned to approve the recommendation of the Finance Committee, seconded by Lukens.

Kilian requested clarification if the Federal Loft building has always been subsidized in some form. Stratz replied yes. He then asked why they haven't been able to build up their reserve from rent revenue.

Rasmussen withdrew her motion in order to get more information regarding the rent revenues – repayment.

No further action taken.

### Agenda Item 5 – Discussion and possible action on sale of 1408 Bissell Street (*Stratz*)

Stratz explained the partnership with NCHC who is renting Bissell Street and using it as a group home, is no longer working and they have been provided a 90-day vacate notice. Stratz explained an appraisal was proactively completed in anticipation of approval to sell the property. She said she would like to try selling the property without the use of a realtor to start but if not successful, it would then be listed with a realtor.

Kilian commented that the use of a realtor would be preferred to ensure it is listed in all appropriate outlets and the sale is handled in a proper manner.

*Rasmussen motioned to list the property on the MLS through a realtor, seconded by Kilian. **Approved Unanimously 4-0***

### Agenda Item 6 – Discussion and possible action approving Second Amendment to Planning Option for Commonwealth Real Estate Acquisitions, LLC at 700 Grand Avenue (*Fifrick*)

Fifrick reminded the committee that last August an RFP was released for a low-income housing project at 700 Grand Ave and Commonwealth was the chosen developer for the project. Fifrick explained that Commonwealth applied for Low-Income Housing Tax Credits this past cycle and were not selected just as the Westside Battery project the previous year. He noted Westside Battery was funded in this cycle. He said Commonwealth believes this is a viable project and are still invested but are requesting an extension, similar to what was done for Westside Battery, so they can apply for the tax credit next year. He stated Commonwealth will be able to amend their application to be more favorable during next year's cycle and there won't be multiple applications submitted for Wausau.

Watson mentioned that there are some infrastructure things that need to be completed as a City, so the delay isn't necessarily a bad thing. Fifrick responded that it would be nice if the project could have moved forward this year but there is 100+ year old storm sewer and other infrastructure that needs to be moved so the delay could be considered a blessing.

*Rasmussen motioned to approve amendment, seconded by Lukens. **Approved Unanimously 4-0***

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**Agenda Item 7** – Discussion and possible action on waiver of Right of First Refusal at 7130 Packer Drive (*Fifrick*)

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Removed from agenda.

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**Agenda Item 8** – Discussion and possible action on approving Skywalk Easement Agreement with Foundry on 3<sup>rd</sup> PH1, LLC for connection to parking ramp formerly known as the Sears ramp (*Brodek, T-Wall Rep*)

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Removed from agenda.

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**Agenda Item 9** – Discussion and possible action approving the sale of tangible personal property and fixtures of Bull Falls Brewery, LLC located at 836 and 900 East Thomas Street in TID #9 (*Jacobson*)

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Jacobson noted Bull Falls contacted the city to request approval to sell their tangible assets, not the real-estate, by auction which was required per the development agreement. Jacobson noted the real-estate would be sold at a later time and the proceeds from the sale of the tangible assets will be held in trust until the real-estate is sold and its determined who has priority in receipt of the proceeds.

Kilian asked if there was anything in the development agreement in terms of any specific type of claw back with assets that might trump the process being described. Atty. Jacobson responded that the City has personal guarantees from Don and Mike Zamzow and the City also secured life insurance policies in case either of them passed during the term of the development agreement in addition to the UCC Financial statement and the mortgage so Atty. Jacobson felt the City protected themselves as best they could. She noted there is the possibility of enforcing the personal guarantee still remains if the that is something council would desire to pursue. Kilian asked if Atty Jacobson had any recommendation in regard to that and she responded that she thinks it's too soon for a recommendation on that and if she did have one, it's probably not one she'd be willing to share with the council publicly at this time.

*Rasmussen moved to approve authorization for the auction, seconded by Lukens. **Approved Unanimously 4-0***

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**Agenda Item 10 – CLOSED SESSION** pursuant to s. 19.85(1)(e), Wis. Stats., deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, *regarding approval of the sale of tangible personal property and fixtures of Bull Falls Brewery, LLC, located at 836 and 900 East Thomas Street in TID #9, by auction.*

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Committee chose not to hold closed session.

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**Agenda Item 11 – RECONVENE IN OPEN SESSION**, to take action on closed session item, if necessary.

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Closed Session did not occur.

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**Agenda Item 12 – Adjournment**

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*Alder Lukens motioned to adjourn meeting, seconded by Kilian. **Approved Unanimously 4-0.***

Meeting adjourned at 6:29 PM.

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT  
AND SECOND AMENDMENT TO MASTER GROUND LEASE**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT AND SECOND AMENDMENT TO MASTER GROUND LEASE** (this "Amendment") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the **City of Wausau, Wisconsin**, a Municipal Corporation of the State of Wisconsin (the "City") and **Federal Building Redevelopment Limited Partnership**, a Wisconsin limited partnership, or its designee, qualified to do business in Wisconsin ("Tenant").

**RECITALS**

**WHEREAS**, the City and Tenant entered into that certain Development Agreement dated as of January 31, 2011 (the "Development Agreement"); and

**WHEREAS**, pursuant to the Development Agreement, the City and Tenant entered into that certain Master Ground Lease dated as of February 1, 2011 (the "Ground Lease") with respect to the real property located in the City of Wausau, County of Marathon, State of Wisconsin, described on the attached Exhibit A (the "Premises"); and

**WHEREAS**, the City and Tenant entered into an Amended and Restated Master Ground Lease dated as of March 15, 2012; and

**WHEREAS**, the parties hereto now desire to amend certain terms of the Development Agreement and Ground Lease (capitalized terms which are not otherwise defined herein shall be deemed to have the same meanings herein as are ascribed to such terms in the Development Agreement or the Ground Lease, as the case may be).

**NOW, THEREFORE**, in consideration of the foregoing, and other valuable consideration, effective as of the Effective Date, the parties hereto agree as follows:

**1. Amendments to Development Agreement.**

Section 3 Rent shall be amended to reflect the addition of the \$121,000.00 loan (b.)

3.a. **Financing Assistance.** Subject to the provisions of this Agreement, CITY shall loan Federal Building Limited Partnership, for a 30-year period, zero percent (0%) interest, \$75,000.00 from TIF #3 for blight elimination, environmental testing and cleanup, site preparation, infrastructure, and utilities/services. Such funding shall be provided as set forth in the Development Plan, and the terms of such funding shall be evidenced by appropriate loan documents acceptable to CITY.

3.b. Subject to the provisions of this Agreement, CITY shall loan Federal Building Limited Partnership, for an 8-year period, two percent (2%) interest, \$121,000 from TIF #3 for blight elimination and rehabilitation of the historical structure. Such funding shall be provided as set forth in the Development Plan, and the terms of such funding shall be evidenced by appropriate loan documents acceptable to City.



2. **Amendment to Master Ground Lease.** Addition of the \$121,000.00 loan.

- a. Section 1 Definitions. shall be amended to reflect the addition of the \$121,000.00 loan from the City of Wausau.

*Loan Documents:* All documents evidencing or securing the Mortgages encumbering Tenant's leasehold interest in the Premises securing the following loans: first loan of \$3,100,000.00 in favor of the Wisconsin Housing and Economic Development Authority, second loan of \$548,800.00 in favor of the Wisconsin Department of Administration, third loan of \$75,000.00 in favor of the City of Wausau, and fourth loan of \$121,000.00 in favor of the City of Wausau.

*Mortgages:* The mortgages or deeds of trust encumbering Tenant's leasehold interest in the Premises described as follows: first mortgage securing indebtedness in the amount of \$3,100,000.00 in favor of the Wisconsin Housing and Economic Development Authority, second mortgage securing indebtedness in the amount of \$548,800.00 in favor of the Wisconsin Department of Administration, third mortgage securing indebtedness in the amount of \$75,000.00 in favor of the City of Wausau, and fourth mortgage securing indebtedness in the amount of \$121,000.00 in favor of the City of Wausau.

- b. Section 3 Rent.

(a) Beginning on the Commencement Date and on the anniversary date thereof for each year during the Term, Tenant, without deduction, set-off, recoupment, counterclaim, or demand, shall pay the Annual Rent for the applicable year to Landlord at Landlord's Address, except for the annual rent payment due during the eight year loan shall be deferred, and shall first apply 7/1/2024, through the payment due 7/1/2031; however, the difference between the total annual loan payments and the Annual Rent payment due the City during the term of the loan (for example, \$16,538.88 in 2023) shall continue to accrue during the term of the loan. This accrued amount will be paid back to the City after the termination of the loan, over the remaining term of the lease. By way of example, Metroplains will pay the City \$17,000 in annual rent in 2023. Per the Development Agreement, this rent increases 2% annually and will continue to do so through the term of the lease with this amendment. The annual loan payments, which will begin in 2024, will be \$16,538.88. Using the 2023 lease payment of \$17,000 - \$16,538.88 loan payment = \$461.12 would be due to the City for rent on July 1, 2024.

3. **Lender Consent.** Tenant shall use commercially reasonable efforts to promptly obtain a consent to this Amendment from each of its mortgage lenders with a mortgage on Tenant's leasehold interest in the Premises in the form attached hereto or in a form otherwise reasonably acceptable to the City.

4. **Reaffirmation of Development Agreement and Master Ground Lease.** The Development Agreement and the Master Ground Lease, both as modified by this Amendment, remain in full force and effect, and all terms of the Development Agreement and the Master Ground Lease, as modified hereby, are hereby ratified and reaffirmed. The provisions of the Development Agreement and the Master Ground Lease not affected by this Amendment remain in full force and effect.

5. **Representations and Warranties of Tenant.** Tenant hereby represents and warrants to the City that:

- a. After giving effect to this Amendment, all of the representations and warranties made by Tenant in the Development Agreement and the Development Agreement and the Master Ground Lease are true and accurate in all material respects on the Effective Date of this Amendment, and no event of default under the Development Agreement or the Master Ground Lease has occurred and is continuing as of the Effective Date of this Amendment.
- b. The making, execution and delivery of this Amendment, and performance of and compliance with the terms of the Development Agreement and the Master Ground Lease, as amended, have been duly authorized by all necessary action of Tenant. This Amendment is the valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.

6. **Miscellaneous.** If any provision of this Amendment or the application thereof to any person or circumstance is or shall be deemed illegal, invalid or unenforceable, the remaining provisions of this Amendment shall remain in full force and effect and this Amendment shall be interpreted as if such illegal, invalid or unenforceable provision did not exist. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties agree that faxed and electronically scanned signatures shall be binding on all parties. This Amendment shall be governed in all respects by the laws of the State of Wisconsin.

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

**TENANT:**

Federal Building Redevelopment Limited Partnership

By: \_\_\_\_\_  
Rob McCready, Co-President

**THE CITY**

THE CITY OF WAUSAU, WISCONSIN

By: \_\_\_\_\_  
Katie Rosenberg, Mayor

Attest:

By: \_\_\_\_\_  
Kaitlyn A. Bernarde, Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PREMISES**

Lots 1, 4, 7 and 8, Block 8;

and

The West 29 feet of Lots 2, 3 and 6, Block 8, Original Plat of the City of Wausau, Marathon County, Wisconsin.

Parcel Identification Number: 291.2907.253.0490

**MORTGAGEE'S CONSENT**

WHEREAS, pursuant to a certain [Mortgage] (the "Mortgage") given to [\_\_\_\_\_] ("Lender") by Federal Building Redevelopment Limited Partnership ("Ground Lessee") dated at of [\_\_\_\_\_, \_\_\_\_] and recorded with the Register of Deeds for Marathon County, Wisconsin on [\_\_\_\_\_, \_\_\_\_] as Document No. [\_\_\_\_\_] , Lender took an interest, as mortgagee, in Ground Lessee's leasehold interest in a portion of the property described on Exhibit A attached to and made a part of this Declaration (the "Mortgaged Property"); and

WHEREAS, Lender now wishes to consent to the terms and conditions of this First Amendment to Development Agreement and Second Amendment to Master Ground Lease (this "Amendment").

NOW, THEREFORE, Lender hereby consents to Tenant entering into this Amendment.

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



<u>Year</u>	<u>Total annual Rent</u>	<u>Total Annual Loan payment</u>	<u>Rent-Loan = amount actually paid to rent</u>	<u>Amount being deferred until termination of the loan</u>
2024	\$17,340.00	\$16,538.88	\$801.12	\$16,538.88
2025	\$17,686.80	\$16,538.88	\$1,147.92	\$16,538.88
2026	\$18,040.54	\$16,538.88	\$1,501.66	\$16,538.88
2027	\$18,401.35	\$16,538.88	\$1,862.47	\$16,538.88
2028	\$18,769.38	\$16,538.88	\$2,230.50	\$16,538.88
2029	\$19,144.77	\$16,538.88	\$2,605.89	\$16,538.88
2030	\$19,527.66	\$16,538.88	\$2,988.78	\$16,538.88
2031	\$19,918.21	\$16,538.88	\$3,379.33	\$16,538.88
<b>Amount to be paid back over the remaining term of the lease (4/1/2078)</b>				<b>\$132,311.04</b>

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

**JOINT RESOLUTION OF THE ECONOMIC DEVELOPMENT AND  
FINANCE COMMITTEES**

Approving First Amendment to Development Agreement and Second Amendment to Master Ground Lease between City of Wausau and Federal Building Redevelopment Limited Partnership for Federal Building Lofts at 317 North First Street, to allow for an additional loan from City and related TID #3 budget modification

Committee Action:       Economic Development Committee: 4-0  
                                  Finance Committee: 4-0

Fiscal Impact:

**File Number:**

**Date Introduced:**   July 11, 2023

**FISCAL IMPACT SUMMARY**

<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Budget Source:</i> TID 3
	<i>One-time Costs:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i> \$121,000
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<i>Amount:</i> <i>Annual Retirement</i>
	<i>TID Financed:</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i> \$121,000
	<i>TID Source:</i> <i>Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input checked="" type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, a Development Agreement was authorized January 25, 2011 and entered January 31, 2011, between the City of Wausau (“CITY”) and Federal Building Redevelopment Limited Partnership (“FBRLP”) to redevelop and preserve the Federal Building located at 317 N. 1<sup>st</sup> Street, by converting the property and constructing therein, twenty (20) loft-style apartments with gallery space, because the property was identified as blighted and determined to be in need of redevelopment, preservation and restoration; and

**WHEREAS**, entering into the Development Agreement was contingent upon FBRLP entering into a Ground Lease Agreement, with a term of 50 years and requiring annual payments of \$14,000.00 for the first lease year adjusted two percent (2%) in each lease year thereafter, which commenced on July 1, 2011, and was amended and restated in its entirety on March 15, 2012, and which is currently \$17,000; and

**WHEREAS**, upon agreement with the National Park Service, the CITY agreed to continue to own the property and maintain certain historical elements and furniture; and

**WHEREAS**, the CITY agreed to loan FBRLP, for a 30-year period, at 0% interest, \$75,000 from TID #3 for blight elimination, environmental testing and cleanup, site preparation, infrastructure, and utilities/services, as set forth in the Development Plan; and

**WHEREAS**, FBRLP has identified exterior brick work which it is necessary to repair, which they are unable to finance through conventional means because as a lessee of the property, they are unable to secure financing through a mortgage; therefore, they have requested of CITY, and

**WHEREAS**, your Finance Committee, on May 9, 2023, discussed a facilities loan to FBRLP and unanimously recommended approval of using TID funds to make the \$121,000 loan at 2% interest with an 8-year term to FBRLP; and

**WHEREAS**, your Economic Development Committee, on June 6, 2023, discussed amending the Development Agreement and Ground Lease by recommending approval of the Finance Committee’s recommendation, but took no action, to further explore deferral, rather than forgiveness of Annual Rent payments; and

**WHEREAS**, your Finance Committee approved a budget modification to fund the loan from TID #3 at their meeting on June 27, 2023;

**WHEREAS**, your Economic Development Committee, at their meeting of July 5, 2023 approved such amendments to the Development Agreement and the Ground lease as presented.

**NOW THEREFORE, BE IT RESOLVED** that the Common Council approves the First Amendment to Development Agreement and Second Amendment to Master Ground Lease between City of Wausau and Federal Building Redevelopment Limited Partnership for Federal Building Lofts at 317 North First Street, to allow for an additional loan from City, the terms of which are described above, and authorizes appropriate City staff to execute such documents as are necessary to effectuate the loan.

**BE IT FURTHER RESOLVED** that the Common Council approved the budget modification to TID #3 as described below:

*Ledger Account/Summary	*Fund	*Cost Center	Revenue Category	Spend Category	Project	Program	Grant	Debit Amount
50720:Grants and Donations to Other Organizations	403 Tax Increment District Three	Housing		57220 Down payment and Rehabilitation Financial Assistance	Federal Building Rehabilitation Loan			\$121,000.00

Approved:

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Katie Rosenberg, Mayor

**CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403**

<b>RESOLUTION OF THE ECONOMIC DEVELOPMENT COMMITTEE</b>	
Discussion and possible action approving the request of Asch Properties, LLC (Infused) at 180 E. Wausau Ave., to extend one-year occupancy deadline and modify project plan.	
Committee Action:	Pending
Fiscal Impact:	None
<b>File Number:</b>	22-0709
<b>Date Introduced:</b>	July 11, 2023

FISCAL IMPACT SUMMARY			
<b>COSTS</b>	<i>Budget Neutral</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
	<i>Included in Budget:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Budget Source:</i>
	<i>One-time Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Recurring Costs:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
<b>SOURCE</b>	<i>Fee Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Grant Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>Debt Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount</i> <span style="float: right;"><i>Annual Retirement</i></span>
	<i>TID Financed:</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<i>Amount:</i>
	<i>TID Source: Increment Revenue</i> <input type="checkbox"/> <i>Debt</i> <input type="checkbox"/> <i>Funds on Hand</i> <input type="checkbox"/> <i>Interfund Loan</i> <input type="checkbox"/>		

**RESOLUTION**

**WHEREAS**, a sale of 180 E. Wausau Ave. was approved by the Common Council on July 12, 2022 and the closing of the sale of the property to Asch Properties, LLC, occurred on August 19, 2022; and

**WHEREAS**, Deed Restrictions recorded with the conveyance include a requirement that construction be complete consistent with the response to the RFP that was accepted by the City, and occupancy reached within one year of the date of closing; and

**WHEREAS**, Owner responded to the City’s Request for Proposal to redevelop the property located at 180 E. Wausau Ave., and submitted a proposal to construct a public indoor green space; and

**WHEREAS**, Owner has made many improvements to the property since closing, but has requested an extension of time to reach occupancy beyond the first year, to August 19, 2024, to complete proposed indoor green space, kitchen area, growing beds, storage and exterior hardscape planters, and to modify their response to include solar installation and water runoff systems with the complete repair of the roof; and

**WHEREAS**, Deed Restrictions recorded with the conveyance include a requirement that any modification requests from the original proposal shall require CITY approval; and

**WHEREAS**, Owner has requested delaying the solar installation and water runoff systems to coincide with the complete repair of the roof, which they estimate to happen within 5 years; and

**WHEREAS**, your Economic Development Committee, at their July 5, 2023 meeting, discussed and recommended \_\_\_\_\_.

**NOW, THEREFORE, BE IT RESOLVED**, that the Common Council of the City of Wausau, hereby approves the request of Asch Properties, LLC to extend the one-year deadline within which to complete construction and reach occupancy at 180 E. Wausau Ave., to August 19, 2024, and the modification to their response to the City's Request for Proposal, as outlined above.

Approved:

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Katie Rosenberg, Mayor

To the Wausau City Council,

We are writing to ask for an extension to the deed restriction of 180 E Wausau Ave. It is unlikely that occupancy will be reached on August 19, 2023. We are requesting a one year extension to August 19, 2024.

The following progress has been made since the purchase of the property:

- Roof repairs: The roof has serious damage that we have been able to patch. A total replacement of the roof is necessary within 5 years. Bids have been placed and the cost of a new roof is \$80,000.
- Heating and cooling: There was no functional heating and the building was winterized. We have completely updated the heating and added a cooling system.
- Electrical: To add the air handler and heating units, the electrical panels required updating.
- Overhead doors: All overhead doors (9) have been replaced, which has greatly transformed the look of the building—specifically the glass doors—and greatly improved the energy efficiency of a building with doors that were damaged and severely ill-fitting.
- Plumbing: The water to the building was completely shut off with the winterization of the building. This has been turned on and multiple plumbing areas have been updated.
- Engineering: The proposed event space has been designed and approved by the state and city. Details of these plans have been submitted to the city inspector.
- Plant growth: Multiple plant species have been growing with potting and semi-permanent beds.
- The distillation apparatus has been acquired.
- Storage solutions have been created for equipment to be properly maintained (south side of building)

The following steps require an extension of the deed restriction, but will be finished prior to August 19, 2024

- Proposed indoor green space completion: The acquisition of a general contractor was delayed due to availability. Construction is expected to start in August.
- Kitchen area: This is included in the plans submitted to the city.
- Growing beds, including hydroponic growing: As construction starts, the growing space in the south area will contain growing beds. The hydroponic equipment has been purchased and requires Wi-Fi to function. Wi-Fi will be set up at the completion of construction.
- Further storage solutions will be expanded for tables, chairs and electrical equipment.
- Exterior hardscape planters will be constructed.



The following are modifications to the RFP.

- Solar installation and water runoff systems will be added with the complete repair of the roof, as the estimated cost of replacement is beyond what was budgeted. This is a five year timeline. The temporary repairs to the roof allow it to be functional.

Total to date spent on the project has been \$289,528. There is still a considerable cost left. We anticipate another \$250,000 on this project. We are committed to finishing this project and appreciate an extension to the deed restriction.

Kindly,  
Mathew and Kristen Aschbrenner



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Planning, Community and Economic Development  
Liz Brodek, Development Director

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TEL: (715) 261-6680  
FAX: (715) 261-6808

## MEMO

TO: Economic Development Committee Members  
FROM: Tammy Stratz, Community Development Manager  
DATE: June 29, 2023  
RE: 703 Fulton Street

The City of Wausau has owned 703 Fulton Street since December of 2009. After the housing crash of 2008, the City received stimulus funds called Neighborhood Stabilization Program funds (NSP) to assist with the acquisition and redevelopment of vacant, foreclosed properties. This site fit the parameters of the program so the City purchased, demolished the current building, and redeveloped it into a six-unit apartment building that fit perfectly in the neighborhood. Since the beginning, the City partnered with North Central Health Care to provide housing for eight of their clients who had disabilities of which they could live on their own as long as they had some services provided to them. The tenants were charged rents based on 30% of their gross income – making it very affordable. This partnership continued until North Central pulled out September 30, 2022. A new organization (called Succeed) came through to take over the services for our tenants that North Central had been doing. The tenants and their families were thrilled that they would be able to continue to live and thrive in this environment.

The Community Development Department has been acting as landlord from the beginning of this development. The department was able to hire the maintenance staff of the Community Development Authority (CDA) for any minor repairs that have been needed along the way. This property paid a PILOT payment to the City in lieu of taxes.

Recently, staff had reached out to the CDA to question if the Authority would be interested in taking over ownership of this property since they are the experts in the rental business as well as working with income-qualifying tenants. The Authority agreed that it made sense to pursue this opportunity. They submitted a plan to HUD regarding the acquisition and received approved for such action. On Tuesday, June 27, 2023, the Wausau Community Development Authority Board approved moving forward with the acquisition as well.

Staff is now requesting authorization to transfer the property to the CDA so it will continue to be an affordable housing complex for lower-income residents. The CDA agrees to continue to pay a PILOT payment to the City of Wausau in lieu of taxes. If you have any questions or concerns, please feel free to call me at 715-261-6682 or e-mail me at [tammy.stratz@ci.wausau.wi.us](mailto:tammy.stratz@ci.wausau.wi.us).

Thank you.



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Planning, Community and Economic Development  
Liz Brodek, Development Director

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TEL: (715) 261-6680  
FAX: (715) 261-6808

## MEMO

TO: Economic Development Committee Members  
FROM: Tammy Stratz, Community Development Manager  
DATE: June 29, 2023  
RE: Nidus Hospitality subordination request

On July 20, 2020, the City of Wausau had entered into a TIF loan with Jayjeet Govardhan, owner of Nidus Holding Company, LLC in the amount of \$190,000. The City is holding a subordinate position behind two SBA loans with the Bank of George for a total of \$3,010,000. To date, the borrower has not missed a payment with us.

Staff has received a request to subordinate the City's loan to two new loans through Abby Bank. The new loan amount will equal \$2,856,000 – which is just under the payoff amounts. The original loans carry an interest rate of 9.75%. The new loans will carry 7.25% and 6.25%. The combined monthly payment will go from \$26,155 a month down to approximately \$20,000 a month = saving him over \$73,800 a year! Once the new loans have closed, the 2<sup>nd</sup> loan will be bought out by the SBA. They will ask us to subordinate to them.

Since the City's loan is a TIF loan, it does require council approval to subordinate to the new loans. Staff does agree that the refinancing of the initial loans is definitely in the best interests of the borrower which, then will ease up cash flow to enable the borrower to continue making his payments to us. We are looking for authorization to subordinate to the new loans to Abby Bank and then onto SBA (or their equivalent lender) once the second loan has been bought out by them.

If you have any questions or concerns, please feel free to call me at 715-261-6682 or e-mail me at [tammy.stratz@ci.wausau.wi.us](mailto:tammy.stratz@ci.wausau.wi.us).

Thank you.

**DEVELOPMENT AGREEMENT**  
**(Plaza Hotel)**

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is made as of July 16, 2020 (the “Effective Date”), by and among the CITY OF WAUSAU, a Wisconsin municipal corporation (the “City”); and, NIDUS HOLDING COMPANY LLC, a Wisconsin limited liability company (the “Company”), and JAYJEET M. GOVARDHAN (“Govardhan” and, together with the Company, “Developer”).

**RECITALS**

WHEREAS, the Company is the owner of certain real property located at 201 N. 17th Ave. in the City of Wausau, County of Marathon, State of Wisconsin, being legally described on Exhibit A attached hereto (the “Parent Parcel”), which includes the Plaza Hotel and Suites (the “Hotel”); and

WHEREAS, Developer has proposed to divide the Parent Parcel into three parcels, one of which shall include the Hotel (the “Property”); and

WHEREAS, Developer has further proposed to renovate the Hotel as set forth herein; and

WHEREAS, the City has, pursuant to the authority granted in Wisconsin Statutes, Section 66.1105, created a Tax Incremental District, the City of Wausau Tax Increment District Eight (the “TID”), and adopted a Project Plan (as amended, the “TID Plan”) to finance certain costs to induce development within or around the TID; and

WHEREAS, in order to achieve the objectives of the TID Plan and to make the land within the TID available for development by private enterprises for and in accordance with the uses specified in the TID Plan, the City has determined to provide financial and other assistance from the TID and other actions, as hereinafter set forth, to permit development to proceed; and

WHEREAS, the City intends to amend the TID Plan to include the Property within the TID; and

WHEREAS, Developer’s ability to renovate the Hotel as set forth herein requires certain financial incentives from the City as set forth herein; and

WHEREAS, the City has determined that the renovation of the Hotel by Developer (i) will promote and carry out the development objectives of the City, (ii) furthers the purposes of the TID Plan, and (iii) would not occur at the Property without the assistance of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

a. “Agreement” means this Development Agreement.

- b. “City” is defined in the introductory paragraph of this Agreement.
- c. “Company” is defined in the introductory paragraph of this Agreement.
- d. “CSM” is defined in Section 2.a. of this Agreement.
- e. “Developer” is defined in the introductory paragraph of this Agreement.
- f. “Effective Date” is defined in the introductory paragraph of this Agreement.
- g. “Loan” means the loan of up to \$190,000.00 from the City to Developer for reimbursement of City-approved hard construction Project costs. The Loan shall be evidenced by the Note and secured by the Mortgage.
- h. “Loan Closing” means the commencement date of the Loan, which is the earliest to occur of: (i) the date that Developer makes the first request for Loan proceeds pursuant to Section 3.b.i. of this Agreement; and (ii) the Loan Closing Deadline.
- i. “Loan Closing Deadline” means within sixty (60) days following the Effective Date.
- j. “Loan Request Deadline” means September 30, 2020.
- k. “Maturity Date” means the last day of the calendar month seven (7) years following the Loan Closing.
- l. “Maximum Tax Increment Grant” means \$50,000.
- m. “Memorandum” means the short form memorandum of this Agreement in the form attached hereto as Exhibit B.
- n. “Minimum Construction Cost” means at least One Million, Four Hundred Thousand Dollars (\$1,400,000.00).
- o. “Mortgage” means a real estate mortgage from Developer for the benefit of the City on the Property (including all of the improvements located or to be located thereon) to secure repayment of the Loan. The Mortgage shall be in the form attached hereto as Exhibit C and shall be subordinate only to third-party financing for the Project in the amount set forth in the Project Cost Breakdown approved by the City. The Mortgage shall be recorded as a lien against the Property.
- p. “Note” means the instrument signed by Developer evidencing Developer’s obligation to repay the Loan in the form attached hereto as Exhibit D.
- q. “Parent Parcel” is defined in the Recitals above.
- r. “Plans” means final detailed plans and specifications for the Project in form and substance acceptable to the City, which shall include, without limitation, the following: all improvements now located or to be located on the Property, the footprint of all

improvements and the square footage of all improvements, all easements, pathways, exterior boundary lines, walkways, parking and circulation areas, adjoining public streets and alleys, utilities, exits and entrances, all signage, sidewalks, landscaping, all materials to be used in construction, all interior and exterior finishes, building sections, description of room and space sizes, plan arrangement of rooms and functional spaces, exterior elevations, the stacking of floors and all construction elements, a narrative description of all structural systems, mechanical systems, electrical systems and any specialty systems, and a landscaping plan and landscape maintenance plan.

- s. “Project” means the renovation of the Hotel as set forth in the Proposal.
- t. “Project Commencement” means, the date of actual construction commencement of the Project, as determined by the City in its reasonable discretion.
- u. “Project Commencement Deadline” means August 1, 2020.
- v. “Project Completion” means the substantial completion of all of the Project, as determined by the City in its reasonable discretion. Substantial completion means the occurrence of each of the following: (i) a certificate of occupancy is issued by the appropriate governmental authorities for the Project, as applicable; and (ii) the Project architect has issued a certificate stating that the Project has been substantially completed in accordance with the Plans.
- w. “Project Completion Deadline” means November 30, 2020.
- x. “Project Cost Breakdown” means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect costs of development, construction and installation of the Project in accordance with the Plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.
- y. “Property” is defined in the Recitals above and as further described in Section 2.a below.
- z. “Proposal” means that certain City of Wausau TIF Application dated March 11, 2020, which was presented by Developer to the City.
- aa. “Tax Increment” for any given calendar year is the amount derived by: (i) taking the total real property tax revenues paid by Developer and actually received and retained by the City from real property tax payments on the Property and then (ii) subtracting the Tax Increment Base Year Amount. In the event of a negative number, the Tax Increment for such year shall be \$0.00.
- bb. “Tax Increment Base Year Amount” means the real property taxes payable for calendar year 2020 based on the assessed value of the Property as of January 1, 2020.



cc. “Tax Increment Grant” means, as described in more particularity in Section 3.a below, a grant from the City of the Tax Increment for the year immediately following Project Completion, not to exceed the Maximum Tax Increment Grant.

dd. “TID” is defined in the Recitals above.

ee. “TID Plan” is defined in the Recitals above.

2. Commitments of Developer. Developer agrees and covenants with the City as follows:

a. *Division of Parent Parcel*. As soon as reasonably practicable after the Effective Date, Developer, at its sole cost and expense, shall cause a land surveyor licensed in the State of Wisconsin to make a survey, land division and map, via a certified survey map, of the Parent Parcel that divides the Parent Parcel into three lots (the “CSM”): (i) one lot shall be the Property, which includes the Hotel; and (ii) two other lots. The CSM shall be in form and substance reasonably acceptable to the City and shall be approved by the City pursuant to its normal procedures for approving certified survey maps, and by any other governmental body, if necessary. On or prior to the Project Completion Deadline, the CSM shall be recorded with the Office of the Register of Deeds for Marathon County, Wisconsin.

b. *Construction and Operation of the Project*.

i. Subject to the terms and conditions of this Agreement, Developer, at its cost and expense, agrees to construct, install, furnish, equip and maintain the Project. Developer will cause the Project to be constructed in a good and workmanlike manner and in accordance with the Plans.

ii. Construction of the Project shall commence no later than the Project Commencement Deadline, and upon commencement, Developer will diligently continue construction of the Project substantially in accordance with the construction schedule approved by the City and shall achieve Project Completion no later than the Project Completion Deadline.

iii. Developer will conform and comply with, and will cause the Project to be in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, and all environmental laws, rules, regulations and ordinances. Developer covenants that it will perform and observe the covenants contained in, and the Project will conform and comply with, the covenants, restrictions, documents or instruments governing the Property.

iv. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with the development, construction, management, and operation of the Project.

v. Developer will not, without the City's prior written consent, materially change the scope of the Project, the Plans, or the uses of the Project. The development and operation of the Project shall be in substantial conformity with the Proposal.

vi. Developer shall spend at least the Minimum Construction Cost in construction costs at the Property in connection with the Project. Developer's soft construction costs shall not be included in such amount.

3. Commitments of the City.

a. *Tax Increment Grant by the City.* Subject to the terms and conditions of this Agreement, the City agrees to make, and Developer agrees to accept, the Tax Increment Grant as partial reimbursement for the construction of the Project. The Tax Increment Grant shall be made in a single installment on or before November 1 of the second calendar year after the year of Project Completion in the amount of 100% of the Tax Increment for the calendar year immediately following the year of Project Completion, but in no event shall the Tax Increment Grant exceed the Maximum Tax Increment Grant; provided, however, that the amount of the Tax Increment is further limited to the amount of the Tax Increment actually appropriated for use as the Tax Increment Grant by the City Council. In the event that Developer fails to meet all conditions precedent for the Tax Increment Grant, the Tax Increment Grant shall be forfeited. The City makes no representation or covenant, express or implied, that any non-zero Tax Increment will be generated and/or appropriated or that, the Tax Increment Grant will equal the Maximum Tax Increment Grant. Any Tax Increment which is not appropriated and allocated toward the Tax Increment Grant may be used by the City for any legally permitted purpose, in its sole discretion. The City reserves the right to accelerate payment of the Tax Increment Grant.

b. *Loan.*

i. Subject to the terms and conditions herein, to induce Developer to construct the Project, the City hereby agrees to provide Developer with the Loan on a construction-draw basis for City-approved costs of the construction necessary to complete the Project in accordance with the Project Cost Breakdown. Provided that Developer submits a draw request for disbursement (along with sufficient proof of such expenditures and evidence that all other conditions precedent set forth herein have been satisfied) no later than the Loan Request Deadline, the requested portion of the Loan shall be made available by the City to Developer within thirty (30) days of such written request. No more than one Loan draw request may be made each month and all Loan draw requests shall be provided to the City no later than the Loan Request Deadline. Notwithstanding the foregoing, if Developer's other lender(s) require that the City's funds be disbursed through a title company pursuant to a disbursement agreement acceptable to the City in its reasonable discretion (the "Disbursement Agreement"), then to the extent the terms of the Disbursement Agreement conflict with the foregoing, the terms of the Disbursement Agreement shall control. The City and Developer agree that

disbursements on the Loan are to be made and used pari passu with the funds disbursed to Developer by Developer's primary third-party lender for the Project.

ii. The unpaid principal amount of the Loan shall bear interest until repaid at the rate of 1.50% per annum, computed on the basis of a 365-day year. Interest due and payable on the Loan shall be paid in arrears. While in default and after maturity, the Loan shall bear interest at the rate of 12.00% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

iii. The Loan shall be repaid as follows:

A. Commencing on the first day of the calendar month one (1) year following the Loan Closing, and continuing on the first day of each calendar month thereafter through the Maturity Date, Developer shall make payments of principal (based on a 15-year amortization schedule) and interest in accordance with the Note.

B. Notwithstanding anything to the contrary contained herein, the outstanding principal balance and all accrued but unpaid interest on the Loan shall be due and payable in full on the Maturity Date.

iv. The Loan shall be evidenced by the Note. The Loan and all of the liabilities and obligations of Developer under this Agreement and the Note shall be secured by the Mortgage. All payments of principal and interest on account of the Loan and all other payments made pursuant to this Agreement in connection with the Loan shall be delivered to the City in immediately available funds on the date when due. All payments owed by Borrower to the City under this Agreement and any other document related hereto shall be made without any counterclaim and free and clear of any restrictions or conditions. The Loan may be prepaid in full or in part at any time without premium. Any partial prepayment shall be applied to the principal amount of the Loan in the inverse order of maturity.

4. Conditions Precedent to the City's Obligations.

a. *General Conditions.* In addition to all other conditions and requirements set forth in this Agreement, all of the obligations of the City under this Agreement are conditioned upon the satisfaction of each and every one of the following conditions:

i. Developer shall promptly provide the City with (A) evidence that the Company is authorized to enter into this Agreement and that the persons signing this Agreement on behalf of the Company are authorized to so sign this Agreement and to bind the Company to the terms and conditions of this Agreement, (B) a certified copy of the Company's organizational documents, (C) a certificate of status for the Company issued by the Wisconsin Department of Financial Institutions or the applicable jurisdiction, and (D) resolutions or consents of the Company's board of directors, partners or members, as the case may be, approving this Agreement and the transactions which are the subject of this Agreement.

- ii. No uncured default, or event which with the giving of notice or lapse of time or both would be a default, shall exist under this Agreement. Developer shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.
  - iii. Developer, at its cost, will promptly provide the Project Cost Breakdown to the City. The Project Cost Breakdown shall be certified by Developer, its Project architect and general contractor as accurate and complete and shall be acceptable to the City. The Project Cost Breakdown must show a state of facts acceptable to the City. Any revisions to the Project Cost Breakdown shall be subject to the City's review and approval.
  - iv. Developer shall promptly have completed the Plans which must be acceptable in all respects to the City. Any revisions to the Plans shall be subject to the City's review and approval.
  - v. Developer shall promptly provide the City with a detailed completion schedule for the Project which must be acceptable to the City. Such schedule shall specify the timing of all material aspects of the Project. Any revisions to such completion schedule shall be subject to the City's review and approval.
  - vi. Developer shall have obtained all necessary consents, permits, and approvals, including, but not limited to, zoning and plan approval and building permits, required by the City or any other governmental entity having jurisdiction over the Project.
  - vii. Developer shall promptly provide financial information of Developer to the City, which information shall be in form and content acceptable to the City, including evidence that Developer has available funds sufficient to complete the Project.
  - viii. The City shall have amended the TID Plan.
  - ix. The CSM shall have been recorded.
  - x. The City, through its City Council, shall have approved this Agreement and the transactions contemplated herein, and all other agreements and/or transactions which require approval.
  - xi. Developer shall promptly deliver to the City a standard lender comfort letter from Developer's primary lender.
- b. *Conditions to Each Disbursement of Loan Proceeds.* In addition to the foregoing and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to provide each installment of the Loan is conditioned upon the satisfaction of each and every of the following conditions:



- i. No uncured default, or event which with the giving of notice or lapse of time or both would be a default, shall exist under this Agreement. Developer shall not be in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.
  - ii. Developer shall have executed, delivered and, as applicable, recorded the Note, Mortgage and any other document reasonably requested by the City to evidence the Loan.
  - iii. City shall have approved a list of all contractors employed in connection with the construction of the Project, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. Any change in the general contractor shall require the prior written consent of City, which consent may be withheld in City's sole discretion. Any change in the list of contractors or any change in any materialmen providing goods or services to the Project shall require the delivery by Developer of written notice thereof and delivery of an updated list of contractors within a reasonable time after such change is made.
  - iv. Developer shall submit an executed copy of each and every construction contract or design-building agreement for the Project to the City. Such construction contracts or design-building agreements must be reasonably acceptable to the City.
  - v. Developer shall provide the City with written evidence of Developer's expenditures with respect to construction of the Project and such other documentary evidence as required herein consistent with the Project Cost Breakdown showing a minimum hard cost construction spend of at least the Minimum Construction Cost.
  - vi. Developer shall provide the City with written evidence that the third-party lender providing the primary financing on the Project has approved the draw request submitted by Developer to the City and such third-party lender.
  - vii. Developer shall provide the City with such other documentary evidence as reasonably requested by the City for the construction draw, including, without limitation, appropriate lien waivers and affidavits.
- c. *Conditions to Provision of Tax Increment Grant.* In addition to the foregoing and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to provide the Tax Increment Grant is conditioned upon the satisfaction of each and every of the following conditions:
- i. No uncured default, or event which with the giving of notice or lapse of time or both would be a default, shall exist under this Agreement. Developer shall not be in default (beyond any applicable period of grace) of any of its obligations

under any other agreement or instrument with respect to the Project to which Developer is a party or an obligor.

ii. Project Completion shall have occurred on or prior to the Project Completion Deadline.

iii. Developer shall provide the City with written evidence of Developer's expenditures with respect to construction of the Project and such other documentary evidence as required herein consistent with the Project Cost Breakdown showing a minimum hard cost construction spend of at least the Minimum Construction Cost.

iv. Developer shall provide the City with evidence that the Memorandum was either recorded before any mortgages, leases or any other assignment of the Property, or that such pre-existing mortgagee, lessee and/or assignee has agreed in writing to the terms and conditions of this Agreement.

All submissions given to the City to satisfy the conditions contained in this Section 4 must be satisfactory in form and content to the City, in its reasonable discretion.

5. Additional Representations, Warranties and Covenants of Developer. Developer represents and warrants to the City and agrees and covenants with the City as of the Effective Date and again at each disbursement of the Loan, and again at the disbursement of the Tax Increment Grant as follows:

a. All copies of documents, contracts and agreements which Developer has furnished to the City are true and correct in all material respects.

b. Developer has paid, and will pay when due, all federal, state and local taxes, and will promptly prepare and file returns for accrued taxes prior to any taxes becoming delinquent.

c. Developer will pay for all work performed and materials furnished for the Project.

d. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading at the time when made.

e. The Company is a limited liability company duly formed and validly existing and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. The Company is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

f. For as long as the Loan is outstanding, Jayjeet M. Govardhan shall be the sole member and manager of the Company.



g. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of the Company and constitute the valid and binding obligations of Developer enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.

h. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with the Company's organizational documents or any indenture, instrument or agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer or the Project.

i. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project that would adversely affect the Project or Developer or the enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

j. No default, or event which with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument entered into in connection with the Project.

k. The Project Cost Breakdown approved by the City accurately reflects all Project costs that will be incurred in the development, completion, construction, furnishing and equipping of the Project, and the City is entitled to rely on the Project Cost Breakdown. Developer knows of no circumstances presently existing or likely to occur which would or could be expected to result in a variation or deviation from the Project Cost Breakdown.

l. Developer agrees to pay timely all generally applicable property taxes assessed and levied in connection with the Property under applicable property tax laws, rules, rates, regulations and ordinances in effect from time to time. Nothing in this Agreement shall impair any statutory rights of the City and other taxing authorities with respect to the assessment, levy, priority, collection and/or enforcement of real estate and personal property taxes.

The representations and warranties contained herein shall be true and correct at all times as required by this Agreement. Without limiting the generality of the foregoing sentence, the representations and warranties above shall be deemed to have been made again by Developer at the Loan Closing, again at each disbursement of the Loan, and again at the disbursement of the Tax Increment Grant. Developer shall comply with all covenants contained herein at all times during the term of this Agreement.

6. Default. The occurrence of any one or more of the following events shall constitute a default ("Default") hereunder:

a. Any representation or warranty made by Developer in this Agreement, or any document or financial statement delivered by Developer pursuant to this Agreement, shall prove to have been false in any material respect as of the time when made or given; or

b. Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following notice thereof from the City to Developer (or such longer period of time as is necessary to cure the default as long as Developer has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than 60 days following the notice thereof from the City); or

c. Construction of the Project shall be abandoned for more than sixty (60) consecutive days or if any portion of the Project shall be damaged by fire or other casualty and not repaired, rebuilt or replaced within a reasonable time thereafter; or

d. Developer shall: (i) become insolvent or generally not pay, or be unable to pay, or admit in writing its/his inability to pay, its/his debts as they mature; or (ii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or (iii) become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or (iv) have a petition or application filed against it/him in bankruptcy or any similar proceeding, or have such a proceeding commenced against it/him, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer or Guarantor shall file an answer to such a petition or application, admitting the material allegations thereof; or (v) apply to a court for the appointment of a receiver or custodian for any of its/his assets or properties, or have a receiver or custodian appointed for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after its/his appointment; or (vi) adopt a plan of complete liquidation of its/his assets; or

e. If the Company shall dissolve or shall cease to exist, or Govardhan dies; or

f. Developer shall default on any obligations it has under the Note or under the Mortgage and such default shall continue beyond any applicable notice and cure period; or

g. A default shall occur beyond any applicable notice and cure period on any other indebtedness of or loan to Developer, or a default shall continue beyond any applicable notice and cure period under any mortgage or other lien or encumbrance affecting the Property; or

h. Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations (including any payment obligations) under any other contracts or agreements with respect to the Project.

Upon the occurrence of any Default, the City at its option, may pursue any or all of the rights and remedies available to it at law and/or in equity and/or under this Agreement.

7. Transfers; Assignment. Developer shall not, directly or indirectly, sell, assign, transfer, convey, mortgage or encumber the Property during the term of this Agreement unless it first obtains the prior written consent of the City, which consent shall not be unreasonably withheld. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties and shall run with the land. Notwithstanding the foregoing, the City hereby consents to the sale, assignment, transfer, or conveyance of the Property along with this Agreement from Nidus Holding Company, LLC to Laxmi Holdings LLC, a Wisconsin limited liability company, provided that Jayjeet M. Govardhan is the sole member and manager of Laxmi Holdings LLC at the time of such sale, assignment, transfer, or conveyance, and that if the Loan is still outstanding, Laxmi Holdings LLC shall execute and deliver to the City such documents reasonably required by the City in order for Laxmi Holdings LLC to assume the obligations of the Company pursuant to the Note and Mortgage.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue, unless terminated by all parties, until the latest to occur of the following: (i) repayment in full of the Loan, and (ii) termination of the TID.

9. Joint and Several Obligations. The Company and Govardhan shall each be jointly and severally liable for the performance of all obligations of Developer under this Agreement, and the City may bring suit against either of them, jointly or severally, or against both of them.

10. Miscellaneous.

a. Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

*Notices to Developer:*

Jayjeet M. Govardhan  
201 N. 17th Ave.  
Wausau, WI 54401-4224

*with a copy to:*

Steven H. Schinker  
Essential Counsel, LLC  
500 First Street, Suite 2500  
Wausau, WI 54403

*Notices to the City:*

City of Wausau  
407 Grant Street  
Wausau, WI 54403  
Attn: City Clerk

*with a copy to:*

City of Wausau  
407 Grant Street  
Wausau, WI 54403  
Attn: City Attorney

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the Notice with the courier for overnight (next day) delivery.



- b. Recording. Recording of this Agreement is prohibited except as allowed in this paragraph. Simultaneously with this Agreement, Developer shall execute and deliver to the City the Memorandum. The City will record the Memorandum against the Parent Parcel. Once the CSM is finalized and recorded, the City shall prepare and record such documents are sufficient to release the lots created by the CSM, other than the Property, from the lien of the Memorandum.
- c. No Personal Liability. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
- d. Waiver; Amendment. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.
- e. Entire Agreement. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.
- f. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of Developer and the City, and no third party shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.
- g. Severability. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms, and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.
- h. Governing Law. This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Marathon County, Wisconsin.
- i. Time is of the Essence; Deadlines. Time is of the essence with respect to this performance of every provision of this Agreement in which time of performance is a factor.

In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

**DEVELOPER:**

NIDUS HOLDING COMPANY LLC

By: Jay Govardhan  
Name: JAYJEET M. GOVARDHAN  
Title: Member and Manager

Jay Govardhan  
JAYJEET M. GOVARDHAN, individually

**CITY:**

CITY OF WAUSAU

By: Katie Rosenberg  
Katie Rosenberg, Mayor

Attest: Leslie M. Kremer  
Leslie M. Kremer, Clerk

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PARENT PARCEL**

Lot 2 of Certified Survey Map No. 18583 recorded on May 15, 2020, in the Office of Register of Deeds for Marathon County as Document Number 1803980, being a division Parcel 1 of Certified Survey Map Number 8538 recorded in Volume 33 of Certified Survey Maps on Page 106 located in the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 29 North, Range 7 East, City of Wausau, Marathon County, Wisconsin.

Tax Parcel ID Number: Part of 291-2907-274-0967

AND

Outlet 1 of Certified Survey Map No. 13624, recorded in Volume 60 of Certified Survey Maps, Page 1, as Document No. 1391257; being a redivision of Lots 1 and 2 of Certified Survey Map No. 10207, and a part of and located in the NW 1/4 of the SE 1/4 of Section 27, Township 29 North, Range 7 East, City of Wausau, Marathon County, Wisconsin.

Tax Parcel ID Number: 291-2907-274-0952