



# City of Madison

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

## Master

**File Number: 30387**

**File ID:** 30387

**File Type:** Resolution

**Status:** Items Referred

**Version:** 1

**Reference:**

**Controlling Body:** BOARD OF ESTIMATES

**File Created Date :** 05/28/2013

**File Name:** 9967 309 W Johnson TIF

**Final Action:**

**Title:** Authorizing 1) the Mayor and City Clerk to execute a development agreement to fund a \$3,025,000 Tax Incremental Finance Loan ("TIF Loan") to W. Johnson Lending, Inc., a Wisconsin Corporation ("Lender"), which will then immediately loan the proceeds of the TIF Loan to Hovde West Johnson, LLC ("Borrower") to assist in the development of the 309 West Johnson apartments and commercial redevelopment project located at 309 West Johnson and 316 West Dayton in the proposed amendment to TID #32 (State Street) and 2) an amendment to the 2013 City of Madison Capital Budget to authorize funding of the TIF Loan.

**Notes:**

**CC Agenda Date:** 06/04/2013

**Agenda Number:** 34.

**Sponsors:** Michael E. Verveer

**Effective Date:**

**Attachments:** 309 W Johnson TIF Report 5-29-13.pdf

**Enactment Number:**

**Author:** Joe Gromacki, TIF Coordinator

**Hearing Date:**

**Entered by:** afreedman@cityofmadison.com

**Published Date:**

### Approval History

Version	Date	Approver	Action
1	05/29/2013	Daniel Bohrod	Approve

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Economic Development Division	05/28/2013	Referred for Introduction				
	<b>Action Text:</b>		This Resolution was Referred for Introduction				
	<b>Notes:</b>	Board of Estimates					
1	COMMON COUNCIL	06/04/2013	Refer	BOARD OF ESTIMATES			Pass

**Action Text:** A motion was made by Resnick, seconded by Clausius, to Refer to the BOARD OF ESTIMATES. The motion passed by voice vote/other.

**Notes:**

1 BOARD OF ESTIMATES 06/10/2013

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## Text of Legislative File 30387

### Fiscal Note

This resolution would authorize a \$3,025,000 loan to W. Johnson Inc., a Wisconsin Corporation ("Lender") to be immediately loaned by Lender to Hovde West Johnson, LLC ("Borrower") for the redevelopment of property at the intersection of State Street and West Johnson Streets. One parcel of the site is currently owned by the City of Madison and houses the Fire Administration building that will be sold to Borrower for the development of the Project. As a component of the Project, Borrower shall construct a Fire Administration condominium and Fire Administration Parking condominium to be sold to the City at cost. For the purposes of TIF gap analysis, the cost of constructing the Fire Administration and Fire Administration Parking condominiums was omitted from the calculation.

The redevelopment consists of an 478,000 gross square feet of residential, office, retail and parking uses comprised of approximately 255 apartment units, approximately 331 parking stalls, approximately 24,000 gross square feet of office and retail space and approximately 30,000 gross square feet of Fire Administration office condominium unit and a 25-stall Fire Administration parking condominium unit or other use allowed by the zoning text ("Project"). The Fire Administration office condominium unit and the Fire Parking condominium unit (collectively, the "Fire Units") shall be conveyed by Borrower to the City in accordance with a Purchase and Sale Agreement between the parties.

This loan would be repaid through incremental taxes generated by the Project and represents approximately 52% of the present value of all incremental taxes anticipated from the Project throughout the remaining 17-year life of TID #32 and its proposed boundary amendment that includes a portion of the Project. This would require a minor exception to the City's 50% Rule in its TIF Policy.

The TIF Loan would be disbursed prior to certification of the boundary amendment being provided by the Wisconsin Department of Revenue, such certification expected in the first quarter of 2014.

Funds to capitalize this loan would require an amendment the 2013 Capital Budget, funded with general obligation debt. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 8 years, the Borrower is required to guarantee a minimum payment if sufficient future tax increment is not available.

The increment guarantee is secured by a subordinated mortgage on the property. The TIF Loan also requires that Borrower be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If Borrower sells or transfers the Property to a tax-exempt entity, Buyer shall pay an annual payment in lieu of taxes (PILOT) in the amount of the property tax paid as of the date of sale, frozen, through 2030.

The 2013 adopted capital budget is amended as follows:

Agency: PCED

Project: No. 25, "TID 32 - Upper State Street Corridor," Acc't No. 823201

\$3,025,000 CT32-79140-823201 Proceeds from Borrowing  
(\$3,025,000) CT32-57700-823201 Loan to Developer

**Title**

Authorizing 1) the Mayor and City Clerk to execute a development agreement to fund a \$3,025,000 Tax Incremental Finance Loan ("TIF Loan") to W. Johnson Lending, Inc., a Wisconsin Corporation ("Lender"), which will then immediately loan the proceeds of the TIF Loan to Hovde West Johnson, LLC ("Borrower") to assist in the development of the 309 West Johnson apartments and commercial redevelopment project located at 309 West Johnson and 316 West Dayton in the proposed amendment to TID #32 (State Street) and 2) an amendment to the 2013 City of Madison Capital Budget to authorize funding of the TIF Loan.

**Body**

WHEREAS the City of Madison is in the process of amending TID #32 State Street during 2013 and has completed a blight survey indicating that 67% of the proposed boundary amendment qualifies as blighted; and

WHEREAS the intent and purpose of the TID #32 Project Plan, among other things, is to eliminate blighting conditions and attract and retain business and employment along State Street Corridor; and

WHEREAS, Hovde West Johnson, LLC ("Borrower") has proposed a redevelopment project upon property within the proposed TID #32 boundary amendment, to construct no less than 478,000 gross square feet of residential, office, retail and parking uses comprised of approximately 255 apartment units, approximately 331 parking stalls, approximately 24,000 gross square feet of office and retail space and approximately 30,000 gross square feet of Fire Administration office condominium unit and a 25-stall Fire Administration parking condominium unit or other use allowed by the zoning text at an estimated development cost of approximately \$70,000,000 ("Project") on property generally located at 309 West Johnson and 316 West Dayton ("Property"); and

WHEREAS, the cost of the Fire Administration office condominium unit and Fire Administration Parking condominium unit were omitted from the cost of the Project for the purpose of determining a gap; and

WHEREAS, the Project would generate additional tax increment that would finance remaining public works improvements, assist in the accelerated recovery of existing public works improvement cost to the State Street area and eliminate blight, these outcomes being consistent with said intent and purposes of the Project Plan and City of Madison TIF Policy; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$3,025,000 gap is attributable to land and parking construction cost; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$3,025,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$3,025,000 of said TIF assistance represents approximately 52% of the present value of the estimated tax incremental revenues generated by the Project and requires an exception to TIF Policy that no more than 50% be made available to a project; and

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project and/or out-of-pocket payments made by Borrower or its personal guarantors are sufficient to

repay the TIF Loan; and

WHEREAS, Borrower is pursuing financing from the U.S. Housing and Urban Development (HUD) that may, if awarded, prevent Borrower from paying the City an Equity Participation Payment upon sale or transfer of the Project or a date certain being the statutory expiration date of TID #32; and

WHEREAS, for income tax purposes and in conformance to HUD regulations, Borrower has requested that the City disburse the TIF Loan to Lender, which will then immediately loan the proceeds of the TIF Loan to Borrower; and

WHEREAS, in anticipation of HUD financing approval, Borrower shall pre-pay the Equity Participation Payment to the City as a \$375,000 reduction in the amount of the original \$3.4 million TIF Loan request; and

WHEREAS, said pre-payment is calculated as the present value of an approximately One Million Nine Hundred Thousand Dollar (\$1,900,000) Equity Participation Payment estimated to be paid at the end of the statutory TID lifespan in 2030, less an estimated credit of approximately Three Hundred Fifty Thousand Dollars (\$350,000) representing the estimated future value of foregone profit from the sale of the Fire Units to the City, said profit compounding at 7% per year until 2030; and

WHEREAS, the remaining One Million Five Hundred and Fifty Thousand Dollars (\$1,550,000) is discounted at 7% from the year 2030 and then negotiated between the City and Borrower to approximately Three Hundred and Seventy-Five Thousand Dollars (\$375,000); and

WHEREAS, the conveyance of the Fire Units to the City shall not trigger payment of the Equity Participation Payment; and

WHEREAS, in addition to any other powers conferred by law, the City may exercise any power necessary and convenient to carry out the purpose of the TIF law, including the power to cause project plans to be prepared, to approve such plans, and to implement the provisions that effectuate the purpose of such plans; and

WHEREAS, funding of the \$3,025,000 of TIF Loan proceeds to this Project requires a budget amendment to the City of Madison 2013 Capital Budget; and

WHEREAS, funding of the TIF Loan may occur in 2013, prior to certification of the TID #32 boundary amendment by the Wisconsin Department of Revenue; and

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's loan to Lender, disbursed by Lender to Borrower, demonstrates the potential to eliminate blighting conditions in the State Street area and recover existing public works and improvement cost that would stimulate planned commercial redevelopment in TID #32, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its amendment, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Project. Borrower agrees to develop not less than approximately 478,000 gross square

feet of residential, office, retail and parking uses comprised of approximately 255 apartment units, approximately 331 parking stalls, approximately 24,000 gross square feet of office and retail space and approximately 30,000 gross square feet of Fire Administration office condominium unit and a 25-stall Fire Administration parking condominium unit or other use allowed by the zoning text. The Fire Administration office condominium unit and the Fire Parking condominium unit (collectively, the "Fire Units") shall be conveyed by Borrower to the City in accordance with a Purchase and Sale Agreement between the parties.

2. Form of Assistance. TIF assistance shall be disbursed in the form of a zero percent interest (0%) loan from the City to Lender and then loaned by Lender to Borrower, in the amount of Three Million and Twenty-Five Thousand Dollars (\$3,025,000) ("TIF Loan") to partially finance Borrower's development of the Project as described herein. The TIF Loan proceeds shall be disbursed to Lender, and by Lender to Borrower on a reimbursement basis for TIF-eligible costs, and in accordance with a Disbursing Agreement between the parties. Said TIF Loan becomes a grant when tax increment recovered from the Project and/or cash payments by Lender, Borrower or its guarantors are sufficient to repay the TIF Loan and the City's associated borrowing costs.

3. Evidence of Financing. Prior to execution of the TIF Loan Agreement by the City, Borrower shall provide evidence of bank financing and equity in the aggregate amount of not less than \$66,600,000 ("Financing"), as stated in Borrower's TIF Application dated October 25, 2012 and its amendments or attachments ("TIF Application"). Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Borrower has met all of the lender's conditions of financing, if any, such as commercial pre-leasing requirements. Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Borrower and/or a financial statement demonstrating Borrower's financial capacity to invest equity in the Project. Contribution of land shall be considered equity to the extent the value is supported by Borrower's appraisal used for the Project's financing purposes, net of debt assumption, if any, by Borrower. Borrower's equity investment in the Project shall not be less than the amount of the TIF Loan. The TIF Loan shall be used solely for the purpose of partially funding the TIF-eligible project costs. "Project Costs" as stated in the TIF Application shall equal no less than \$70,000,000.

4. Method of Payment and Tax Increment Guaranty. The City's TIF Loan shall be repaid by Borrower through tax increments generated by the Project and/or cash payments by Lender, Borrower and/or its guarantors.

5. Security. The TIF Loan shall be evidenced by a Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Lender shall execute and deliver the Note. Borrower shall execute a note to evidence the loan from Lender to it (the "Second Note") and also a second mortgage ("Second Mortgage") in favor of the City to secure the TIF Loan and Lender will assign its interest in the Second Note to the City of Madison to secure payment of the TIF Loan. Borrower and the City shall agree to execute a subordination of the Second Mortgage in a form approved by the City Attorney. As principals of the Borrower, Eric D. Hovde and Steven D. Hovde shall each execute a personal guaranty guaranteeing payment of the TIF Loan.

6. Equity Participation Payment-TIF Loan Credit for Prepayment. In addition to all other payments required to be made by Borrower to the City, Borrower shall pre-pay the City Three Hundred and Seventy-Five Thousand Dollars (\$375,000) in the form of a credit against Borrower's original \$3,400,000 TIF Loan request. Said credit represents the present value of an approximately One Million Nine Hundred Thousand Dollar (\$1,900,000) Equity Participation

Payment estimated to be paid the at the end of the statutory TID lifespan in 2030, less an estimated credit of approximately Three Hundred Fifty Thousand Dollars (\$350,000) representing the estimated future value of foregone profit from the sale of the Fire Units to the City, said profit compounding at 7% per year until 2030. The remaining One Million Five Hundred and Fifty Thousand Dollars (\$1,550,000) is discounted at 7% from the year 2030 and then negotiated between the City and Borrower to approximately Three Hundred and Seventy-Five Thousand Dollars (\$375,000). The conveyance of the Fire Units to the City shall not trigger payment of the Equity Participation Payment.

7. Sale to Tax Exempt Entity - PILOT Payment. Borrower shall be prohibited from selling or transferring any portion of the Property (other than the Fire Units) prior to the Borrower's repayment of the TIF Loan. If Borrower sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2030. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.

8. Audit Provision. On June 1, 2016 Borrower shall provide the City with an audit of the total expended Project Cost and Financing of not less than \$70,000,000, each to the City's satisfaction, for the City's review and approval. If the City does not approve the Borrower's audit, the City may request additional information from the Borrower and may perform its own audit of Borrower's books and records related to Project Cost expenditures and Financing.

9. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and PILOT payments, if any, through July 1, 2030.

10. Affirmative Action MGO 39.02 (9). Borrower and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Borrower shall contact the City's Affirmative Action Division to assure that Borrower is in compliance with the aforementioned requirements. Borrower shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Borrower shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract.

11. Living Wage (MGO 4.20) and Equal Benefits (MGO 39.07). Borrower shall comply with Madison General Ordinance (MGO) 4.20 that requires Borrower to provide a living wage and MGO 39.07 Equal Benefits.

12. Accessibility (MGO 39.05). Borrower shall submit a written assurance of compliance with Madison General Ordinance 39.05.

13. Equal Opportunity. Borrower shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.

14. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated October 25, 2012 and its attachments and

amendments submitted to the City as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, shall subject this TIF Loan commitment to reconsideration by the City, or if the loan has been made to immediate repayment of the TIF Loan by Borrower. Notwithstanding the foregoing, the City acknowledges that the Borrower may reconfigure the size and use of the Project to address current market conditions (for example, the number and size of apartments may be increased or decreased, and certain space designated for office use may be converted to residential use), provided such reconfiguration complies with all applicable zoning requirements, condominium documents, approved plans and building permits.

15. Project Completion. Borrower shall guarantee that the construction of the Project shall be completed by December 31, 2015. Project completion shall be evidenced by the issuance of certificates of occupancy for all the components of the Project described in Paragraph 1 herein.

16. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.

17. Title Insurance. At least fifteen (15) days prior to closing of the TIF Loan, Borrower shall provide a commitment for a title insurance policy of the proper type and amount (i.e., the amount of the TIF Loan) of coverage to the City. The City shall receive a lender's policy.

18. Environmental Assessment. Borrower shall provide the City an environmental assessment of the site which is acceptable to staff. The City acknowledges receipt of an acceptable environmental assessment.

19. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval and recording of the GDP/SIP for the Project as described in the October 25, 2012 TIF Application and its amendments and attachments including not less than approximately 478,000 gross square feet of residential, commercial and parking uses including approximately 255 apartment units, approximately 331 parking stalls, approximately 24,000 gross square feet of office and retail space and approximately 30,000 gross square feet of Fire Administration office condominium unit to be sold to the City of Madison as set forth in the Purchase and Sale Agreement, between the parties, as amended, or other use allowed by the zoning text.

BE IT STILL FURTHER RESOLVED that the City of Madison hereby makes exception to TIF Policy 3.1 (8) "50% Rule" to provide Developer with 52% of the present value of tax increments generated by the Project.

BE IT STILL FURTHER RESOLVED that the TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT STILL FURTHER RESOLVED that the 2013 City of Madison Capital Budget be amended to fund the \$3,025,000 TIF Loan to the Project and the Common Council hereby authorizes internal borrowing to fund the loan to be reimbursed from the proceeds of future borrowing.

BE IT STILL FURTHER RESOLVED that the City of Madison shall disburse the TIF Loan prior to certification of the boundary amendment to TID #32 (State Street) by the Wisconsin Department of Revenue, such certification anticipated in the first quarter of 2014.

BE IT STILL FURTHER RESOLVED that disbursal of the TIF Loan prior to certification by the Wisconsin Department of Revenue is contingent upon approval of the boundary amendment to TID #32 by the TIF Joint Review Board.