

WHEREAS the City of Madison (the "City") adopted Resolution 05-00580 approving a Project Plan and Boundary for TID #37 (Union Corners) on July 18, 2006; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of commercial and housing options and attract and retain business and employment in the district; and

WHEREAS the City purchased, cleared, made public improvements, and secured entitlements for the Union Corners property at a cost of approximately \$6,000,000; and

WHEREAS, the City published a Request for Proposals and selected Gorman and Company, Inc. and its assigns ("Developer") to develop the property; and

WHEREAS, on October 30, 2013 the City and Developer executed a Purchase and Sale Agreement that stipulated, among other things, that 1) Developer was not required to pay an Equity Participation Payment (a TIF Policy in force at the time) in the event of the sale of any Phase or Phases to unrelated third parties, and 2) the Developer provide a Corporate Guaranty of tax increment and the loan agreement in lieu of a personal guaranty; and

WHEREAS, Gorman and Company, Inc. and its assigns ("Developer") has proposed to construct six (6) Phases on the Property, the first four phases including a medical clinic, affordable and market rate housing, retail and commercial other use allowed by the zoning text at an estimated development cost of approximately \$66,408,000 ("Project") located within Phase 1, 2 and Phases 3 & 4 of the City-owned parcels 2504, 2507 and 2340 Winnebago Street ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of six (6) Phases of the Project and has determined the gap to be approximately \$5,000,000 for all six (6) Phases and that, but for TIF assistance, the Project could not occur; and

WHEREAS, the City agrees to convey \$5,000,000 of land cost represented in Phase 1, 2 and Phases 3 & 4 of the Property to Developer for One Dollar (\$1.00) to develop said Phases; and

WHEREAS, the City shall retain the land in Phase 5 and 6 and grant Developer a 3-year option to purchase said properties for approximately \$1,000,000 or demonstrate a financing gap in the projects proposed for said properties of at least \$1,000,000; and

WHEREAS, Developer and its assigns shall guaranty that increment generated by the Phases shall be sufficient to recover the City's \$5,000,000 land cost; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$5,000,000 gap is attributable to approximately \$2,127,000 of underground parking cost related to the grocery, approximately \$2,028,000 of cost attributable affordable housing and approximately \$851,000 of non-assessable infrastructure including a serpentine walkway and 40 angled parking stalls along Winnebago Street; and

WHEREAS, \$5,000,000 of said TIF assistance represents approximately 50.1% of the present value of the estimated tax incremental revenues generated by the Project, thus

being in conformance to TIF Policy that no more than 55% be made available to a project ("55% Gateway") without Board of Estimates prior authorization; and

WHEREAS, TIF Policy requires that TIF Policy exceptions stipulated in the Purchase and Sale must be considered by the Board of Estimates prior to drafting a Term Sheet for TIF assistance; and

WHEREAS, in conformance to TIF Policy 3.1(7), TIF staff met with the Board of Estimates on June 8, 2015, information to be found under Legistar File No. 38839, and received the Board's direction to draft a term sheet for the Project; and

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project and/or Developer out-of-pocket payments are sufficient to repay the TIF Loan; 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

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 Developer demonstrates the potential to eliminate blighting conditions, attract and retain businesses and employment in the Capitol Square West area, encourage development of a wide range of housing options and finance additional public works and improvements that would stimulate planned commercial redevelopment in TID #37, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan, the TIF Law and City TIF Policy.

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

1. The Project. Developer agrees to develop:
  - a. Phase 1: An approximately 60,000 square foot medical clinic to be owned by the UW Medical Foundation (UWMF) and operated by UW Health with approximately 100 underground parking stalls and approximately 154 surface parking stalls;
  - b. Phase 2: Approximately 102 apartment units, approximately 28,200 SF grocery store, approximately 7,700 gross square feet of commercial and retail space, 100 underground parking stalls for the apartments, 100 underground stalls and 47 surface stalls for the grocery, commercial and retail space or other use(s) allowed by the zoning text;
  - c. Phases 3 & 4: Approximately 97 affordable and market-rate apartment units 100 underground parking stalls for the apartments and approximately 10,250 square feet of commercial and retail space or other use(s) allowed by the zoning text;
  - d. Infrastructure Improvements: Construction of a serpentine walkway located within the development phases and approximately 40 angled, on-street stalls for

grocery, commercial or retail customers, or other use allowed by the zoning text;  
and

2. Form of Assistance. The Master TIF Loan (“Master TIF Loan”) assistance shall be provided to Developer in the form of conveyance of four phases of the Property from the City to Developer, valued at approximately Five Million Dollars (\$5,000,000), for One Dollar (\$1.00) (“TIF Loan”) to partially finance Developer’s development of Phase 1, Phase 2 and Phases 3 and 4 of the Project. Applicable portions of the TIF Loan (“Phase Loan”) shall be apportioned to each Phase or Phases in accordance with a Master TIF Loan Agreement as set forth in Exhibit D of the Purchase and Sale Agreement, and its subsequent amendments, executed between the City and Developer on October 30, 2013 (“Purchase and Sale Agreement.”) Each of the respective Phase Loans becomes a grant when tax increment recovered from the respective Phase or Phases and/or cash payments by Developer, or any guarantor, are sufficient to repay the respective Phase Loan and the City’s associated borrowing costs. Each Phase Loan, represented as the value of land allocated to each phase, is the following:

Phase 1:	\$2,153,470
Phase 2:	\$2,345,427
Phases 3 & 4:	<u>\$460,425</u>
TOTAL	\$4,959,222

**Approximate Total: \$5,000,000**

3. Evidence of Phase I Investment. Prior to the TIF Loan closing, Developer is expected to create a limited liability corporation (LLC) with the University of Wisconsin Medical Foundation (“UWMF”) which is considered a Gorman LLC, as defined in Section 6. The Gorman LLC for Phase 1 shall provide evidence of investment from for Phase 1 in the aggregate amount of not less than \$22,124,000 (“Investment”) as stated in Developer’s TIF Application dated May 4, 2015 on and its amendments or attachments (“TIF Application”). UWMF will provide \$19,970,530 of the investment, while the remainder will be provided via the loan for Phase 1 as apportioned herein. If no Gorman LLC is created for Phase 1, the Investment will be evidenced as though a Gorman LLC had been created. Investment shall be evidenced in the form of a commitment letter from UWMF and evidence that Developer has met all of the conditions of the Purchase and Sale Agreement. The Project Loan shall be used solely for the purpose of partially funding the TIF-eligible total cost of the Project, as stated in the TIF Application for Phase 1, 2, 3&4, estimated therein at approximately \$66,408,000 (“Project Cost”).
4. Audit. Upon completion of each Phase of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing, to the City’s satisfaction, for the City’s review and approval. If the City does not approve the Developer’s audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer’s books and records related to Project Cost and Financing.
5. Reversionary Rights. As stated in the Purchase and Sale Agreement and its amendments:

- a. There will be a reversionary interest in the Deed from the City ("Seller") that provides that the Developer ("Buyer") will have five (5) years from the Closing to commence construction of any or all of the remaining Phases (in any order) or at the end of five (5) years the Buyer will be required to reconvey to the seller for One Dollar (\$1.00) any Undeveloped Phase(s) unencumbered and receive a credit to the Master TIF Loan. "Commence Construction" or "Commencement of Construction" shall be defined as commencement of excavation for the foundation of a Phase project on the respective Phase or Phases. The Buyer may reconvey any or all Undeveloped Phases to the City at any time within the five (5) year period, in which case the Buyer shall receive a credit equal to the Guarantee Amount for such Phase as set forth on the Phase Apportionment Table [Exhibit D of the Purchase and Sale Agreement].
  - b. The Buyer shall reconvey to the Seller the respective Phase or Phases, by warranty deed, conveying fee simple ownership to such Phase or Phases free and clear of all liens and encumbrances except (a) those subject to which the Buyer took title to the Property, and (b) special assessments not yet due and payable. Real property taxes levied for the year in which the reconveyance occurs will be prorated between the parties. Any real estate transfer fees due shall be paid by the Buyer.
  - c. The Seller shall be required to release a Phase from its reversionary interest on the date the Buyer close on its construction loan for such Phase if all of the following conditions have been met: (1) the Buyer has obtained the building permits necessary to commence construction, (2) the Buyer has provided the Seller with copies of signed agreements with contractors to commence construction, (3) the commencement of construction has occurred, and (4) and Sections 4.e and f. [of the Purchase and Sale Agreement] have been satisfied. Upon certification of the Developer or the particular Gorman LLC (as defined in section 6) that no construction loan will be required, the Phase will be exempted from complying with that portion of this paragraph.
6. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. As stipulated in the Purchase and Sale Agreement, Developer shall guaranty the City's receipt of increment revenue in the form of a Corporate Guaranty provided by Developer until such time as a Phase or Phases is conveyed to a LLC of which the Developer is a Member ("Gorman LLC") and the respective Gorman LLC's net worth equals or exceeds the then outstanding principal balance of the Phase Note. A schedule of the projected tax increments used to calculate the TIF loan amount shall be attached to the TIF Loan Agreement.
  7. Security. The TIF Loan shall be evidenced by a Master Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Developer shall execute a second mortgage in favor of the City of Madison securing payment of the TIF Loan ("Master TIF Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney. Developer shall execute a corporate guaranty guaranteeing payment of the Master TIF Loan and guaranteeing the PILOT payment, if Developer sells or transfers any

portion of the Property to a tax exempt entity as more particularly described in section 8 below. As set forth in the Purchase and Sale Agreement, the following shall also apply:

- a. Upon conveyance of a Phase or Phases from Developer to a Gorman LLC, each Gorman LLC shall execute and collaterally assign a note ("Phase Note") and a mortgage encumbering the respective phase in favor of the City securing payment of the apportioned Master TIF Loan ("Phase Mortgage"). Payment of the Phase Note shall be guaranteed by Developer until the Gorman LLC's net worth equals or exceeds the then-outstanding principal balance of the Phase Note, at which time the City shall release Developer from further liability under such guaranty.
  - b. The original principal amounts of all the Phase Notes shall equal not less than \$4,959,222. Each Gorman LLC shall agree not to remove assets such that its net worth is less than the then-outstanding balance of the Phase Note executed by such Gorman LLC and shall provide annual financial statements to the City demonstrating that its net worth is not less than the then-outstanding balance of the Phase Note.
  - c. None of the Gorman LLCs shall be eligible for additional TIF assistance.
  - d. If a Gorman LLC sells a Phase to any entity other than a Gorman LLC ("Non-Gorman LLC") the Gorman LLC shall pay to the Seller a release price equal to the then-outstanding principal balance of the Phase Note for such Phase.
  - e. If Developer sells or transfers any of the Phases to a Gorman LLC that executes a Phase Note, Phase Mortgage and Phase TIF Loan Agreement, the principal amount of the Master Note shall be reduced by the initial principal amount of the Phase Note and the City shall provide a partial release of the Master TIF Loan Agreement and Master Mortgage for the Phase sold or transferred, provided that Developer is not in default of the Master TIF Loan Agreement or Master Mortgage.
  - f. There will be no release price if the Developer sells any Phase to a Gorman LLC. If Developer sells a Phase to a Non-Gorman LLC, the Buyer shall pay to the City a release price equal to the Guarantee Amount for such Phase as set forth in the Phase Apportionment Table [Exhibit D of the Purchase and Sale Agreement].
8. Sale to Tax Exempt Entity – PILOT Payment. If Developer sells or transfers any portion of the Property to a tax exempt entity ("Entity"), whereupon such ownership renders the Property or any portion thereof as property tax exempt, Entity 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 Entity, frozen, through July 18, 2033. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Entity shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Entity's Mortgage") at the time of Entity's acquisition of the Property. The Entity's Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.

9. Exceptions to TIF Policy. The TIF Loan is contingent upon Common Council adoption of the following exceptions to TIF Loan Underwriting Policy that were stipulated in the Purchase and Sale Agreement executed on October 30, 2013:

Guaranty

a. *Increment Guaranty—*

The City hereby grants an exception to TIF Policy that “requires a personal guaranty of increment, sufficient to recover the debt service on City-financed TIF loans.”

Per the terms of the Purchase and Sale Agreement, a corporate guaranty of Gorman and Company, Inc. or its assigns was accepted in lieu of a personal guaranty.

b. *Loan Agreement Guaranty—*

The City hereby grants an exception to TIF Policy that “requires a personal guaranty to provide the highest level of security to the City, of the terms and conditions of the loan agreement. A corporate agreement may be acceptable if it provides the City with adequate security.”

Per the terms of the Purchase and Sale Agreement, a corporate guaranty of Gorman and Company, Inc. or its assigns was accepted in lieu of a personal guaranty.

Equity Participation Payment

The Purchase and Sale Agreement, executed on October 30, 2013, granted an exception to the Equity Participation Payment, a requirement that Developer must pay a percentage of gross sales proceeds upon sale of a TIF-financed project to an unrelated third party. The Equity Participation policy was subsequently eliminated as part of the amended TIF Policy, adopted of a resolution by the Common Council on February 25, 2014. The City hereby recognizes that said exception to TIF Policy made in the Purchase and Sale Agreement is now authorized.

10. Satisfaction. Subject to Section 4, the following applies to the respective mortgages:
- a. For any phases that are not conveyed to a Gorman LLC, the Master TIF Mortgage will remain against the untransferred Phases. The Master TIF Mortgage shall be satisfied and the Master Note cancelled upon full payment of the apportioned amounts of the TIF Loan as specified in section 2 or full payment of a PILOT payment, if applicable.
  - b. Subject to Section 7, for any phases that are conveyed to a Gorman LLC, the Master TIF Mortgage and Master TIF Note with regard to that phase will be released and replaced with a Phase Mortgage and Phase Note relating only to that phase.
  - c. Phase Mortgages will be satisfied upon the full payment of the apportioned TIF Loan in accordance with the Phase Notes, or upon payment of a PILOT payment, if applicable.

11. Option for Phases 5 & 6. Phases 5 & 6 shall be retained by the City. The City shall grant a 3-year option to Developer, from the date of closing, to purchase for one dollar (\$1.00). Phases 5 & 6, including showing a financing gap of One Million Dollars (\$1,000,000). Phases 5 and 6 can be purchased separately, but the financing gap must be equal to the Guarantee Amount stated in Exhibit D of the Purchase and Sale Agreement.
12. Affirmative Action MGO 39.02 (9). Developer 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, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer 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. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract with a minimum Small Business utilization to be negotiated with the City's Affirmative Action Division based on total construction costs.
13. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.
14. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
15. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
16. Material Changes. With the exception of sales to Gorman LLCs in accordance with the PSA, any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application 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 Developer. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, 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).
17. Project Completion. Developer shall guarantee that the construction of Phase 1 of the Project shall be completed by December 31, 2018. Project completion shall be evidenced by the issuance of a certificate of occupancy. All other Phases must be completed within 3 years of transfer to a Gorman LLC.
18. 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.

19. Title Insurance. At least fifteen (15) days prior to closing, Developer 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.
20. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval of zoning and other land use approvals for the Project as described in the TIF Application and its amendments and attachments including a 60,000 SF UW Health medical clinic, 100 underground parking stalls and 154 surface stalls ("Phase 1"); approximately 102 apartment units, a 28,200 SF grocery, 7,700 SF of commercial and retail space, 200 underground parking stalls for the apartments and grocery and 47 surface stalls ("Phase 2"); approximately 97 affordable and market rate apartment units, 10,250 SF of commercial and retail (collectively, as "Phases 3&4"); and infrastructure improvements including a serpentine walkway located throughout the Project and 40 angled, on-street parking stalls or other use allowed by the zoning text.
21. Requirements for Phase Loan Document. All loan documents for phases of the Project shall be in conformity with the terms of the PSA, the Master Loan Agreement, TIF Policy and standard City practices. City staff will be authorized to execute Phase loan documents without additional approvals from Common Council unless the terms of the documents, except as provided in Section 9 above, deviate materially from the standard and approved terms in the documents listed herein.

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.