

WHEREAS, on September 6, 2005, the City of Madison adopted RES-05-00696 creating a Project Plan and Boundary for TID 36 (“District”); 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 housing options and attract and retain business and employment along East Washington Avenue; and

WHEREAS, 1000 NEW, LLC and 1010 Commercial, LLC (together the “Developer”) proposed to construct approximately 140 apartment units comprising approximately 143,000 gross square feet, approximately 61,000 gross square feet of office, approximately 18,000 gross square feet of retail and other use(s) allowed by the zoning text and approximately 362 stalls of structured parking, at an estimated development cost of approximately \$39,220,000 (“Project”) on property generally located at the former Madison Dairy property on the north 1000 Block of East Washington Avenue (“Property”); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$2,885,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$2,885,000 gap is attributable to parking cost; and

WHEREAS, the \$2,885,000 TIF loan represents a portion of \$3,450,000 of total TIF loan assistance to Borrower; and

WHEREAS, a companion resolution introduced to the Common Council on March 15, 2016 would authorize \$565,000 of TIF loan assistance to Borrower to develop a separate, 65-unit affordable housing project with 50 structured parking stalls; and

WHEREAS, the separation of these two TIF loans that provide financial assistance to two components of the same development is due to federal low-income housing tax credit regulations that exclude commercial and retail-related costs, including parking, from tax credit consideration; and

WHEREAS, the \$3,450,000 total of TIF assistance to Borrower, for the Project and its companion project, represents 67% of the estimated tax incremental revenues generated by both projects; and

WHEREAS, as required by TIF Policy, TIF staff met with the Board of Estimates on January 25, 2016 that authorized an exception to the 55% Gateway; and

WHEREAS, the Project is located outside the boundary of TID 36 and said District has expended all of the \$22 million of eligible project costs authorized in the District Project Plan, thus requiring an amendment to the Boundary and Project Plan for TID #36; and

WHEREAS, the City shall make TIF funds available to the Project no sooner than the date of an approval of a TID #36 Project Plan and Boundary Amendment by the TIF Joint Review Board; 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

WHEREAS, funding of the loan proceeds to this project is authorized in the City of Madison 2016 Capital Budget; and

WHEREAS, in order to make loan funds available the City may have to internally borrow until General Obligation borrowing occurs in the fall of 2016.

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, encourage development of a wide range of housing options and attract and retain businesses and employment in the East Washington Avenue corridor and finance additional public works and improvements that would stimulate planned commercial redevelopment in TID 36 and its proposed Project Plan and Boundary amendment, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its proposed amendment, 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. Approximately 140 market-rate apartment units comprising approximately 143,000 gross square feet, approximately 61,000 gross square feet of office and approximately 18,000 gross square feet of retail and other use(s) allowed by the zoning text;
  - b. A parking ramp of approximately 362 parking stalls allocated for apartment tenants, commercial or retail customers or other use allowed by the zoning text.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan from the City to SHD and then loaned or contributed by SHD to Developer, via an affiliate or subsidiary if necessary, in the aggregate amount of Two Million Eight Hundred and Eighty-Five Thousand Dollars (\$2,885,000) ("TIF Loan") to partially finance Developer's development of the market rate housing, office, retail space and parking for the Project as described in a loan agreement to be executed between the City and Developer ("TIF Loan Agreement"). The TIF Loan shall be disbursed into escrow with the title company on the date of closing of all financing for the Project. Upon completion of the applicable portions of the TIF Loan Agreement, the TIF Loan shall be disbursed in accordance with a Disbursing Agreement among the parties. The TIF Loan shall become a grant when tax increment recovered from the Project and/or cash payments by Developer, or any

guarantor, are sufficient to repay the TIF Loan and the City's associated borrowing costs.

3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and equity in the aggregate amount of not less than \$36,365,000 ("Financing"), as stated in Developer's TIF Application dated September 29, 2015 and its amendments or attachments ("TIF Application"). Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing, such as commercial pre-leasing requirements, if any. Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. In aggregate, Developer's equity investment shall not be less than the amount of the TIF Loan at closing. The TIF Loan shall be used solely for the purpose of partially funding the TIF-eligible total project costs stated in the TIF Application, estimated therein at approximately \$39,220,000 ("Project Cost"). Upon completion of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing ("Audit"), 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. In the event that the financing gap for the Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City ("Clawback"):

The Clawback shall be calculated as follows:

1. "Cost Savings" = \$39,220,000 minus the Audited Actual Cost; and
  2. "Financing Increase" = Audited Actual Financing minus \$36,365,000.
- If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 4 below.

4. Method of Payment and Tax Increment Guaranty. Except as provided in Section 6, 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. Principals of Developer, Helen H. Bradbury and Richard B. Arnesen, shall guaranty the City's receipt of increment revenue. A schedule of the projected tax increments used to calculate the TIF loan amount shall be attached to the TIF Loan Agreement.
5. TID 36 Project Plan and Boundary Amendment. The City shall make TIF funds available no sooner than the date of an approval of a TID 36 Project Plan and Boundary Amendment (the "Plan Amendment") by the TIF Joint Review Board.

6. No TID Project Plan and Boundary Amendment Certification. In the event that the Plan Amendment is not certified by the Wisconsin Department of Revenue (“DOR”), Developer shall be obligated to repay all funds disbursed by the City as a conventional loan, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City’s borrowing, plus one hundred basis points (the “City Loan”). Payments of principal and interest shall be made quarterly. Developer shall perform on all requirements of the TIF Loan Agreement for the City Loan, including but not limited to the Clawback provision (Section 3), as adjusted for the partial funding, and the Tax Increment Guaranty (Section 4). In such event, the City shall credit Developer for the City’s portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Section 4, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, at its ten-year maturity in 2026. The City shall make its best effort to correct any issues that prevented Plan Amendment certification in 2017 and secure certification by DOR in 2018.
7. 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”). SHD shall execute and deliver the Note. If SHD loans (rather than contributes) the TIF Loan To Developer, Developer shall execute a note to evidence the loan from SHD to it (the “Second Note”) and also a second mortgage (“Second Mortgage”) in favor of SHD. SHD will assign its interest in the Second Note and Second Mortgage to the City of Madison to secure payment of the TIF Loan. If SHD contributes the TIF Loan to Developer, Developer shall execute a mortgage in favor of the City of Madison securing payment of the TIF Loan (“TIF Mortgage”). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney if necessary. Principals of Developer, Helen H. Bradbury and Richard B. Arnesen, shall execute a personal guaranty guaranteeing payment of the TIF Loan and PILOT payment, if applicable.
8. Sale to Tax Exempt Entity – PILOT Payment. If Developer sells or transfers any portion of the Property to a tax exempt entity (“Buyer”), whereupon such ownership renders the Property or any portion thereof 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 2032. 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.
9. Satisfaction. Subject to Section 4, the TIF Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and PILOT payment, if any.
10. 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.

11. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Developer to provide a living wage.
12. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
13. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
14. Equal Benefits. Developer shall comply with Madison General Ordinance 39.07 that requires Developer to provide equal benefits.
15. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
16. Material Changes. 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 the Project shall be completed by June 30, 2018. Project completion shall be evidenced by the issuance of a certificate of occupancy for all of the apartment units.
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 approximately approximately 140 market-rate apartment units, comprising 143,000 gross square feet, approximately 61,000 gross square feet of office and approximately 18,000 gross square feet of commercial retail space and a 362-stall parking ramp, or other use allowed by the zoning text.

21. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by issuance of construction permits, by December 31, 2016.

BE IT STILL FURTHER RESOLVED that the TIF Loan to SHD and 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 FINALLY RESOLVED that the Common Council hereby authorizes internal borrowing to fund the Loan to be reimbursed from the proceeds of 2016 General Obligation borrowing.

Fiscal Note:

This resolution would authorize a \$2,885,000 loan to SHD, Inc. ("Borrower") for the redevelopment of the former Madison Dairy property located at the north 1000 Block of East Washington Avenue. The property is located outside the TID 36 boundary and the TID has also expended all \$22 million of TIF funds authorized in the original Project Plan, requiring an amended TID Boundary and Project Plan.

TIF loan disbursement shall be contingent upon the approval of a TID 36 Project Plan and Boundary amendment by the Common Council and TIF Joint Review Board. Certification of the TID #36 amendment by the Wisconsin Department of Revenue is anticipated during the first quarter of 2017.

The \$2,885,000 TIF loan, out of a total of \$3,450,000 of TIF loan assistance disbursed to Borrower, would partially fund the construction of approximately 140 market-rate apartment units, 61,000 gross square feet of office, 18,000 gross square feet of retail space and approximately 362 parking stalls ("Project").

A separate, companion resolution introduced to the Common Council on March 15, 2016 would authorize \$565,000 of TIF loan assistance to Borrower to develop a 65-unit affordable housing project. The separation of these two TIF loans is due to federal low-income housing tax credit regulations that exclude commercial and retail-related costs, including parking from tax credit consideration.

Both TIF loans would be repaid through incremental taxes generated by the Project and guaranteed by principals of Borrower.

The overall TIF assistance to both projects, totaling \$3,450,000, represents 67% of the present value of all incremental taxes anticipated from both projects throughout the remaining 16-year life of TID #36 and its proposed boundary amendment. This figure exceeds the 55% Gateway established in TIF Policy. As required by TIF Policy, TIF staff met with the Board of Estimates on January 25, 2016 that authorized an exception to the 55% Gateway.

Upon completion of the Project, the City will review the Developer's audit of project costs and financing, to the City's satisfaction, or conduct its own audit. In the event that project costs are less than stated in the TIF Application, Developer shall make a clawback payment to the City of 50% of the difference between actual project cost and actual project financing ("Clawback"). This Clawback formula is consistent to the formula recently utilized for condominium projects over the last several years.

Funds to capitalize this loan were authorized in the 2016 Capital Budget, funded with general obligation debt. The City's General Obligation borrowing may not occur until after this TIF Loan is proposed for disbursement. Therefore, funds will be internally borrowed until they are reimbursed by scheduled General Obligation borrowing in the fall of 2016.

While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 9 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

If Developer 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 2032. The increment guarantee and PILOT payment are secured by a subordinated mortgage on the property.