



Special Untelevised

Agenda

Tuesday, March 15, 2016

7:00 PM

De Pere City Hall Council Chambers

Pursuant to Wisconsin Statutes 19.84, Notice is hereby given to the public that a meeting of the **Common Council and Redevelopment Authority** of the City of De Pere will be held on **March 15, 2016 at 7:00 PM** in the **De Pere City Hall Council Chambers, 335 S. Broadway Street, De Pere, WI 54115.**

Call to Order

1. Roll Call
2. Consideration of Amendment No. 5 to the Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).

PLEASE TAKE NOTICE, that pursuant to Wis. Stats. §19.85(1)(e), the Council and Authority may convene in closed session for the purpose of 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. The Council and Authority may then reconvene in open session to take action on any matter discussed in closed session or for such other purposes as are allowed by law.
3. Redevelopment Authority Resolution #RDA 16-01, Authorizing Amendment No. 5 to the Agreement Regarding Redevelopment Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).
4. Resolution #16-41, Authorizing Amendment No. 5 to the Agreement Regarding Development of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).
5. Adjournment.

Any person wishing to attend this meeting who, because of disability, requires special accommodations should contact the Clerk-Treasurer's office at 339-4050 by Noon, the previous day so that arrangements can be made.

Agenda Sent To:

Alderspersons
City Administrator
Mayor
Department Heads
TV, Newspapers & Radio Stations
Kress Family Library
De Pere Chamber of Commerce
Broadway Investment Partners, LLC c/o Jason Tadych
Attorney Ryan Krumrie

City of De Pere, Wisconsin



**Request For Common Council and Redevelopment Authority
Action**

MEETING DATE: March 15, 2016

DEPARTMENT: Plan Commission

FROM: Kimberly Flom

SUBJECT: Consideration of Amendment No. 5 to the Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).

ATTACHMENTS:

- RDA-Council Memo 3-8-16 (DOCX)
- Redevelopment Agreement - Broadway Investment Partners - redlined (PDF)
- Amendment No 5 to Redevelopment Agreement - 3-9-16 (PDF)

At a static guaranteed assessed value of \$3,000,000, the 102 N. Broadway project is estimated to generate approximately \$1,100,000 over the life of TID #7, which expires in 2033. A Developers Grant of \$900,000 would cost the City approximately \$150,000 to \$160,000 in bond issuance and interest costs. Assuming no increases in property value or tax rate over the life of the TID, the project will essentially 'break even'. Any increases in property value or tax rates would generate additional increment that the City would use to cover infrastructure projects, administration costs and other costs incurred by the TID.

The Council typically considers industrial incentives in the amount of 10% to 20% of newly assessed increment. The \$900,000 request equates to 30% of the guaranteed assessed value of \$3,000,000. Redevelopment projects, in urban areas, are inherently more complicated and costly than greenfield developments. It is also important to note that, more than many other project, the developer is providing substantially more density and taxable than the minimum required by Code. This project also contributes to the goal of adding more residential units in Downtown De Pere.

The developer has indicated that he is ready to schedule a closing date and complete construction shortly after this last due diligence item is finalized. He has also mentioned that, without the additional incentive, his team will need to consider reductions in the design of the building façade.

The revised Developers Agreement and approved agreement are attached for your review. The Developer will be at the joint RDA/Council meeting to give a presentation on the project. Please contact me if you have any questions on this agreement prior to the meeting.

Attachments

c: Michael Walsh, Mayor
 Larry Delo, City Administrator
 Judith Schmidt-Lehman, City Attorney
 Scott Thorenson, Public Works Director

**AGREEMENT REGARDING REDEVELOPMENT OF
CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 NORTH BROADWAY STREET)**

THIS AGREEMENT (“Agreement”), made and entered into this 22nd day of September, 2015, by and between the City of De Pere, Wisconsin, a municipal corporation (“City”), the Redevelopment Authority of the City of De Pere (“RDA”), and Broadway Investment Partners, LLC, a Wisconsin limited liability company (“Developer”), (collectively referred to as the “Parties”).

RECITATIONS

WHEREAS, Wis. Stats. §66.1105, provides the authority and establishes procedures by which the City may undertake redevelopment projects within the City and finance such projects through the use of tax incremental financing; and

WHEREAS, in 2006, the City and RDA approved a Project Plan for the East Side Redevelopment Project; and

WHEREAS, in 2006, the City created “Tax Incremental District No. 7, City of De Pere” (TID #7) as and for the benefit of such East Side Redevelopment Project, finding, among other things, that not less than 50% of the area included in the East Side Redevelopment Project District was in need of rehabilitation or conservation work, and

WHEREAS, Wis. Stats §66.1337 and §66.1331 empower cities to assist redevelopment projects by lending or contributing funds and performing other actions of a character which the City is authorized to perform for other purposes; and

WHEREAS, RDA and City have determined that the development of an upscale multiple story commercial/ luxury loft-style apartment mixed-use complex together with parking facilities

and other amenities is consistent with the East Side Business District Redevelopment Project and the TID #7 Project Plan; and

WHEREAS, Developer's ability to develop the mixed-use complex is contingent upon the City's providing financial and other assistance to Developer on the terms set forth in this Agreement; and

WHEREAS, the Redevelopment Project as described above and more fully described in this Agreement will promote the revitalization and economic stability of TID #7 and the City and RDA have determined that Developer is qualified to conduct this Redevelopment Project.

NOW, THEREFORE, upon the mutual promises and obligations contained herein, together with such other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1. The following terms as used herein shall have the following meanings:

- A. "Assessed Value" has the meaning set forth in Wis. Stats. §70.32.
- B. "City" means the City of De Pere and/or the Redevelopment Authority of the City of De Pere interchangeably.
- C. "Commence Construction" means physical work at the Fee Parcel has occurred such that the site is excavated and footing and foundation installation is underway.
- D. "Deficit Payment" means a "Payment in lieu of tax payment to City calculated yearly which is the difference between the taxes paid upon the Assessed Value of

the completed Redevelopment Project after January 1, 2017 and the taxes which would have been paid upon Guaranteed Value”.

- E. “Developer” means Broadway Investment Partners, LLC and its successors and assigns.
- F. “Fee Parcel” means Parcel ED-844 more fully described below and shown on the map attached hereto and incorporated by reference as Exhibit B.
- G. “Guaranteed Value” means the amount of ~~Three Million Dollars and no/100 (\$3,000,000.00)~~ One Million and no/100 Dollars (\$1,000,000.00) as of January 1, 2017 and means the amount of Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2018.
- H. “Inspection Period” means the ninety (90) day period of time Developer has to perform tests, investigation and such other due diligence as Developer may choose regarding the Fee Parcel as a contingency to purchase, which has been extended an additional twenty-one (21) days to March 23, 2016.
- I. “Project”, “Redevelopment”, or “Redevelopment Project” means the proposed multiple story mixed retail/commercial and luxury-style apartment complex, as shown in the concept drawing, attached hereto and incorporated by reference as Exhibit A.
- J. “Payment In Lieu Of Tax” means the Deficit Payment.
- K. “Term of this Agreement” means that period of time from the date this Agreement is entered into until January 1, 2031, or until TID #7 is terminated, whichever is earlier.

- L. “Substantial Completion” or “Substantially Completed” shall mean that Developer has sufficiently completed the Project so that a Certificate of Occupancy has been issued by the City of De Pere Building Inspector for each floor of the Project. The Project will be substantially complete when a Certificate of Occupancy has been issued for all floors of the Project.

ARTICLE II

PURCHASE OF FEE PARCEL

Section 1. Developer agrees to purchase, and City agrees to sell the following described property (the Fee Parcel):

The North 15 feet of the South One-half (S ½) of Lot Eight (8) and the South 10 feet of the West 90 feet of the North One-half (N ½) of Lot Eight (8), all in Block Nineteen (19), according to the recorded Original Plat of De Pere, in the City of De Pere, East side of Fox River, Brown County, Wisconsin.

AND

The North 10 feet of Lot Seven (7), and the South 15 feet of Lot Eight (8), all in Block Nineteen (19), according to the recorded Original Plat of De Pere, in the City of De Pere, East side of Fox River, Brown County, Wisconsin.

AND

The North part of Lot Seven (7), Block Nineteen (19), according to the recorded Original Plat of De Pere, in the City of De Pere, East side of Fox River, Brown County, Wisconsin, described as follows: Commencing at a point on Broadway, 23 ½ feet North of the Southwest corner of said Lot Seven (7); thence North on the West line of said Lot, 26 ½ feet; thence East on a line parallel to North and South lines of said Lot to the Eastern boundary thereof, thence South on said Eastern boundary line 26 ½ feet; thence West to place of beginning.

AND

All that part of the North 6 feet of the South 23.5 feet of Lot Seven (7), Block Nineteen (19), according to the recorded Original Plat of De Pere, in the City of De Pere, East side of Fox River, Brown County, Wisconsin, described as follows: Beginning at a point 17.5 feet North 0 deg.25 min. East of the Southeast corner of said Lot Seven (7); thence North 0 deg. 25 min. East,6 feet; thence North 89 deg.

39 min. West, 120 feet; thence South 62 deg. 08 min. East, 12.99 feet; thence South 89 deg. 39 min. East to the point of beginning.

AND

That part of Lot Seven (7), Block Nineteen (19), according to the recorded Original Plat of De Pere, in the City of De Pere, East side of Fox River, Brown County, Wisconsin, described as follows: Commencing at the Southwest corner of Lot Seven (7), Block Twenty (20), said Plat of De Pere; thence South 00 deg. 35 min. 30 sec. West, 398.51 feet on the East right of way of Broadway Street to the existing North right of way of George Street, the point of beginning; thence South 61 deg. 34 min. 54 sec. East, 13.01 feet on said North right of way; thence South 89 deg. 24 min. 17 sec. East, 102.61 feet on said North right of way; thence South 00 deg. 37 min. 27 sec. West, 16.30 feet; thence North 89 deg. 24 min. 17 sec. West, 86.19 feet; thence North 69 deg. 00 min. 00 sec. West, 22.33 feet; thence North 25 deg. 00 min. 00 sec. West, 16.17 feet to the point of beginning.

as depicted on the map attached and incorporated as Exhibit B.

Section 2. Purchase.

- A. Price. The purchase price for the Fee Parcel shall be Ninety Thousand and no/100 Dollars (\$90,000.00).
- B. Municipal Improvements and Utilities. The purchase price for the Fee Parcel covers and includes the following municipal improvements: concrete street, curb, gutter, storm sewer, sanitary sewer, municipal water, and the following private utility improvements: electric and natural gas and services. The municipal improvements and private utilities are available from and located in and along City right-of-way and applicable utility easements. The purchase price is not intended to and does not cover extension of municipal improvements and private utilities from their location in City right-of-way onto the Fee Parcel.
- C. Security Interest in Fee Parcel. As security for substantial completion of the project, Developer shall execute a mortgage (utilizing State Bar of Wisconsin

Form 21-2003) in the amount up to ~~seven hundred fifty and no/100 thousand dollars (\$750,000.00)~~ nine hundred thousand and no/100 dollars (\$900,000.00) in favor of City at the closing on the Fee Parcel. It is understood that this mortgage shall be in a security position subordinate only to a mortgage lien in favor of Developer's principal lender and that City shall execute such subordination or intercreditor documents as are reasonably required by such institution. The City shall release its mortgage upon return of the Fee Parcel under Article IV. Section 3 or upon Substantial Completion of the Project, whichever occurs earlier.

D. Contingencies to Closing. The following shall constitute contingencies and conditions precedent to the Parties' obligations to close on the sale and purchase of the Fee Parcel, each of which must be satisfied or waived in writing by the Party benefited thereby prior to closing:

1. Certified Survey Map of Fee Parcel. City shall, at its own expense, have a Certified Survey Map (CSM) of the Fee Parcel prepared by a certified surveyor. The proposed CSM shall be provided to Developer no later than ten (10) days following execution of this Agreement and shall be subject to Developer's approval prior to recording the same with the Brown County Register of Deeds, which approval shall not be unreasonably withheld.
2. ALTA/ACSM Survey. City shall, at its own expense, have an ALTA/ACSM Survey of the Fee Parcel prepared by a certified surveyor. The ALTA/ACSM Survey shall be provided to Developer no later than

thirty (30) days following execution of this Agreement and shall be subject to Developer's approval.

3. Inspection Period.

- a. Developer shall have ninety (90) days from the date this Agreement is executed to perform such due diligence, including, but not limited to, tests and investigation regarding the Fee Parcel as necessary to confirm the feasibility of the Project, review of condition of title to the Fee Parcel as evidenced by the title commitment, review of the Certified Survey Map and ALTA Survey, develop and prepare final plans and specifications for the Project, obtain final construction pricing based upon the final plans and specifications, secure and document a construction loan for the Project, and secure and document equity commitments for the Project. City shall permit Developer access to the Fee Parcel prior to closing at no cost to Developer for the purpose of site examination, testing and investigation regarding the Fee Parcel as deemed necessary by Developer. Developer agrees to hold City harmless for any and all injury that may occur to Developer, its agents or employees, City's agents, employees or third parties, or any properties or interest of any of the above referenced persons occasioned as a result of Developer's site examination and testing activities as contemplated by this Section. The hold harmless

provision of this Section is intended to include all costs of defense, including reasonable attorney fees.

- b. Notwithstanding anything contained in this Agreement to the contrary, if the Developer determines, that, (a) the Fee Parcel, or any portion thereof, is not satisfactory to Developer, (b) any of the due diligence, items detailed in Article II, Section 2.D.3(a) are not completed to the satisfaction of Developer, or (c) any of the Developer's contingencies are not satisfied or waived by Developer; then Developer may terminate this Agreement upon written notice given to City on or prior to the date of expiration of the Inspection Period. Developer and City hereby each waive any and all rights to challenge the enforceability of this Agreement on the basis that any of the conditions and contingencies set forth herein are illusory.
4. Evidence of Title/Title Defects. City shall at its own expense, provide title insurance for the property to be conveyed. City shall forward a copy of the commitment of such title insurance to Developer as soon as possible, but in no event later than ten (10) days following execution of this Agreement. The commitment shall be for an owner's policy of title insurance in the amount of the purchase price, naming Developer as the intended insured, written by Bay Title and Abstract, Inc., with an extended coverage and gap endorsement showing title to the property to be marketable. City shall cause, at its cost and expense, the satisfaction

and/or deletion of all standard title insurance exceptions to such title insurance policy. If Developer gives City notice of any title defects prior to the closing which are not acceptable or if the commitment does not contain the extended coverage endorsement, City shall use its best effort to cure such defects. If any such defects are not cured by the date of closing, Developer may terminate this Agreement or reschedule the closing at its option.

5. Financing. Developer shall obtain a loan commitment from a lender and on such terms and conditions acceptable to Developer, in its sole discretion, and Developer shall present to City prior to the transfer of the Fee Parcel hereunder, such loan commitment, or such other commitment as may be acceptable to City and RDA, to finance the Project.
6. Zoning. City shall have approved a conditional use permit for the project on or before October 6, 2015.
7. Approval of Plans. City shall have approved all plans and specifications for the Project including, but not limited to, the site plan.
8. Permits and Approvals. Developer shall have obtained all necessary licenses, permits, certification and approvals required in connection with the Project.
9. George Street Easement. The City shall provide Developer with an easement of the City's air rights over the real estate adjoining the Fee Parcel on George Street and the alley way between George and James Streets to allow for overhanging balconies contemplated by the Project.

The City shall, to the extent possible, convey additional real estate to Developer or provide an encroachment easement to resolve the encroachment of the Project onto the George Street right of way, provided the legal description and necessary recordable documents for the transfer or easement are produced by Developer.

10. Acquisition of Right of Way. The City shall have completed, at its sole cost and expense, the acquisition from Brown County of the right of way located immediately south of and adjacent to the Fee Parcel.
11. Reliance Letter. Developer shall receive a reliance letter from Robert E. Lee & Associates, authorizing Developer, Developer's lender and such other parties as designated by Developer to rely on the Phase I and II Environmental Audits referenced below for purposes of meeting any "all appropriate inquiry" standards required for Developer and its designees to obtain any and all applicable defenses under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and any other federal, state or local laws, statutes, ordinances and regulations.
12. Closing Costs. City shall pay all closing costs usually and customarily paid by sellers of property in the State of Wisconsin, including the cost of the title insurance as provided herein.
13. Conveyance of Title. City shall convey good and marketable title to Developer by warranty deed as of the date of closing, free and clear of

liens, encumbrances, easements, restrictions and covenants to which Developer objects except the following:

- a. Municipal and zoning ordinances providing the same do not restrict or interfere with the intended use of the Fee Property.
 - b. Easements of record provided the same do not restrict or interfere with the intended use of the Fee Property.
 - c. Obligations contained in this Agreement.
14. Closing Date. Closing shall take place within thirty (30) days after the expiration of the Inspection Period. The location of the closing shall be De Pere City Hall, unless the Parties agree otherwise in writing.

Section 3. Warranties and Representations

A. Environmental Condition of Property. City has forwarded to Developer a Phase I and II Environmental Audit of the Fee Parcel completed by Robert E. Lee & Associates. Except as provided, discussed or disclosed in such report, the City represents and warrants as follows:

1. Use of Property. Since City acquired title to the Fee Parcel, no portion of the Fee Parcel has ever been used by City:
 - a. In a manner requiring the issuance of a permit covering the discharge or disposal of pollutant or waste into any waters of the United States pursuant to Wisconsin Statutes, or 33 U.S.C. 1241, et seq.
 - b. For treatment, collection, storage, or disposal of any refuse, objectionable waste, or material in a manner inconsistent with

regulations issued by the Wisconsin Department of Natural Resources pursuant to Wisconsin Statutes, or requiring a permit thereunder.

- c. For the generation, transport, treatment, storage, or disposal of any hazardous waste subject to regulation under Wisconsin Statutes, or 42 U.S.C. 6901, et seq.
 - d. For the manufacture, processing, distribution in commerce, use, or disposal of any toxic substance, including, particularly, PCB's and asbestos, subject to regulations under 15 U.S.C. 2601, et seq.
 - e. For any underground storage tanks subject to regulation under Wisconsin Admin. Code Chapter ILHR 10.
 - f. For any injection well, dry well, or similar facility subject to regulation pursuant to Wisconsin Statutes, or 42 U.S.C. 300H, et seq.
2. Release of Hazardous Substances. There is no current, nor has there been since the City acquired title to the Fee Parcel, any release or substantial threat of release of a hazardous substance, pollutant, or contaminant from or onto the property subject to regulations pursuant to Wisconsin Statutes, or 42 U.S.C. 9601, et seq., or subject to any action that may make the buyer liable in tort under common law, public, or private nuisance action.
3. Threatened or Pending Environmental Litigation. No portion of the Fee Parcel is the subject of threatened or pending investigation or lawsuit or administrative action by any person, forum, governmental body or any

entity relating to or arising from any manner of circumstances subject to regulation pursuant to any statute, ordinances, or regulations.

4. Compliance With Federal, State or Local Environmental Laws. The current use of the Fee Parcel is in compliance with all federal, state, county, and municipal laws and regulations.
- B. Flood Plain or Wetlands. The City represents that it has not undertaken, and under this Agreement is not obligated to undertake, a wetland delineation study of the Fee Parcel.
- C. Geotechnical. The City has forwarded to Developer a Geotechnical Exploration Report completed by River Valley Testing Corp. The City makes no representations regarding the geotechnical characteristics of the Fee Parcel except as provided in such report.
- D. Provisions to Survive Closing. The representations provided in Paragraphs A, B, C and D of this Section shall survive the closing of this transaction.

ARTICLE III

CITY OBLIGATIONS

Section 1. Project Grants.

- A. The Total Project Grant, based upon the Guaranteed Value of Three Million and no/100 Dollars (\$3,000,000.00), is ~~Seven Hundred Fifty Thousand and no/100 Dollars (\$750,000.00)~~ Nine Hundred Thousand and no/100 Dollars (\$900,000.00) (collectively, the "Total Project Grant," and individually, a "Project Grant"), which shall be paid to Developer to defray the costs of the Redevelopment Project on the following schedule:

1. First Disbursement. The first disbursement of the Project Grant in the amount of Ninety Thousand and no/100 Dollars (\$90,000.00) shall be payable to Developer upon closing of the purchase of the Fee Parcel.
 2. Second Disbursement. The second disbursement of the Project Grant shall be in the amount of ~~Two Hundred Eighty Five Thousand and no/100 Dollars (\$285,000.00)~~ Four Hundred Thirty-Five Thousand and no/100 Dollars (\$435,000.00) and shall be payable to Developer not more than fifteen (15) days after approval of the completed footings and foundation by the Building Inspection Department.
 3. Third Disbursement. The third disbursement of the Project Grant shall be in the amount of Two Hundred Twenty-Five Thousand and no/100 Dollars (\$225,000.00) and shall be payable to Developer not more than fifteen (15) days after issuance of certificate of occupancy for the first completed floor (likely the 4th floor) of the Building.
 4. Remainder. The remainder of the Project Grant in the amount of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) shall be payable to Developer upon Substantial Completion of the Project.
- B. The City shall assess the Redevelopment Project in accordance with the real estate valuation requirements for similar mixed commercial/luxury loft-style apartments under Wis. Stats, §70.32. The Total Project Grant is premised upon the ~~completed Redevelopment Project having an Assessed Value equal to the Guaranteed Value for real property tax purposes of not less than Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2017~~ Redevelopment Project

having an Assessed Value equal to the Guaranteed Value of One Million and no/100 Dollars(\$1,000,000.00) as of January 1, 2017 and having an Assessed Value equal to the Guaranteed Value of Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2018. If the Assessed Value of the Redevelopment Project as of such date is less than the Guaranteed Value, Developer and its successors and assigns, agrees to make the Deficit Payment to City as provided in Article IV Section 2.B. below.

- C. Failure to Proceed with Project. If Developer fails to proceed with the Project by failing to meet its obligations in Article IV of this Agreement after receiving any portion of the Project Grant, City may proceed to declare Developer in default of this Agreement and proceed with such remedies as are provided under this Agreement.

Section 2. Fire Line. The fire line currently located in the right-of-way on the south side of the Fee Parcel shall be relocated, at the City's sole cost, to a location to be determined by the City and Developer and which shall not impact the Redevelopment Project.

Section 3. Construction Staging. City shall provide Developer exclusive use of the parking spaces on George Street adjacent to the Fee Parcel as needed for construction staging, including, storage of construction materials and equipment, and for other uses during the construction of the Project, as determined by Developer. To the extent necessary, and upon request for a street closure permit by Developer, City shall, during the construction of the Project, close those portions of George Street on which the aforementioned staging occurs. Developer and City shall cooperate

in coordinating such street closures so as to minimize, to the extent practicable, unduly burdensome parking and traffic disruption.

Section 4. Cooperation. The City agrees to cooperate in the timely prosecution and granting of applications made by Developer for any certifications, permits or approvals appropriate or necessary for the Project.

ARTICLE IV

DEVELOPER OBLIGATIONS

Section 1. Financing. With the exception of the Project Grants to Developer as set forth above, Developer warrants that City will not, in any way, be obligated in any manner to arrange, guarantee, or otherwise participate in obtaining financing for the Project.

Section 2. Construction Parameters.

- A. Developer warrants that the Redevelopment Project shall not be substantially different than the proposed four-story mixed use building of approximately 36,000 square feet of space, to include approximately 2,700 square feet of commercial space and approximately 24 luxury loft-style apartments, which shall be of first class quality construction and which shall comply with the building and site plan designs, all subject to the results of Developer's due diligence investigations, testing and inspections performed during the Inspection Period and further subject to the specifications and site plan finally approved by the RDA and City Plan Commission. Further, such Redevelopment Project is contemplated to include underground and other parking, landscaping and other site amenities to comply with the De Pere Zoning Code.

B. ~~Developer covenants and agrees that, as of January 1, 2017, the total value of the real estate and improvements comprising the Redevelopment Project shall be the Guaranteed Value. Developer further agrees and covenants that should the Assessed Value be less than Three Million and no/100 Dollars (\$3,000,000.00) on and after January 1, 2017, it will make a Payment In Lieu Of Tax to City (the “Deficit Payment”) equal to the difference in taxes to be collected due to the shortfall in the Assessed Value~~Developer covenants and agrees that the total value of the real estate and improvements comprising the Redevelopment Project shall be the Guaranteed Value. Developer further agrees and covenants that should the Assessed Value be less than the Guaranteed Value, it will make a Payment in Lieu of Tax to City (the “Deficit Payment”) equal to the difference in taxes collected due to the shortfall in Assessed Value. The Deficit Payment shall be determined as follows:

1. The Deficit Payment shall be determined by subtracting the Assessed Value from ~~Three Million and no/100 Dollars (\$3,000,000.00)~~the Guaranteed Value. That number shall be multiplied by the mil-rate for all taxing jurisdictions established for the prior tax year for the east side of De Pere, with the product being due and payable by Developer on or before October 15 of the year in which it is levied.
2. If not paid in full by October 15 of the year levied, the Deficit Payment amount shall become a lien on the property as a special charge under Wis. Stats. §66.0627.

3. Developer waives all rights to appeal the real estate assessment to the City Board of Review provided said assessment is equal to or less than the total Guaranteed Value.
4. These and all other provisions shall become restrictive covenants on the transfer of ownership of any interest in the Fee Parcel. City shall record a copy of this Agreement against the Fee Parcel after closing to memorialize these and other obligations in this Agreement as provided in Article VI Section 1 of this Agreement.
5. The guarantee and concomitant waiver of appeal rights found in this Subsection shall expire upon termination of this Agreement.

Section 3. Construction Schedule.

- A. Site Plan Review. Developer shall present final construction plans to the RDA and Plan Commission for their review during the Inspection Period and following approval of said construction plans, Developer shall commence construction of the Redevelopment Project within sixty (60) days following closing unless otherwise agreed in writing between the parties.
- B. Failure to Commence Construction. If Developer fails to commence construction as provided under Article IV. Section 3.A and Developer fails to cure same as provided under Article V. Section 2, City shall be entitled to return of the Fee Parcel.
 1. Closing on the return of the Fee Parcel to the City shall take place not less than 30 days after the 30 day cure period provided under Article V. Section 2 has expired.

2. Developer shall transfer the Fee Parcel to City free and clear of all encumbrances and shall pay all closing costs usually and customarily paid by sellers of property, including transfer fees, title insurance, pro-rated real estate tax and other special charges. Other than the release of mortgage from City as required under Article II Section 2.C., there shall be no consideration paid by City to Developer for such transfer in recognition of the fact that the price Developer paid for the Fee Parcel (\$90,000) was earlier reimbursed by City in the form of a Project Grant at the time of closing.
3. Return of the Fee Parcel under this paragraph satisfies the requirement of Article IV Section 9.
- C. Construction. Developer agrees that construction shall proceed with all deliberate speed and shall be Substantially Completed no later than ~~December 31, 2016~~September 1, 2017.
- D. Failure to Comply with Plan Approval, Commencement of Construction or Completion. Developer agrees that time is of the essence as to plan approval, commencement of construction and Substantial Completion. If any of the above timelines are not met, in addition to all other remedies available under this Agreement and in law or equity, City shall be entitled to forfeiture of the deposit under Article IV, Section 10.
- E. Certificate of Occupancy. Developer is required to obtain all Certificates of Occupancy from the City Building Inspector for all phases of the Project.

Section 4. Equal Opportunity. Developer hereby agrees, on behalf of itself and its successors and assigns, that it will not permit the sale, lease, or use of the property or facilities within the Fee Parcel by any party who would act or permit unlawful discrimination or restriction in contradiction of Wis. Stats. § 111.321.

Section 5. Restrictions on Use. For the Term of this Agreement, Developer hereby agrees, for itself, its successors and assigns, that it shall not, without the prior written consent of the City, sell or lease any portion of the Fee Property or Project to an entity whereby such sale or lease would cause such portion of the same to become exempt from real estate taxation. This obligation, as well as the other obligations of this Agreement, shall be binding upon all of the Developer's successors and assigns. Developer further agrees it will place a restriction in any deed conveying the Fee Parcel during the duration of this Agreement prohibiting any use of such property during the Term of this Agreement which would cause the Fee Parcel or any portion thereof to become tax exempt. Should the Building Development nevertheless become tax exempt, Developer, for itself, its successors and assigns, hereby agrees that the Deficit Payment shall then be made by the owner of the Fee Parcel in accordance with Article IV Section 2.B.

Section 6. Obligation to Maintain and Repair.

A. Maintenance of Redevelopment Area. Developer shall, during the Term of this Agreement, keep and maintain the Fee Parcel in good repair and working order and will make or cause to be made from time to time all repairs necessary thereto (including external and structural repairs) and renewals and replacements thereof so as to maintain in the City an operational, habitable, and marketable retail and

residential development, ordinary wear and tear and obsolescence excepted, and shall keep and maintain such casualty insurance upon the property as is customarily held in developments of like sizes and characters. All insurance policies required under this Section shall be taken out and maintained with insurance companies authorized to do business in the State of Wisconsin. To assume the respective risks undertaken, said policies of insurance may be written without deductible amounts but with co-insurance features and the exceptions and exclusions comparable to those in similar policies carried by other companies similarly situated, all of which must be approved by City, which approval shall not be unreasonably withheld. Certification of co-insurance shall be filed with City prior to Developer commencing of construction of the Projects and each such policy of insurance shall contain a provision that the insurance company shall give City at least thirty (30) days prior written notice of cancellation, non-renewal, or material change during the Term of this Agreement. In the event of the proposed cancellation or non-renewal of any policy by an insurance company, Developer shall secure adequate replacement insurance policies prior to the effective date of such cancellation.

- B. Damage Repair by Developer. If the Redevelopment Project, or any portion of it shall be damaged or partially or totally destroyed during the Term of this Agreement, Developer shall promptly repair, rebuild, or restore that portion of the Fee Parcel which it owns and has been damaged or destroyed in a manner consistent with the Project plan. In the happening of such an event, Developer shall promptly give written notice thereof to City. If said net proceeds of the Fee

Parcel insurance are insufficient to restore the property in a manner consistent with the Project Plan, it shall be the responsibility of Developer to complete the restoration.

- C. Subordination. City agrees that, upon presentment of a written request from Developer's lender, it will subordinate its interests in this Agreement to those of the lender as may reasonably be required.

Section 7. Claims, Injury and Property Damage Indemnification. Except as provided in Article II, Section 3 (Warranties and Representations), Developer agrees to protect, defend, indemnify, and hold City and RDA, their officers, agents, and employees, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, reasonable professional fees, reasonable attorney fees, including those imputed to the City Attorney or other expenses or liabilities of every kind and character to the extent caused by and in connection with, or arising directly or indirectly out of, this Agreement and/or arising out of the operations and construction of this Development Project. This requirement shall apply with equal force to work performed by Developer, its architect, contractor, or any subcontractor or any other party directly employed or retained by Developer. Without limiting the generality of the foregoing, any and all such claims, etc. relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof), or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of

any court, shall be included in the indemnity hereunder. Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at its sole expense and agrees to bear all other costs and expenses related thereto even if it (claims, etc.) is groundless, false or fraudulent.

Developer agrees that City will, if City deems appropriate, provide any additional reasonable defense to any claim hereunto, the full cost of which shall be borne by Developer. Notwithstanding the above, Developer's indemnification obligations under this Section shall not apply to the extent a claim or damage is caused by the City.

Section 8. Not for Speculation. Developer represents and agrees that its acquisition of the parcels in the Project Area and its undertakings pursuant to this Agreement will be for the sole and express purpose of the redevelopment of the Fee Parcel consistent with the Project Plan and the terms and conditions of this Agreement and are not for the speculation in land holdings. Accordingly, Developer agrees for itself, its successors and assigns, that, except only by way of security for and only for the purpose of obtaining the financing necessary to perform its obligations with respect to making the improvements on the Fee Parcel under this Agreement, Developer has not made and will not make or suffer, cause or permit to be made prior to the Substantial Completion of the Project, any total or partial sale, assignment, conveyance or lease, or any trust or power or transfer in any other mode or form of or with respect to this Agreement, the Parcels, the Redevelopment or any interest of the Developer therein, except for non-voting interest in the Developer for investment purposes only, or in this Agreement or

any other agreement related to the Redevelopment without the prior written approval of the City, which shall not be unreasonably withheld. This provision shall not, however, restrict Developer from entering into contracts for the lease of commercial space or the rental of apartment units prior to Substantial Completion for the purpose of occupancy of the Project after its completion.

Section 9. Failure to Develop.

- A. Return of Project Grants. Developer agrees to and obligates itself, its successors and assigns, to repay all Project Grants received from City should Developer fail to have Substantially Completed construction of the Redevelopment Project within twenty-four (24) months following the closing on the Fee Parcel, unless otherwise agreed by the Parties in writing. Upon repayment in full of the Project Grants received by Developer, plus interest thereon at the statutory rate from the date the Project Grant was made to the date repaid, the obligations found in Article IV Section 2.B. and Article IV Section 5 shall become null and void.

Section 10. Liquidated Damages /Penalty Clause. Developer agrees to provide, at the time this Agreement is executed, a refundable cash deposit to City in the amount of Ten Thousand and no/100 Dollars (\$10,000.00). The deposit shall be forfeited to City in the event of a material default by Developer under any of the material terms of this Agreement, which shall constitute compensation to City for expenses incurred as a result of Developer's breach. Developer's obligations for a deposit shall be released and the deposit refunded to Developer by City upon Substantial Completion of the Redevelopment Project by Developer.

ARTICLE V
DEFAULT PROVISIONS

Section 1. Enforced Delay in Performance for Causes Beyond the Control of Parties.

For the purposes of any provisions of this Agreement, no party nor any successor in interest shall be considered in breach or default of its obligations with respect to the beginning and completion of any phase of construction or progress in respect thereto in the event of enforced delay in the performance of any obligations due to unforeseeable causes beyond its control and without its fault, or negligence including, but not restricted to, acts of God, forces majeure, acts of the public enemy, acts of adjoining property owners, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, breach of contracts by contractors or subcontractors, unusual delays in obtaining any necessary permits or approvals from a governmental agency not caused by Developer's acts or omissions, and unusually severe weather or delays of subcontractors due to such causes, it being the purpose and intent of these provisions that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of Developer with respect to construction of the improvements shall be extended for the period of the enforced delay as determined in good faith by City; provided that the party seeking the benefit of the provisions of this Section shall, within Thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof and of the cause or causes thereof and requested an extension for the period of the enforced delay. In the event a delay is caused by unavailable materials or breach

of contracts by contractors or subcontractors, Developer shall make a reasonable effort to procure performance and City agrees to grant a sufficient extension to permit such procurement by Developer.

Section 2. Breach and Cure. Any provision of this Agreement which does not contain a specific remedy shall be resolved as provided hereunder. Except for Developer's failure to commence construction as provided under Article IV Section 3.B., if either party believes that such provision has been breached, it shall supply the other party with written notice, informing the other party that it has sixty (60) days to cure such breach. If any party has reason to believe that Developer has failed to commence construction as provided under Article IV Section 3.B., the cure period shall be thirty (30) days, not sixty (60) days. If there is no cure of any t breach, the party may bring any action available for any remedy provided in law or equity; except, however, in the event a party is pursuing a cure but the cure cannot be completed in the cure period provided herein, then it shall not be construed as a default if the party immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

Section 3. Specific Performance Where Remedy Provided. Where a remedy is specifically provided in this Agreement, in the event that either party fails to perform in compliance with such remedy provision or unreasonably delays in performing thereunder and such delay or failure causes damage to the other party, nothing in this Agreement shall prevent the other party from maintaining an action in specific performance to compel the remedy, demanding damages for any injury

caused by the failure of the other party to act in compliance with such remedy provision within a reasonable time or any other remedy or collection of any other costs available in law or equity.

Section 4. Rights and Remedies Cumulative. The rights and remedies of the parties, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default of breach or of any remedies for any other event of default or breach by Developer. No waiver made by City with respect to the performance or manner or time of any obligation of Developer under this Agreement shall be considered a waiver of any rights of City to enforce any other obligations of Developer.

ARTICLE VI

MISCELLANEOUS

Section 1. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized office of City, and delivered to the party to whom it is directed at the address specified in Section 5 hereunder. Whenever under this Agreement the consent, approval or waiver of City is required or the discretion of City may be exercised, the Mayor and/or the Chair of the RDA shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and

request or application for such approval is duly made, such approval shall not be unreasonably withheld.

- Section 2. Obligations to Run with the Land. The obligations contained herein shall run with the land and are binding on all subsequent owners of the Fee Parcel as applicable. This Agreement and any amendment thereto shall be recorded with the office of the Brown County Register of Deeds.
- Section 3. Assignment. Developer may assign this Agreement only in its entirety, and then only upon written notice of assignment to City, including acknowledgement by the assignee of the obligations contained in this Agreement and City's consent to the same.
- Section 4. Contractual Interpretation. The paragraphs headed by roman numerals in this Agreement are referred to as sections and are intended to include, as categories thereunder, lettered subsections. The lettered subsections of this Agreement are to be referred to as sections and the numbered sections, subsections. The Section, paragraph, and subparagraph headings of this Agreement are for convenience of reference only and shall not limit or otherwise affect or be used in the construction of any terms of the provisions of this Agreement.
- Section 5. Notices. Unless otherwise specifically addressed in this Agreement, all notices required by this Agreement must be in writing. All notices of breach or termination as required in this Agreement shall be mailed by certified mail to the addresses below and shall be deemed received on the date of mailing. All other notices required under this Agreement may be sent by regular mail. All notices

and communications shall be addressed to the Parties hereto at their respective addresses set forth and shall be deemed received on the date of postmark:

1. If to Developer: Jason Tadych
Broadway Investment Partners, LLC
3032 Autumn Leaves Circle
Green Bay, WI 54313

2. If to City/RDA: City of De Pere
City Clerk-Treasurer
335 South Broadway Street
De Pere, WI 54115

With a copy to: City of De Pere
City Administrator
335 South Broadway Street
De Pere, WI 54115

Section 6. No Liability of City. City shall have no obligation or liability to the lending institution, architect, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by Developer to any third party or by any third party which are contrary to these provisions.

Section 7. Law Governing. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

Section 8. Entire Agreement. This Agreement contains all agreements, terms, covenants, conditions, warranties, and representations made or entered into by and between the Parties and supersedes all prior discussions and agreements, whether written or oral, between the Parties and constitutes the sole and entire agreement between the Parties with respect thereto. This Agreement may not be modified or

amended unless such modification or amendment is set forth in writing and executed by all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first written above.

BROADWAY INVESTMENT PARTNERS, State of Wisconsin)
LLC : SS
By: Brown County)

Print Name: This instrument was acknowledged before me
Title: on the ___ day of ___, 2015, by
and
of Broadway Investment Partners, LLC.

Print Name:
Title:

Notary Public, State of Wisconsin
My commission expires on _____.

Signatures continue on following page

CITY OF DE PERE State of Wisconsin)
By: : SS
Brown County)

Michael J. Walsh, Mayor This instrument was acknowledged before me
Shana L. Defnet, Clerk-Treasurer on the ___ day of ___, 2015,
by Michael J. Walsh, Mayor and Shana L.
Defnet, Clerk-Treasurer of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

REDEVELOPMENT AUTHORITY OF State of Wisconsin)
THE CITY OF DE PERE : SS
By: Brown County)

Attachment: Redevelopment Agreement - Broadway Investment Partners - redlined (4498 : 102 N. Broadway Developers Agreement)

Theodore J. Penn, Chair

This instrument was acknowledged before me on the _____ day of _____, 2015, by Theodore J. Penn, Chair of the Redevelopment Authority of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

Drafted by: Judith Schmidt-Lehman

Attachment: Redevelopment Agreement - Broadway Investment Partners - redlined (4498 : 102 N. Broadway Developers Agreement)

**AMENDMENT NO. 5 TO AGREEMENT REGARDING REDEVELOPMENT OF
CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 NORTH BROADWAY STREET)**

This Amendment No. 5 is entered into this ____ day of March, 2016, with respect to that certain Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street), dated September 22, 2015 (“Agreement”), which Agreement was entered into between the City of De Pere, the Redevelopment Authority of the City of De Pere and Broadway Investment Partners, LLC.

RECITALS

WHEREAS, on December 17, 2015, the Parties hereto entered into Amendment No. 1 to the Agreement which extended the “Inspection Period” to January 11, 2016; and on January 11, 2016, the Parties hereto entered into Amendment No. 2 to the Agreement which extended the “Inspection Period” to February 1, 2016; and on January 24, 2016, the Parties hereto entered into Amendment No. 3 to the Agreement which extended the “Inspection Period” to March 2, 2016; and on February 29, 2016, the Parties hereto entered into Amendment No. 4 to the Agreement which extended the “Inspection Period” to March 23, 2016; and

WHEREAS, the City has agreed to provide Developer with an additional One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) due to the existence of soil conditions discovered on the Fee Parcel during the Inspection Period which requires Developer to install a deep foundation system to adequately support the Redevelopment Project; and

WHEREAS, the Parties have agreed to delay the Substantial Completion due date as set forth below; and

WHEREAS, the Parties desire to amend certain terms and conditions of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms not otherwise defined in this Amendment No. 5 shall have the same meanings set forth in the Agreement. In the event of any inconsistency between the terms of this Amendment No. 5 and the Agreement, this Amendment No. 5 shall control. All other terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

2. Change in Date for Substantial Completion. All references in Article IV, Section 3(C), of the Agreement to a date regarding the Substantial Completion of “December 31, 2016” are hereby deleted and replaced with “September 1, 2017”.

3. The definition of “Guaranteed Value” in Article I, Section 1(G) is hereby deleted and replaced with:

“Guaranteed Value” means the amount of One Million and no/100 Dollars (\$1,000,000.00) as of January 1, 2017 and means the amount of Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2018.”

4. The second sentence of Article III, Section 1(B) is hereby deleted and replaced with:

“The Total Project Grant is premised upon the Redevelopment Project having an Assessed Value equal to the Guaranteed Value of One Million and no/100 Dollars(\$1,000,000.00) as of January 1, 2017 and having an Assessed Value equal to the Guaranteed Value of Three Million and no/100 Dollars_(\$3,000,000.00) as of January 1, 2018.”

5. The first and second sentences of Article IV, Section 2(B) are hereby deleted and replaced with:

“Developer covenants and agrees that the total value of the real estate and improvements comprising the Redevelopment Project shall be the Guaranteed Value. Developer further agrees and covenants that should the Assessed Value be less than the Guaranteed Value, it will make a Payment in Lieu of Tax to City (the “Deficit Payment”) equal to the difference in taxes collected due to the shortfall in Assessed Value.”

6. The words “of Three Million and no/100 Dollars (\$3,000,000.00)” found in Article IV, Section 2(B)(1) is hereby deleted and replaced with “the Guaranteed Value”.

7. Security Interest in Fee Parcel. Article II, Section 2(C), of the Agreement shall be amended to replace the amount of the mortgage from seven hundred fifty thousand and no/100 dollars (\$750,000.00) to nine hundred thousand and no/100 dollars (\$900,000.00).

8. Project Grants. Article III, Section 1(A), of the Agreement shall be amended to replace seven hundred fifty thousand and no/100 dollars (\$750,000.00) with nine hundred thousand and no/100 dollars (\$900,000.00) as the Total Project Grant amount.

9. Second Disbursement. Article III, Section 1(A)(2), shall be amended to replace two hundred eighty-five thousand and no/100 dollars (\$285,000.00) with four hundred thirty-five thousand and no/100 dollars (\$435,000.00) as the amount of the second disbursement of the Project Grant.

10. Counterparts. This Amendment No. 5 may be executed in any number of counterparts, all of which together shall constitute a single Amendment No. 5. Facsimile and email (pdf. format) signatures shall be accepted by the parties and shall be deemed original signatures for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 5 to be executed as of the date and year first written above.

BROADWAY INVESTMENT PARTNERS,
LLC
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Jason Tadych, Member

This instrument was acknowledged before me on the ____ day of March, 2016, by Jason Tadych, Member of Broadway Investment Partners, LLC.

Notary Public, State of Wisconsin
My commission expires on _____.

CITY OF DE PERE
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Michael J. Walsh, Mayor

This instrument was acknowledged before me on the _____ day of March, 2016, by Michael J. Walsh, Mayor of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

REDEVELOPMENT AUTHORITY OF
THE CITY OF DE PERE
By:

State of Wisconsin)
: SS
Brown County)

Theodore J. Penn, Chair

This instrument was acknowledged before me on the _____ day of March, 2016, by Theodore J. Penn, Chair of the Redevelopment Authority of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

Attachment: Amendment No 5 to Redevelopment Agreement - 3-9-16 (4498 : 102 N. Broadway Developers Agreement)

City of De Pere, Wisconsin



**Request For Common Council and Redevelopment Authority
Action**

MEETING DATE: March 15, 2016

DEPARTMENT: City Attorney

FROM: Judith Schmidt-Lehman

SUBJECT: Redevelopment Authority Resolution #RDA 16-01, Authorizing Amendment No. 5 to the Agreement Regarding Redevelopment Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).

ATTACHMENTS:

- RDA16-01 (DOCX)
- Amendment No 5 to Redevelopment Agreement - 3-9-16 (PDF)

REDEVELOPMENT AUTHORITY
RESOLUTION #RDA 16-01

AUTHORIZING AMENDMENT No. 5 TO THE AGREEMENT REGARDING
REDEVELOPMENT OF CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 North Broadway Street)

WHEREAS, the City of De Pere (“City”), its Redevelopment Authority (“RDA”), and Broadway Investment Partners, LLC, (“Developer”) entered into the Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (“the Agreement”), dated December 17, 2015 regarding the redevelopment of the property located at 102 North Broadway Street (Parcel ED-844); and

WHEREAS, the parties have previously agreed to certain Amendments of the Agreement in order to provide additional time for Developer to undertake due diligence during the inspection period provided in the Agreement;

WHEREAS, additional soil analysis on ED-844 revealed that the a deep foundation system was required to support the structure rather than the anticipated spread footing system, which will result in additional costs of \$200,000 to the project together with additional time needed for completion of the project; and

WHEREAS, Developer has earlier assumed additional unanticipated project costs and is not able to wholly absorb the additional foundation costs without scaling down other attributes of the project; and

WHEREAS, the City and RDA, believing it necessary to maintain the quality and design of the original project are able to provide an additional \$150,000 in Tax Increment Financing assistance to Developer for completion of the project; and

WHEREAS, the attached Amendment No. 5 to the Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC, sets forth the necessary modifications to the Agreement to accomplish these changes.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

The Redevelopment Authority hereby approves of, adopts and authorizes the Chair to execute the attached Amendment No. 5 to Agreement Regarding Development of Certain Property and further recommends approval and adoption thereof to the Common Council of the City of De Pere.

BE IT FURTHER RESOLVED THAT:

All City officials, officers, and employees are further authorized and directed to take such steps as are lawful and necessary in furtherance thereof.

Adopted by the Redevelopment Authority of the City of De Pere, Wisconsin, this 15th day of March, 2016.

APPROVED:

Theodore J. Penn
Redevelopment Authority Chair

Ayes: _____

Nays: _____

Attachment: RDA16-01 (4500 : Redevelopment Authority Resolution #RDA 16-01, Authorizing Amendment No. 5)

**AMENDMENT NO. 5 TO AGREEMENT REGARDING REDEVELOPMENT OF
CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 NORTH BROADWAY STREET)**

This Amendment No. 5 is entered into this ____ day of March, 2016, with respect to that certain Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street), dated September 22, 2015 (“Agreement”), which Agreement was entered into between the City of De Pere, the Redevelopment Authority of the City of De Pere and Broadway Investment Partners, LLC.

RECITALS

WHEREAS, on December 17, 2015, the Parties hereto entered into Amendment No. 1 to the Agreement which extended the “Inspection Period” to January 11, 2016; and on January 11, 2016, the Parties hereto entered into Amendment No. 2 to the Agreement which extended the “Inspection Period” to February 1, 2016; and on January 24, 2016, the Parties hereto entered into Amendment No. 3 to the Agreement which extended the “Inspection Period” to March 2, 2016; and on February 29, 2016, the Parties hereto entered into Amendment No. 4 to the Agreement which extended the “Inspection Period” to March 23, 2016; and

WHEREAS, the City has agreed to provide Developer with an additional One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) due to the existence of soil conditions discovered on the Fee Parcel during the Inspection Period which requires Developer to install a deep foundation system to adequately support the Redevelopment Project; and

WHEREAS, the Parties have agreed to delay the Substantial Completion due date as set forth below; and

WHEREAS, the Parties desire to amend certain terms and conditions of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms not otherwise defined in this Amendment No. 5 shall have the same meanings set forth in the Agreement. In the event of any inconsistency between the terms of this Amendment No. 5 and the Agreement, this Amendment No. 5 shall control. All other terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

2. Change in Date for Substantial Completion. All references in Article IV, Section 3(C), of the Agreement to a date regarding the Substantial Completion of “December 31, 2016” are hereby deleted and replaced with “September 1, 2017”.

3. The definition of “Guaranteed Value” in Article I, Section 1(G) is hereby deleted and replaced with:

“Guaranteed Value” means the amount of One Million and no/100 Dollars (\$1,000,000.00) as of January 1, 2017 and means the amount of Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2018.”

4. The second sentence of Article III, Section 1(B) is hereby deleted and replaced with:

“The Total Project Grant is premised upon the Redevelopment Project having an Assessed Value equal to the Guaranteed Value of One Million and no/100 Dollars(\$1,000,000.00) as of January 1, 2017 and having an Assessed Value equal to the Guaranteed Value of Three Million and no/100 Dollars_(\$3,000,000.00) as of January 1, 2018.”

5. The first and second sentences of Article IV, Section 2(B) are hereby deleted and replaced with:

“Developer covenants and agrees that the total value of the real estate and improvements comprising the Redevelopment Project shall be the Guaranteed Value. Developer further agrees and covenants that should the Assessed Value be less than the Guaranteed Value, it will make a Payment in Lieu of Tax to City (the “Deficit Payment”) equal to the difference in taxes collected due to the shortfall in Assessed Value.”

6. The words “of Three Million and no/100 Dollars (\$3,000,000.00)” found in Article IV, Section 2(B)(1) is hereby deleted and replaced with “the Guaranteed Value”.

7. Security Interest in Fee Parcel. Article II, Section 2(C), of the Agreement shall be amended to replace the amount of the mortgage from seven hundred fifty thousand and no/100 dollars (\$750,000.00) to nine hundred thousand and no/100 dollars (\$900,000.00).

8. Project Grants. Article III, Section 1(A), of the Agreement shall be amended to replace seven hundred fifty thousand and no/100 dollars (\$750,000.00) with nine hundred thousand and no/100 dollars (\$900,000.00) as the Total Project Grant amount.

9. Second Disbursement. Article III, Section 1(A)(2), shall be amended to replace two hundred eighty-five thousand and no/100 dollars (\$285,000.00) with four hundred thirty-five thousand and no/100 dollars (\$435,000.00) as the amount of the second disbursement of the Project Grant.

10. Counterparts. This Amendment No. 5 may be executed in any number of counterparts, all of which together shall constitute a single Amendment No. 5. Facsimile and email (pdf. format) signatures shall be accepted by the parties and shall be deemed original signatures for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 5 to be executed as of the date and year first written above.

BROADWAY INVESTMENT PARTNERS,
LLC
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Jason Tadych, Member

This instrument was acknowledged before me on the ____ day of March, 2016, by Jason Tadych, Member of Broadway Investment Partners, LLC.

Notary Public, State of Wisconsin
My commission expires on _____.

CITY OF DE PERE
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Michael J. Walsh, Mayor

This instrument was acknowledged before me on the _____ day of March, 2016, by Michael J. Walsh, Mayor of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

REDEVELOPMENT AUTHORITY OF
THE CITY OF DE PERE
By:

State of Wisconsin)
: SS
Brown County)

Theodore J. Penn, Chair

This instrument was acknowledged before me on the _____ day of March, 2016, by Theodore J. Penn, Chair of the Redevelopment Authority of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

Attachment: Amendment No 5 to Redevelopment Agreement - 3-9-16 (4500 : Redevelopment Authority Resolution #RDA 16-01, Authorizing

City of De Pere, Wisconsin



**Request For Common Council and Redevelopment Authority
Action**

MEETING DATE: March 15, 2016

DEPARTMENT: City Attorney

FROM: Judith Schmidt-Lehman

SUBJECT: Resolution #16-41, Authorizing Amendment No. 5 to the Agreement Regarding Development of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street).

ATTACHMENTS:

- Reso16-41 (DOCX)
- Amendment No 5 to Redevelopment Agreement - 3-9-16 (PDF)

RESOLUTION #16-41

AUTHORIZING AMENDMENT No. 5 TO THE AGREEMENT REGARDING
REDEVELOPMENT OF CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 North Broadway Street)

WHEREAS, the City of De Pere (“City”), its Redevelopment Authority (“RDA”), and Broadway Investment Partners, LLC, (“Developer”) entered into the Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (“the Agreement”), dated December 17, 2015 regarding the redevelopment of the property located at 102 North Broadway Street (Parcel ED-844); and

WHEREAS, the parties have previously agreed to certain Amendments of the Agreement in order to provide additional time for Developer to undertake due diligence during the inspection period provided in the Agreement;

WHEREAS, additional soil analysis on ED-844 revealed that the a deep foundation system was required to support the structure rather than the anticipated spread footing system, which will result in additional costs of \$200,000 to the project together with additional time needed for completion of the project; and

WHEREAS, Developer has earlier assumed additional unanticipated project costs and is not able to wholly absorb the additional foundation costs without scaling down other attributes of the project; and

WHEREAS, the City and RDA, believing it necessary to maintain the quality and design of the original project are able to provide an additional \$150,000 in Tax Increment Financing assistance to Developer for completion of the project; and

WHEREAS, the RDA has reviewed the attached Amendment No. 5 to the Agreement Regarding Redevelopment of Certain Property between the Redevelopment Authority of the City of De Pere, the City of De Pere and Broadway Investment Partners, LLC and believes it to be in the interests of the RDA and City to enter into such Amendment.

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

The Common Council hereby adopts and approves the attached Amendment No. 5 to the Agreement Regarding Redevelopment of Certain Property and thereby authorizes and directs the Mayor and Clerk-Treasurer execute such Agreement.

BE IT FURTHER RESOLVED THAT:

All City officials, officers, and employees are further authorized and directed to take such steps as are lawful and necessary in furtherance thereof.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 15th day of March, 2016.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

Shana D. Ledvina, Clerk-Treasurer

Ayes: _____

Nays: _____

Attachment: Reso16-41 (4501 : Resolution #16-41, Authorizing Amendment No. 5)

**AMENDMENT NO. 5 TO AGREEMENT REGARDING REDEVELOPMENT OF
CERTAIN PROPERTY BETWEEN THE CITY OF DE PERE,
THE REDEVELOPMENT AUTHORITY OF THE CITY OF
DE PERE, AND BROADWAY INVESTMENT PARTNERS, LLC
(102 NORTH BROADWAY STREET)**

This Amendment No. 5 is entered into this ____ day of March, 2016, with respect to that certain Agreement Regarding Redevelopment of Certain Property Between the City of De Pere, the Redevelopment Authority of the City of De Pere, and Broadway Investment Partners, LLC (102 North Broadway Street), dated September 22, 2015 (“Agreement”), which Agreement was entered into between the City of De Pere, the Redevelopment Authority of the City of De Pere and Broadway Investment Partners, LLC.

RECITALS

WHEREAS, on December 17, 2015, the Parties hereto entered into Amendment No. 1 to the Agreement which extended the “Inspection Period” to January 11, 2016; and on January 11, 2016, the Parties hereto entered into Amendment No. 2 to the Agreement which extended the “Inspection Period” to February 1, 2016; and on January 24, 2016, the Parties hereto entered into Amendment No. 3 to the Agreement which extended the “Inspection Period” to March 2, 2016; and on February 29, 2016, the Parties hereto entered into Amendment No. 4 to the Agreement which extended the “Inspection Period” to March 23, 2016; and

WHEREAS, the City has agreed to provide Developer with an additional One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) due to the existence of soil conditions discovered on the Fee Parcel during the Inspection Period which requires Developer to install a deep foundation system to adequately support the Redevelopment Project; and

WHEREAS, the Parties have agreed to delay the Substantial Completion due date as set forth below; and

WHEREAS, the Parties desire to amend certain terms and conditions of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms not otherwise defined in this Amendment No. 5 shall have the same meanings set forth in the Agreement. In the event of any inconsistency between the terms of this Amendment No. 5 and the Agreement, this Amendment No. 5 shall control. All other terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

2. Change in Date for Substantial Completion. All references in Article IV, Section 3(C), of the Agreement to a date regarding the Substantial Completion of “December 31, 2016” are hereby deleted and replaced with “September 1, 2017”.

3. The definition of “Guaranteed Value” in Article I, Section 1(G) is hereby deleted and replaced with:

“Guaranteed Value” means the amount of One Million and no/100 Dollars (\$1,000,000.00) as of January 1, 2017 and means the amount of Three Million and no/100 Dollars (\$3,000,000.00) as of January 1, 2018.”

4. The second sentence of Article III, Section 1(B) is hereby deleted and replaced with:

“The Total Project Grant is premised upon the Redevelopment Project having an Assessed Value equal to the Guaranteed Value of One Million and no/100 Dollars(\$1,000,000.00) as of January 1, 2017 and having an Assessed Value equal to the Guaranteed Value of Three Million and no/100 Dollars_(\$3,000,000.00) as of January 1, 2018.”

5. The first and second sentences of Article IV, Section 2(B) are hereby deleted and replaced with:

“Developer covenants and agrees that the total value of the real estate and improvements comprising the Redevelopment Project shall be the Guaranteed Value. Developer further agrees and covenants that should the Assessed Value be less than the Guaranteed Value, it will make a Payment in Lieu of Tax to City (the “Deficit Payment”) equal to the difference in taxes collected due to the shortfall in Assessed Value.”

6. The words “of Three Million and no/100 Dollars (\$3,000,000.00)” found in Article IV, Section 2(B)(1) is hereby deleted and replaced with “the Guaranteed Value”.

7. Security Interest in Fee Parcel. Article II, Section 2(C), of the Agreement shall be amended to replace the amount of the mortgage from seven hundred fifty thousand and no/100 dollars (\$750,000.00) to nine hundred thousand and no/100 dollars (\$900,000.00).

8. Project Grants. Article III, Section 1(A), of the Agreement shall be amended to replace seven hundred fifty thousand and no/100 dollars (\$750,000.00) with nine hundred thousand and no/100 dollars (\$900,000.00) as the Total Project Grant amount.

9. Second Disbursement. Article III, Section 1(A)(2), shall be amended to replace two hundred eighty-five thousand and no/100 dollars (\$285,000.00) with four hundred thirty-five thousand and no/100 dollars (\$435,000.00) as the amount of the second disbursement of the Project Grant.

10. Counterparts. This Amendment No. 5 may be executed in any number of counterparts, all of which together shall constitute a single Amendment No. 5. Facsimile and email (pdf. format) signatures shall be accepted by the parties and shall be deemed original signatures for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 5 to be executed as of the date and year first written above.

BROADWAY INVESTMENT PARTNERS,
LLC
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Jason Tadych, Member

This instrument was acknowledged before me on the ____ day of March, 2016, by Jason Tadych, Member of Broadway Investment Partners, LLC.

Notary Public, State of Wisconsin
My commission expires on _____.

CITY OF DE PERE
By:

STATE OF WISCONSIN)
: SS
BROWN COUNTY)

Michael J. Walsh, Mayor

This instrument was acknowledged before me on the _____ day of March, 2016, by Michael J. Walsh, Mayor of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

REDEVELOPMENT AUTHORITY OF
THE CITY OF DE PERE
By:

State of Wisconsin)
: SS
Brown County)

Theodore J. Penn, Chair

This instrument was acknowledged before me on the _____ day of March, 2016, by Theodore J. Penn, Chair of the Redevelopment Authority of the City of De Pere.

Notary Public, State of Wisconsin
My commission expires on _____.

Attachment: Amendment No 5 to Redevelopment Agreement - 3-9-16 (4501 : Resolution #16-41, Authorizing Amendment No. 5)