



AGENDA OF THE COMMON COUNCIL

WEDNESDAY, APRIL 8, 2015, 7:00 P.M.

**COUNCIL CHAMBERS
ROOM 203, CITY HALL**

- Roll call.
- Pledge of Allegiance.
- Invocation.
- Approval of minutes of the March 16, 2015, meeting.
- Approval of the Agenda.
- Report by the Mayor.
- Announcements.

REFERRAL OF PETITIONS & COMMUNICATIONS

1. Referral of communications and petitions received by the City Clerk.

Late communications.

REPORTS FOR COUNCIL ACTION

2. Report of the Economic Development Authority. (Held up at March 16, 2015, Meeting)
3. Report of the Redevelopment Authority. (Held up at March 16, 2015, Meeting)
4. Report of the Traffic Commission.
5. Report of the Finance Committee.

With regard to Item #8, the Council may convene in closed session pursuant to Sec. 19.85(1) (g), Wis. Stats., for the purpose of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

6. Report of the Improvement & Service Committee.
7. Report of the Park Committee.
8. Report of the Personnel Committee.

With regard to Item #8, the Council may convene in closed session pursuant to Sec. 19.85(1)(e), Wis. Stats., for purposes of deliberating or negotiating public employee contracts for competitive or bargaining reasons. The Council may thereafter reconvene in open session pursuant to Sec. 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

9. Report of the Protection & Welfare Committee granting Operator Licenses.

RECEIVE & PLACE ON FILE

Building Permit Report for March, 2015.

Account Trial Balance for January and February, 2015

RESOLUTIONS

10. Resolution approving air rights easement at 400 S. Adams Street.
11. Resolution approving the First Amendment to the Animal Services Agreement between the City of Green Bay and Packerland Veterinary Center, Ltd.

12. Resolution authorizing sale of Property located in the I-43 Business Center (SBH-Green Bay, LLC) (Held up at the March 16, 2015, Meeting.)
13. Resolution approving the Development Agreement between SBH-Green Bay, LLC, Redevelopment Authority of the City of Green Bay, and the City of Green Bay for Parcel Numbers 21-181-2 and 21-181-3 located in the I-43 Business Center. (Held Up at the March 16, 2015, Meeting.)
14. Final Resolution authorizing asphalt pavement improvements and levying special assessments against property.

ORDINANCE - THIRD READING

15. General Ordinance No. 7-15
An ordinance creating Section 27.310 of the Code relating to prohibition of bill-posting.

Kris A. Teske
Green Bay City Clerk

***Supporting documents for the numbered items in this agenda are contained in
the
Appendix of Supplemental Information.***

ACCESSIBILITY: Any person wishing to attend who, because of a disability, requires special accommodation should contact the City Safety Manager at 448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.



APPENDIX OF SUPPLEMENTAL INFORMATION

FOR COUNCIL MEETING

OF WEDNESDAY, APRIL 8, 2015

7:00 P.M.

PETITIONS & COMMUNICATIONS

IMPROVEMENT & SERVICE COMMITTEE

Applications for Tree & Brush Trimmer Licenses by the following:

- A. Selner Tree & Shrub Care, LLC
- B. Castro Tree & Stump Removal
- C. Family Tree Service, LLC

Application for an Underground Sprinkler System License by Steinie's Water Gardens.

Applications for Concrete Sidewalk Builder's Licenses by the following:

- A. Northern Concrete
- B. R.G. Hendricks & Sons Construction, Inc.
- C. Helmle Construction, Inc.
- D. J. C. Santy Construction, LLC
- E. Tom Phillips Construction
- F. AIM Concrete & Construction
- G. American Concrete Construction
- H. KPC Concrete Contractors, LLC
- I. Shier Construction
- J. Paul Conard Construction

PLAN COMMISSION

Request by Ald. Wery, on behalf of residents, to consider naming or renaming a street after Green Bay Packer General Manager Ron Wolf.

PROTECTION & WELFARE COMMITTEE

Request by the owner of White Dog Black Cat Cafe, 201 S. Broadway, to hold an outdoor event on May 3, 2015.

Application for a "Class B" Combination License by 129 South Washington, LLC at 129 S. Washington Street. (Currently Kittner's Pub, Inc.)

Notice of the change of agent for Stir-Ups, LLC at 125 S. Washington Street.

Appeal by Aaron Nolan to the denial of his Operator License application.

Appeal by Greg Madsen to the denial of his Operator License application.

Appeal by Scott & Barbara Pardee to a nuisance ticket at 897 Christiana Street.

Appeal by Rachel E. Anker to the denial of her Operator License application.

PETITIONS & COMMUNICATIONS

IMPROVEMENT & SERVICE COMMITTEE

Applications for Tree & Brush Trimmer Licenses by the following:

- A. Selner Tree & Shrub Care, LLC
- B. Castro Tree & Stump Removal
- C. Family Tree Service, LLC

Application for an Underground Sprinkler System License by Steinie's Water Gardens.

Applications for Concrete Sidewalk Builder's Licenses by the following:

- A. Northern Concrete
- B. R.G. Hendricks & Sons Construction, Inc.
- C. Helmle Construction, Inc.
- D. J. C. Santy Construction, LLC
- E. Tom Phillips Construction
- F. AIM Concrete & Construction
- G. American Concrete Construction
- H. KPC Concrete Contractors, LLC
- I. Shier Construction
- J. Paul Conard Construction

PLAN COMMISSION

Request by Ald. Wery, on behalf of residents, to consider naming or renaming a street after Green Bay Packer General Manager Ron Wolf.

PROTECTION & WELFARE COMMITTEE

Request by the owner of White Dog Black Cat Cafe, 201 S. Broadway, to hold an outdoor event on May 3, 2015.

Notice of the change of agent for Stir-Ups, LLC at 125 S. Washington Street.

Appeal by Aaron Nolan to the denial of his Operator License application.

Appeal by Greg Madsen to the denial of his Operator License application.

Appeal by Scott & Barbara Pardee to a nuisance ticket at 897 Christiana Street.

1.

**REPORT OF THE GREEN BAY ECONOMIC DEVELOPMENT
AUTHORITY MEETING**

March 16, 2015

The Economic Development Authority having met on Wednesday, March 11, 2015 considered all matters on its agenda and wishes to report the following:

1. No recommendation regarding the approval of an offer to purchase from Strategic Behavioral Health, LLC (SBH) of parcel 21-181-2 for approximately 10.3 acres of land between Ontario Road and Einstein Way in the I-43 Business Park. SBH will purchase this property from the City of Green Bay for \$494,400. (2-2 vote)

REPORT OF THE GREEN BAY REDEVELOPMENT AUTHORITY
March 16, 2015

The Green Bay Redevelopment Authority, having met on Tuesday, March 10, 2015, considered all matters on its agenda and wishes to report and recommend the following:

2. To approve the Development Agreement with SBH-Green Bay, LLC for the Strategic Behavioral Health project subject to legal and technical changes (copy attached).

**REPORT OF THE
TRAFFIC COMMISSION
April 8, 2015**

The Traffic Commission having met Monday, March 16, 2015, considered all matters on its agenda and wishes to report and recommends the following:

1. To refer to DPW staff the request to improve the safety of pedestrians crossing West Mason Street at LaCount Road.
2. To deny the request to remove the NO PARKING signs on the south side of 1100 Lawe Street.
3. To receive and place on file the request to improve motorist compliance to the 4-WAY STOP signs at Newberry Avenue and Alpine Drive.
4. To establish and adopt by ordinance a NO PARKING zone on the west side of Bornemann Street from a point 185 feet north of Mills Street to a point 140 feet south of Brook Street.
5. To remove and adopt by ordinance the 15 MINUTE LOADING DELIVERY ONLY zone on the east side of Broadway from a point 180 feet north of Dousman Street to a point 270 feet north of Dousman Street.
6. To remove and adopt by ordinance the 2-HOUR PARKING 7 AM TO 7 PM MONDAY THROUGH FRIDAY zone on the east side of Broadway from a point 270 feet north of Dousman Street to a point 335 feet north of Dousman Street.
7. To establish and adopt by ordinance a 2-HOUR PARKING 7 AM TO 7 PM MONDAY THROUGH FRIDAY zone on the east side of Broadway from a point 180 feet north of Dousman Street to a point 335 feet north of Dousman Street.
8. To establish and adopt by ordinance a 2-HOUR MONDAY THROUGH FRIDAY 7 AM TO 7 PM on both sides of Gary Lane from a point 180 feet east of Fellows Drive to its easterly terminus.

REPORT OF THE FINANCE COMMITTEE
APRIL 8, 2015

The Finance Committee, having met on Tuesday, March 31, 2015 considered all matters on its agenda and wishes to report and recommends the following:

1. To approve the amendment to the Animal Service Agreement Contract between the City of Green Bay and Packerland Veterinary to make available all stray animals, excluding livestock and wildlife, to Bay Area Humane Society.
2. To award the purchase of Identix TouchPrint Fingerprint Equipment to Morpho Trak, Inc. for \$20,418.
3. To award the purchase of two Segway Police Patrollers to Segway, Inc. for the total amount of \$15,238.
4. To award a 3-year contract for VoIP Service for the City's telephone network to AT&T for \$86,400 (\$28,800/year.)
5. To award a 3-year contract for Centrex Telephone Service for the City's dedicated telephone lines to AT&T for \$82,800 (\$27,600/year.)
6. To hold until next meeting the request by Ald. Andy Nicholson for more information and discussion with regard to cameras controlled or monitored by the GBPD within the City limits of Green Bay to include locations, reason for location, maintenance cost, and its functionality in solving police cases.
7. To advance to next available Common Council Meeting, or special Common Council Meeting the request by Ald. Tom Sladek to discuss, with possible action, the service agreement between the City and the Oneida Tribe.
8. To hold until next meeting the request by Ald. Chris Wery to review, with possible action, the lawsuit regarding John Kennedy including legal expenses to date.
9. To hold request by Ald. Tom DeWane for an update on the Watermark and for it to include the debt that was abandoned by the developers, guaranties in place for the property, taxes outstanding and City money that was put toward tenant improvements for CH Robinson.

2015 Contingency Fund
\$110,000

**REPORT OF THE
IMPROVEMENT AND SERVICE COMMITTEE
April 8, 2015**

The Improvement and Service Committee, having met on March 25, 2015 considered all matters on its agenda and wishes to report and recommend the following:

1. To approve the contract amendment from OMNNI Associates, Inc., for engineering professional services, for the proposed Mossy Oak Storm Water Facility in the amount of \$10,645.00.
2. To approve the request by Second Wind Auto Gallery, LLC (owner) for an easement to allow building footings and building overhang within the S Adams Street and Crooks Street rights-of-way adjacent to 400 S Adams Street contingent upon executing a Hold Harmless Agreement, placing on file with the City applicable insurance, obtain all necessary City approvals, and authorize the Mayor and City Clerk to execute the agreement.
3. To approve the application for Concrete Sidewalk Builder's License by the following:

A. In the Countryside Concrete LLC

And hold the application for E. Weise Contractors until the background check is complete.

4. To order in asphalt pavement reconstruction improvements and levy special assessments on the following streets:

MAPLE AVENUE – Walnut Street to Howard Street

MARSHALL AVENUE – Mather Street to Desnoyers Street

OAKLAND AVENUE – Shawano Avenue to Howard Street

6.

REPORT OF THE PARK COMMITTEE

April 8, 2015

The Park Committee, having met on Wednesday, March 25, 2015, considered all matters on its agenda and wishes to report and recommend the following:

1. To approve a proposed prairie burn in the Baird Creek Parkway contingent upon the following:
 - Approval of a detailed burn plan by the Green Bay Fire Department;
 - An approved hold harmless agreement by Fox Valley Technical College;
 - Fox Valley Technical College obtaining all proper insurances and permits;
 - All costs being the responsibility of the Baird Creek Preservation Foundation;
 - Proper notification of neighbors, alderpersons, and proper authorities by the Baird Creek Preservation Foundation;
 - The Green Bay Fire Department must be onsite during the burn.
2. To approve the request by Leadership Green Bay to install bike racks along the Fox River Trail near Washington and Doty Streets contingent upon the following:
 - All proper insurances and permits being obtained;
 - All costs of concrete, bike racks, installation, and site restoration are the responsibility of Leadership Green Bay;
 - A signed hold harmless agreement;
 - Final approval of the site plan by Park staff;
 - Once installed, the bike racks become City property.
3. To approve a request by Downtown Green Bay Inc. to install electrical outlets along the Fox River Trail near Washington and Doty Streets contingent upon the following:
 - All proper insurances and permits being obtained;
 - All costs of construction, restoration, and tree replacement will be the responsibility of Downtown Green Bay Inc.;
 - All utility costs and the yearly meter fee is paid for by Downtown Green Bay Inc.;
 - Securing a private transmission easement with the Law Department;
 - A signed hold harmless agreement with the Law Department;
 - Final approval of the site plan by Park staff.
4. To authorize staff to hire Dimension IV to design the Astor Park Shelter for \$23,944.
5. To approve the purchase of a 72" front mount riding lawn mower from Service Motor Company for \$16,300.
6. To direct staff to obtain feedback from the City Council on the three preliminary Bay Beach Pavilion concepts and incorporate comments from the Council and Park Committee to develop one final concept to bring back to the Park Committee for approval.
7. To receive and place on file the Director's Report.

REPORT OF THE PERSONNEL COMMITTEE
April 8, 2015

The Personnel Committee, having met on Tuesday, March 31, 2015 considered all matters on its agenda and reports and recommends the following:

1. To approve the minutes from the meeting held on February 23, 2015.
2. To approve the request to fill 2-Park Maintenance Worker replacement positions and all subsequent vacancies resulting from internal transfers.
3. To request quarterly reports by the Police Chief on the number of speeding citations issued by the Green Bay Police Department and to receive and place on file the report that there were 1,376 speeding citations in 2014.
4. To receive and place on file the report by the Police Chief on the police calls involving transports for the Department of Corrections/State Building locations.
5. To approve the out-of-state travel for Captain Jeremy Muraski to attend the Responsible Retailers Forum, April 29-30, 2015 in Oklahoma City and to provide a report on what was learned at the Conference to the Personnel Committee.
6. To receive and place on file the report on contracting for an attorney to advise the Council on any issue at a contract salary of \$30,000 per year.
7. To receive and place on file the Report of Routine Personnel Actions for regular employees.
8. To receive and place on file the update and discussion on labor negotiations.



131 W. Wilson St., Suite 505
Madison, Wisconsin 53703
phone (608) 267-2380; (800) 991-5502
fax: (608) 267-0645
league@lwm-info.org; www.lwm-info.org

March 13, 2015

BY MAIL and EMAIL

Mr. James L. Mueller
City Attorney
100 North Jefferson Street
Room 200
Green Bay, WI 54301

Re: Common Council Contracting for Legal Services

Dear Attorney Mueller,

I write in response to your request for a legal opinion from our office. You asked for analysis of whether the common council may contract for legal representation to advise the common council, sub-committees, and individual alderpersons on all law business that comes before it/them. Your opinion is no, but recognize that the common council may employ special counsel to handle and give legal advice on specific legal issues.

I agree with your conclusions. In my opinion, while a common council is empowered to employ special counsel pursuant to Wis. Stat. sec. 62.09(12)(g), this authority is limited to circumstances involving a specific disagreement, strife or litigation where a city attorney cannot or should not act.

Wis. Stat. sec. 62.09(12)

Attorney is one of the enumerated officers for a Wisconsin city. Wis. Stat. sec. 62.09(1)(a). The powers and duties of a city attorney are set forth in Wis. Stat. sec. 62.09(12), which provides:

- (12) ATTORNEY.
- (a) The attorney shall conduct all the law business in which the city is interested.
 - (c) The attorney shall when requested by city officers give written legal opinions, which shall be filed with the clerk.
 - (d) The attorney shall draft ordinances, bonds and other instruments as may be required by city officers.
 - (e) The attorney shall examine the tax and assessment rolls and other tax proceedings, and advise the proper city officers in regard thereto.

YOUR VOICE. YOUR WISCONSIN.

BA

- (f) The attorney may appoint an assistant, who shall have power to perform the attorney's duties and for whose acts the attorney shall be responsible to the city. Such assistant shall receive no compensation from the city, unless previously provided by ordinance.
- (g) The council may employ and compensate special counsel to assist in or take charge of any matter in which the city is interested.

Thus, a city attorney is duty bound to perform the law business of a city.

It is indisputable that a city council is part of "the city" not independent of it. Accordingly, handling the law business of a city council is part of a city attorney's statutory duty under 62.09(12)(a).

On the other hand, 62.09(12)(g) authorizes a city council to "employ and compensate special counsel" in certain circumstances. This authorization might initially be read to authorize a city council to hire its own attorney to conduct its law business. However, closer examination through statutory interpretation reveals that such a reading is incorrect.

We are required by rules of statutory interpretation to respect the intent of the legislature. This begins by applying and adhering to the plain language of a statute. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45.

The plain language of 62.09(12)(g) only authorizes a city council to employ *special* counsel. The term "special" has multiple meanings but is not defined in 62.09 or elsewhere in Chapter 62. So, we are obligated by rules of statutory interpretation to give it its "common, ordinary, and accepted meaning." *Kalal* at ¶ 45.

The common, ordinary and accepted meaning of a word may be established by reference to a recognized dictionary. *Village of Menomonee Falls v. Falls Rental World*, 135 Wis.2d 393, 400 N.W.2d 478, 480 (Ct. App. 1986). The term "special" in its broadest sense is commonly defined in dictionaries as "distinguished or different from what is ordinary or usual." *The Random House Dictionary of the English Language*, 2d Ed., 1831 (1987).

Does 62.09(12)(g) "special counsel" merely mean different counsel? I do not think so.

The word "special" is more specifically defined in some circumstances to mean "assigned or provided to meet a particular need *not covered under ordinary procedures* [emphasis added]." *Webster's Third New International Dictionary of the English Language*, 2186 (2002). I believe this definition of "special" is more consistent with legislative intent than the broad definition which, simply stated, says that "special" means different.

Section 62.09(12)(a) directs a city attorney to conduct all of the law business of the city. It establishes the ordinary procedure for legal services in a city; city legal services are performed by the city attorney.

There are certainly specific instances when this ordinary procedure is inadvisable or even prohibited. In some matters, a city attorney may lack the expertise in a particular area of the law to competently represent the city. In others, there may be an intra-city legal dispute that may be best resolved by someone other than the city attorney. And, in some cases, a city attorney who also has a private practice may have a conflict of interest that precludes legal services to the city on a particular issue.

The circumstances when a city attorney cannot fulfill the 62.09(12)(a) duty to a city and its city council are, by their nature, unusual and rare events. They are the events or circumstances when a city's or city council's legal needs are not covered by ordinary procedures. Accordingly, I think a 62.09(12)(g) "special counsel" is best understood as an attorney who is employed to meet a particular legal need that cannot or should not be met by a city attorney.

In addition to the plain language of the statute, the special counsel authority provided by 62.09(12)(g) must be interpreted in a manner that is contextually consistent with 62.09(12)(a). *Kalal* at ¶ 48. Context analysis further supports my interpretation.

I note that the legislature first provides in 62.09(12)(a) that a city attorney "shall conduct *all* the law business in which the city is interested [emphasis added]." This section gives primary responsibility for the law business of a city to the city attorney.

Five subsections later, the legislature grants city councils the authority to employ special counsel in 62.09(12)(g). The "special counsel" authorization is contextually subordinate to a city attorney's duty to handle the law business of a city. This indicates that 62.09(12)(g) should be read as an exception to a city attorney's general law business duty under 62.09(12)(a).

The "special counsel" authorization also appears in the context of a sentence specifying special counsel utilization in "any *matter* in which the city is interested [emphasis added]." However, the term "matter" is not defined in the statute.

One common definition of "matter" is "something that is the subject of disagreement, strife or litigation." *Webster's Third New International Dictionary of the English Language*, 1394 (2002). The term "matter" is used in the context of a statute delineating law business responsibilities that often involve disagreements, strife and litigation. Consequently, I think this definition is most appropriate.

Nonetheless, the universe of a city's law business is much broader than disagreements, strife and litigation. For example, the website for your office states the following about the kinds of law business performed by you and your staff:

The duties of the City Attorney include appearing in judicial, administrative and other legal actions, issuing legal opinions to city officers, drafting ordinances, bonds, and other

Green Bay, James Mueller, 13 Mar 2015

legal documents, prosecuting ordinance violations in Green Bay Municipal Court, and providing a full range of legal services to various City departments, boards, and entities.

Issuing legal opinions and drafting ordinances and other legal documents is commonly known to occur far more often outside the setting of a disagreement, strife, or litigation than inside.

The 62.09(12)(g) "special counsel" authority is therefore limited to certain circumstances that do not encompass the entirety of a city attorney's legal work for a city. This again indicates that "special counsel" employment is a limited exception to the general city attorney duty to handle the law business of a city.

The plain language and context of the "special counsel" authorization provided by 62.09(12)(g) establish two things. First, that 62.09(12)(g) is a limited exception to the general and ordinary procedure where the law business of a city is handled by the city attorney. And, second, 62.09(12)(g) authority is limited to circumstances involving a specific disagreement, strife or litigation where a city attorney cannot or should not act.

Lastly, proponents of a city council attorney have identified that county boards are authorized to have their own attorney pursuant to Wis. Stat. sec. 59.42(3). The proposition that a statute that relates to counties and county corporation counsels could provide any legal authority for a city council to hire its own attorney is simply wrong. The legislature delegated powers to counties in Chapter 59, not cities, and 59.42(3) provides no legal authority for a city council to hire a city council attorney.

My interpretation of 62.09(12)(g) is faithful to its plain language and its context. Accordingly, I must conclude that 62.09(12)(g) does not authorize a city council to employ an attorney to handle the general law business of the council, sub-committees, and individual alderpersons.

I think the foregoing answers the question you presented. Please contact me if there are additional questions or any need for clarification.

Sincerely,



Daniel M. Olson
Assistant legal Counsel
League of Wisconsin Municipalities

8 d

**REPORT OF THE PROTECTION AND WELFARE COMMITTEE
GRANTING OPERATOR LICENSES**

April 8, 2015

The Protection and Welfare Committee wishes to request that the following applications for Operator Licenses be granted. Stipulations placed on licenses shall continue to be in effect.

OPERATOR LICENSES

Armentrout, Joshuah B
Athey, Charlotte J
Baenen, Ann M
Beier, Jenna L
Blum, Richard D
Brown, Tabitha
Burkel, Emily A
Cooper, Heather
Curtis, Heather M
Davister, Cora A
Dickenson, Chelsea T
Dufek, Violetta L
Fischer, Stephani N
Flippen, Regina
Foley, Skyler R
Franco, Maury L
Franek, Paul W
Gerndt, Bridget A
Gussert, Weston C
Hernandez, Primitivo
Holtz, Kaleb J
Humphreys, Jonathon M
Janquart, Thomas E
Koury, Richard B
Krenke, Kristy A
Lamal, Alisa S
Lara, David
LeRoy, Paul C
LoCascio, Melissa M
Luisier, Nicole T
Mande, Alyssa J

Matson, Brandon GH
Matthies, Derek D
Monnier, Ann M
Monte, Margaret M
Munoz, Braden K
Nussbaum, Andrew L
Potvin, Daniel J
Reacco, Markitha M
Roskom, Tasha M
Schmunck, Darrell L
Schrenk, Melinda
Schwartz, Tori L
Simonet, Shannon A
Sterckx, Jason L
Thomas, Ariana N
Tingle, Jennifer L
Van Horn, Toni D
Villarreal, Amy L
Walasek, Jantaratn
Whitehouse, Lauren E
Wild, Jacob D
Woodford, Jason R
Woods, Mary B

4.

**RESOLUTION APPROVING
AIR RIGHTS EASEMENT
AT 400 S ADAMS STREET
RIGHT-OF WAY
April 8, 2015**

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY, RESOLVED:

To approve the request by Second Wind Auto Gallery, LLC (owner) for an easement to allow building footings and building overhang within the S Adams Street and Crooks Street rights-of-way adjacent to 400 S Adams Street contingent upon executing a Hold Harmless Agreement, placing on file with the City applicable insurance, obtain all necessary City approvals, and authorize the Mayor and City Clerk to execute the agreement.

Adopted _____, 2015

Approved _____, 2015

Mayor

ATTEST:

City Clerk

jld

RESOLUTION APPROVING THE
FIRST AMENDMENT TO THE ANIMAL SERVICES
AGREEMENT BETWEEN THE CITY OF GREEN BAY
AND PACKERLAND VETERINARY CENTER, LTD.

April 8, 2015

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY, RESOLVED:

That pursuant to the recommendation of the Finance Committee at its meeting on March 31, 2015, the First Amendment to the Animal Services Agreement between the City of Green Bay and Packerland Veterinary Center, LTD., is hereby approved; and

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to execute said agreement.

Adopted _____

Approved _____

Mayor

Clerk

bc

Attachment – Agreement

**FIRST AMENDMENT TO
ANIMAL SERVICES AGREEMENT
PACKERLAND VETERINARY CENTER, LTD.**

This First Amendment to the Animal Service Agreement (“Amendment”) is made as of April ___, 2015 by and between the City of Green Bay (“City”), and Packerland Veterinary Center, LTD. (“Packerland”).

RECITALS:

A. The City and Packerland entered into an Animal Services Agreement (“Agreement”) dated May 22, 2013.

B. The City and Packerland desire to amend the Agreement as set forth in this Amendment.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein and other good and valuable consideration, the parties agree as follows:

1. Disposition of Animals. Section 5 of the Agreement is deleted and the following is inserted in its place:

5. Disposition of Animals: Packerland shall release or dispose of animals under Wis. Stat. § 173.23 or as provided in a court order. Except for situations in which a longer impound period is required by law (i.e., law enforcement holds and bite holds), upon expiration of the seven (7) day impound period, Packerland shall make available all stray animals, excluding livestock and wildlife, to Bay Area Humane Society (“BAHS”). BAHS agrees to accept all such animals and make arrangements with Packerland to facilitate the transfer of such animals from Packerland to BAHS. If, for any reason, Packerland needs to release an animal to an adoption agency other than BAHS, Packerland shall be responsible for transporting the animal to that adoption agency.

If an animal is released to its owner, the owner shall pay Packerland an admittance fee, plus per day boarding fees prior to the release of said animal. Furthermore, Packerland shall issue a license and collect the appropriate license fee for each unlicensed dog or cat it releases back to the animal’s owner, if the owner is a resident of the City of Green Bay.

Such fees will be established by Packerland at its discretion. If an animal is released to a person other than its owner, Packerland may charge a different fee than it would charge to the owner of the animal. Furthermore, Packerland shall issue a license and collect the appropriate license fee for each unlicensed dog or cat it releases to any other person, if the person is a resident of the City of Green Bay.

2. Amendment. Except as set forth in this Amendment, the Agreement remains as executed and is in full force and effect.

3. Counterpart Signatures. This Amendment may be executed in counterparts and delivered by email.

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

City of Green Bay

James J. Schmitt, Mayor

Attest: _____

Its: _____

Packerland Veterinary Center, LTD.

By: Chanda Holschbach
Chanda Holschbach, Hospital Administrator

[ACKNOWLEDGMENT PAGE TO FOLLOW]

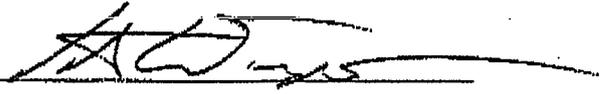
[ACKNOWLEDGMENT PAGE TO FOLLOW]

ACKNOWLEDGEMENT

Bay Area Humane Society ("BAHS") hereby acknowledges that it has read and agrees to the terms and provisions of the foregoing Amendment, specifically the amendment to Section 5 of the Animal Services Agreement.

Dated this 20 day of March, 2015

BAY AREA HUMANE SOCIETY

By: 

Patrick Warpinski, D.V.M.

Its: President

13

11 C.

RESOLUTION AUTHORIZING SALE OF PROPERTY
LOCATED IN THE I-43 BUSINESS CENTER
(SBH-Green Bay, LLC)

April 8, 2015

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY, RESOLVED:

That the Mayor and Clerk are hereby authorized to execute all necessary documents between the City and SBH-Green Bay, LLC (or a subsequent proposed grantee) for the sale of Parcel No. 21-181-2 (located on Einstein Way) and Parcel No. 21-181-3 (located on Ontario Road) in the I-43 Business Center at a sale price of \$494,400.00.

Adopted _____

Approved _____

Mayor

Clerk

bc

RESOLUTION APPROVING THE
DEVELOPMENT AGREEMENT BETWEEN
SBH-GREEN BAY, LLC, REDEVELOPMENT
AUTHORITY OF THE CITY OF GREEN BAY,
AND THE CITY OF GREEN BAY FOR
PARCEL NUMBERS 21-181-2 AND 21-181-3
LOCATED IN THE I-43 BUSINESS CENTER

April 8, 2015

BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

WHEREAS, the Common Council has created Tax Incremental Financing District No. 12 (District) and adopted a project plan for the District; and

WHEREAS, SBH-Green Bay, LLC, has proposed development of property located within the District which complies with the project plan for the District previously adopted by the Redevelopment Authority and Common Council; and

WHEREAS, the Redevelopment Authority has approved the development agreement for the SBH-Green Bay, LLC, project.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Clerk and authorized representatives of the Redevelopment Authority are authorized to execute the Development Agreement subject to technical legal adjustments to the agreement as may be deemed necessary by the parties' counsel; and

BE IT FURTHER RESOLVED that the Redevelopment Authority is authorized to take all actions necessary to carry out obligations of the Development Agreement.

Adopted _____

Approved _____

Mayor

Clerk

bc

Attachment – Development Agreement

DEVELOPMENT AGREEMENT

THIS TRI-PARTY AGREEMENT (hereinafter called the "Agreement") made as of the ____ day of _____, 2015, by and between the **REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY** (hereinafter called the "RDA"), the **CITY OF GREEN BAY** (hereinafter called the "CITY"), **SBH-Green Bay, LLC**, a Delaware limited liability company (hereinafter called the "DEVELOPER"). The RDA, CITY, and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, the DEVELOPER desires to acquire property owned by the CITY located at 1350 Einstein Way and 1351 Ontario Road (Tax Parcels 21-181-2 and 21-181-3) in the I-43 Business Park, legally described on the attached Exhibit "A" hereto, totaling approximately 10.3 acres (hereinafter the "Property"); and

WHEREAS, the DEVELOPER desires to construct a taxable one-story inpatient psychiatric hospital totaling approximately 52,250 square feet and housing approximately 72 beds ("the Project") to serve the needs of the Green Bay community; and

WHEREAS, but for funding sources from the RDA and CITY, the development at the Property would not be feasible;

NOW, THEREFORE, in consideration of the promises and obligations herein set forth, it is mutually agreed between the PARTIES as follows:

I. PROPOSED PROJECT SCOPE AND CONSTRUCTION. The DEVELOPER shall acquire the Property. The DEVELOPER shall construct the Project on the Property. The Project shall have approximately 72 beds totaling approximately 52,250 square feet. The total development costs of the Project and acquisition of the Property shall not be an amount less than \$10,000,000.00. DEVELOPER shall also comply with the following requirements for this Project:

The DEVELOPER, CITY and RDA shall comply with the following requirements for the Project:

- A. The DEVELOPER shall commence construction (the "Commencement Date") of the Project no later than October 1, 2015, with DEVELOPER taking such action as necessary and required to receive all municipal approvals for the Project from the CITY and/or any other governmental entities, and satisfaction of all conditions required herein.
- B. The DEVELOPER shall complete the Project (which shall be deemed achieved by the delivery of a certificate of occupancy or occupancy permit for any portion of the building constructed on the Property) by June 1, 2017, (the "Completion Date") in accordance with site and building plans as approved by the CITY, which approvals shall not be unreasonably withheld, conditioned or delayed.
- C. The CITY will cooperate with respect to any and all permits necessary for completion of the Project. All PARTIES agree to use reasonable efforts to obtain performance of the conditions of this Agreement.
- D. The DEVELOPER shall comply with all applicable Federal, State, and Municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.

- E. The Preliminary Concept Plan for the Project (hereinafter "Concept Plan") is attached hereto as Exhibit "B" and is incorporated herein by reference. By execution of this Agreement, the PARTIES hereto expressly approve the Concept Plan. The RDA or DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the RDA and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with Federal, State and Municipal code requirements.
- F. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means delays beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, the actions of any other party in this Agreement, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. PROPERTY TRANSFERS. The following property transfers shall take place in order to effectuate the terms and intent of this Agreement:

- A. The CITY shall convey to the DEVELOPER the Property for Four Hundred Ninety-Four Thousand and Four Hundred Dollars and No Cents (\$494,400.00), in accordance with the terms and conditions of the Purchase Agreement entered into by the PARTIES and attached hereto as Exhibit "C", after DEVELOPER provides to the RDA adequate proof that all Project financing and construction agreements are executed. The conveyance of the Property shall be by warranty deed.
- B. The CITY and the DEVELOPER shall have the right to undertake due diligence and completion of the following to the CITY and DEVELOPER's reasonable satisfaction:
 - 1. Environmental assessment and clean up. The CITY or its agents and assigns have not deposited any contaminants on the Project Site.
 - 2. Title insurance and, if applicable, ALTA survey review to be paid by the CITY.
- C. In the event the DEVELOPER fails to commence construction by the Commencement Date, or in the event that the DEVELOPER fails to complete the Project by the Completion Date, subject to any unavoidable delays, the DEVELOPER shall convey the Property back to the CITY upon written request of the CITY and repayment by the CITY of the full Purchase Price back to the DEVELOPER, at which time this Agreement shall become null and void, except for any guarantees for outstanding debt of the Project. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those intended to be covenants running with the Property, the holder of any mortgage in the Property (including any holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (i) any other party who thereafter obtains title to the Property or such part from or through such holder or (ii) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to complete the construction of the Project or guarantee such construction; nor shall any covenant or any

other provision in any document of record, including, without limitation, a deed, be construed to so obligate such holder, unless the mortgage holder exercises the option to cure the DEVELOPER's default.

In addition, any conveyance of the Property back to the CITY as a result of such DEVELOPER default shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in the Property and (ii) any right or interest provided in this Agreement for the protection of the holder of such mortgage. In the event of such DEVELOPER default, and the CITY taking action to require conveyance of the Property back to the CITY as described above, the CITY shall first provide the mortgagee (as identified by the DEVELOPER) with written notice of such DEVELOPER default and provide such mortgagee with a reasonable opportunity to cure such default and diligently prosecute the completion of the Project itself, or through an assignee, and in such event, the obligation to convey the Property back to the CITY shall be deemed null and void so long as such party is diligently prosecuting the Project to completion. The mortgagee shall exercise its option to cure such DEVELOPER default and assume this Agreement, if at all, within twenty (20) days after receipt of such default notice and thereafter the CITY and the RDA shall attorn to such mortgagee or its assignee and this Agreement shall thereafter be binding on all such PARTIES. If said event occurs, any and all fees or costs paid by the DEVELOPER (other than the Purchase Price) shall be forfeited and retained by the CITY. The DEVELOPER further agrees to take all necessary action to revert title of the Property back to the CITY at no cost to the CITY through a quit-claim deed. In the event that the CITY must take legal action to re-obtain title to the Property under the terms of this Agreement, the DEVELOPER agrees to indemnify the CITY for all costs associated with such action, including reasonable attorneys' fees and costs.

- D. The RDA shall coordinate the public agency participation in planning, obtaining data from public records as may be available, reviewing and commenting on aspects of the proposed development in a timely manner.

III. EASEMENTS, COVENANTS AND LICENSES.

- A. The CITY and the DEVELOPER will enter into all necessary easements for the Property as may be determined to be necessary by the PARTIES. The easements shall run with the land and benefit all subsequent owners of both sides of the Property.
- B. Additional easements, covenants, conditions and restrictions may be deemed necessary or desirable by the PARTIES to achieve the purposes of this Agreement. In such event, said easements, covenants, conditions and restrictions shall be in writing and mutually agreed to by the PARTIES.

IV. FINANCING

- A. Conditioned on completion of the Project and the DEVELOPER spending approximately Ten Million dollars (\$10,000,000.00), the RDA shall contribute no more than One Million dollars (\$1,000,000.00) of Tax Incremental Financing (TIF) assistance to the DEVELOPER. The TIF assistance shall be structured as a yearend pay-go disbursement and paid out over a term of five (5) years from January 1st in the year following the completion of the Project. This reimbursement shall be known as the Annual TIF

Payment.

- B. The Annual TIF Payment shall be calculated by subtracting the real property taxes paid on the base tax value, from the actual realized real property taxes on an annual basis for the Property. The base tax value shall be Six Thousand Nine Hundred dollars (\$6,900.00). Real property taxes do not include any lawful special assessments, special charges, personal property or other charges that may appear on the annual tax bill.
- C. The Annual TIF Payment shall not exceed Two Hundred Thousand dollars (\$200,000.00) annually. The Annual TIF payment shall be paid to DEVELOPER within thirty (30) days following DEVELOPER's notice to RDA/CITY that the annual real estate tax bill has been paid in full for the Project Site.
- D. If the DEVELOPER transfers the Property/Project to an unaffiliated party or a tax-exempt party prior to conclusion of the five (5) year pay-go TIF assistance term, the RDA and CITY shall have no obligation to provide the Annual TIF Payment outlined in subsection A through C to the successor party.
- E. If the DEVELOPER transfers the Property/Project to a non-profit entity or other tax exempt entity, the DEVELOPER shall remit a transfer penalty to the CITY. The transfer penalty shall be calculated as a percentage of the value of the total Annual TIF Payments made to the DEVELOPER as of the date of transfer. The transfer year shall be calculated from the execution date of this Agreement with year 0 being the year of execution of this Agreement. The transfer penalty is outlined below:

<u>Transfer Year</u>	<u>Transfer Penalty as Percentage of TIF Distributions</u>
0-10	50%
11-15	25%
16-20	15%
After Year 20	No penalty

Upon written demand by CITY, the transfer penalty shall be paid to CITY within thirty (30) days. Payment shall be made in such form as indicated in the written notice from CITY.

Notwithstanding the foregoing, the transfer penalty shall not be payable to the extent the transferee of the Property/Project agrees not to exempt the Property/Project from real estate taxes or enters into a payment in lieu of taxes agreement with the CITY that provides for payments in approximately the same amount as real estate taxes.

V. DEVELOPER'S TRANSFER RESTRICTIONS AND OBLIGATIONS.

- A. Prior to the Completion Date, the DEVELOPER may assign all rights and obligations under this Agreement only to a controlled and affiliated company to (i) own, manage and operate the Property, (ii) any financial institution providing financing in connection with the Property, or (iii) any entity acquiring all or substantially all of the assets of the DEVELOPER and its parent and affiliated entities. Except for the foregoing, no assignment of the DEVELOPER's rights and obligations under this Agreement to an unaffiliated party may occur without the CITY's and RDA's written consent from the date this Agreement is executed to the Completion Date. In the event assignment occurs

without RDA and CITY approval, the RDA/CITY may request or institute legal action based upon a breach of this Agreement. The RDA's or CITY's consent shall not be unreasonably withheld, conditioned or delayed. In determining the reasonableness of any consent or failure to consent, the RDA and CITY shall consider whether the proposed transferee has sufficient development experience and creditworthiness to perform the DEVELOPER's obligations under this Agreement.

After the Completion Date, but subject to the DEVELOPER's obligation to pay the transfer penalty set forth above, if applicable, the DEVELOPER shall have the absolute right to transfer the entirety of its right, title, and interest in and to the Project together with all rights and obligations of this Agreement without RDA's or CITY's consent.

- B. All requests requiring the CITY/RDA approval shall be submitted at least 30 days in advance of the date of the proposed action.
- C. The above restrictions do not preclude the creation of a mortgage, encumbrance or lien upon the Property for the purpose of financing or refinancing the development or any part thereof pursuant to this Agreement. In the event of the creation of any mortgage, encumbrance or lien, without the voluntary act of a party, the DEVELOPER shall notify the RDA/CITY promptly of such occurrence.
- D. Prior to Property transfer to the DEVELOPER, the DEVELOPER shall furnish to the RDA evidence of the construction contract for the Project.
- E. At any time during the implementation of the Project, the DEVELOPER may submit to the RDA proposed revisions in the approved Concept Plans in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plans. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the proposed revisions in the Concept Plans; provided, however, that the RDA shall approve such revised Concept Plans unless it reasonably finds that such revisions would impair the objectives of this Agreement, impose substantial financial burdens on the RDA or the CITY, or adversely affect the Concept Plans. The RDA will make all reasonable efforts to approve of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans.
- F. The DEVELOPER shall prepare or have prepared a Development Budget and Design Development Documents in accordance with the Concept Plans for submission to the RDA no later than September 1, 2015. Design Development Documents shall consist of site plans and building plans or other drawings and other documents that fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and other such essentials as may be reasonably determined by the RDA to be appropriate. The RDA may approve, disapprove or impose further requirements with respect to the Development Budget and Design Development Documents, provided, however, that if the Development Budget and Design Development Documents conform with the Concept Plans, such approval may not unreasonably be withheld. The RDA will make all reasonable efforts to approve of the budget and plans in less than thirty (30) days, including convening for special meetings to review and consider such budget and plans.

- G. The DEVELOPER shall file with the RDA copies of the detailed construction plans promptly (within thirty (30) days) after completion of construction.
- H. During the period prior to the date of commencement of construction of the Project, the DEVELOPER shall from time to time advise the RDA regarding information having a bearing upon the RDA's interest under this Agreement, and, after date of commencement of construction of the Project by the DEVELOPER, the DEVELOPER shall file with the RDA quarterly summary progress reports during the course of construction of the Project.
- I. All documents shall be submitted in triplicate.
- J. The DEVELOPER agrees, not to discriminate on the basis of race, color, religion, sex or national origin in the performance of work under this Agreement and in the sale, lease or rental or in the use or occupancy of the Property or any improvements located thereon, in violation of any applicable law or regulation.
- K. Prior to commencing construction of the Project, the DEVELOPER shall obtain and keep in full force and effect during construction of the improvements, an all-risk builder's risk insurance policy for the Project on which construction is occurring with coverage equal to the total amount of the DEVELOPER's construction contract or contracts for all improvements being constructed. Such builder's risk insurance policy shall name the RDA/CITY as an additional insured, subordinate in its rights to such proceeds to the DEVELOPER's mortgagee. However, in such a case, the DEVELOPER is not relieved of its obligation to perform under this Agreement. The DEVELOPER shall also obtain and keep in full force and effect during construction of its improvements, for the benefit of the RDA and CITY, an owner's comprehensive protective liability insurance policy with personal injury coverage of at least \$2,000,000.00, and property damage coverage of at least \$1,000,000.00. Such policies of insurance shall be written by insurance companies authorized to do business in the state of Wisconsin. Prior to commencement of construction, the DEVELOPER shall file with the CITY a certificate of insurance setting forth that all coverage herein is in full force and effect and providing the RDA and CITY will be given ten (10) days written notice prior to termination or cancellation of such coverage.

VI. ENVIRONMENTAL

- A. The RDA and/or CITY shall make available to the DEVELOPER all known environmental reports and activity upon the Property. If site remediation is required, the the CITY/RDA will work cooperatively with the DEVELOPER to off-set any extraordinary site clean-up costs; however, the CITY/RDA shall not be legally obligated to remediate the site. CITY/RDA shall assume the costs of clean-up only upon obtaining external grant funds covering the entire cost of clean-up.
- B. Subsequent to the conveyance of the Property to the DEVELOPER, the DEVELOPER shall be responsible for, indemnify, pay on behalf of, defend and hold CITY's and RDA's, agents, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity): (a) arising from the actual existence, treatment, deposit, release, storage, or disposal of any hazardous materials or substances as defined under

Environmental Laws, whether on or off the Property, which occurred subsequent to the date of conveyance of the Property; and (b) arising from the breach of any warranty, covenant or representation of DEVELOPER to the CITY or RDA, or any other obligation of DEVELOPER to the CITY or RDA, under this Agreement.

As used herein, the term "hazardous materials or substances" means (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "**Environmental Laws**"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and (E) asbestos containing materials.

VII. MUTUAL RIGHTS OF ACCESS.

- A. Prior to closing on the Property, the CITY shall permit representatives of the DEVELOPER to have access to any part of the Property to at all reasonable times to obtain data and make various tests concerning the Property necessary to carry out this Agreement. The CITY will use reasonable efforts to work with the DEVELOPER for parking accommodations for parties of the DEVELOPER accessing the Property to obtain data or perform tests during the term of this Agreement.
- B. After closing on the Property, the DEVELOPER shall permit representatives of the CITY and RDA to have reasonable access to the Property at all reasonable times for the purposes of this Agreement, including, but not limited to, inspection of all work being performed in connection with construction. Any such access shall require general contractor presence and approval. In addition, all access must be in strict adherence to work site safety guidelines.
- C. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section.

VIII. OTHER RIGHTS AND REMEDIES.

- A. The DEVELOPER shall be responsible for, indemnify, pay on behalf of, defend and hold the CITY and RDA and their agents, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering and similar expenses incurred with respect to such matter and/or

incurred in enforcing this indemnity) arising from the breach of any warranty, covenant or representation of DEVELOPER to the CITY or RDA, or any other obligation of the DEVELOPER to the CITY or RDA under this Agreement.

The CITY and RDA, jointly and severally, shall be responsible for, indemnify, pay on behalf of, defend and hold the DEVELOPER and its agents, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity) arising from the breach of any warranty, covenant or representation of the CITY and/or RDA to the DEVELOPER, or any other obligation of the CITY and/or RDA to the DEVELOPER under this Agreement.

- B. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to cure or remedy such default or breach, and, in any event, such default or breach shall be cured or remedied within sixty (60) days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such sixty (60) day period in which case said defaulting party shall commence such cure within such sixty (60) day period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the Project in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the PARTIES. Accordingly, the PARTIES shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the PARTIES may seek damages as authorized. No other remedies for the PARTIES exist outside of this Agreement.

- C. The PARTIES shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- D. Except as expressly provided otherwise in this Agreement, the rights and remedies of the PARTIES to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party. No waiver made by any such party with

respect to the performance or manner of time thereof, of any obligation of any other party or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the party making waiver with respect to the particular obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations.

- E. No official or employee of the RDA/CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are PARTIES to this Agreement. No official or employee of the RDA/CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the RDA/CITY, or for any amount which becomes due to the DEVELOPER or its successors under this Agreement.
- F. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or PARTIES thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding among the PARTIES with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their respective successors and assigns.
- G. This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.
- H. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- I. This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any party liable for any of the debts or obligations of any other party.
- J. The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.
- K. A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER: SBH-Green Bay, LLC
Attention: Mike Garone, Director of Development

8295 Tournament Drive, Suite 201
Memphis, TN 38125

SBH-Green Bay, LLC
Attn: Jim Shaheen, President
8295 Tournament Drive, Suite 201
Memphis, TN 38125

Stellpflug Law
Attn: Mark Bartels, Attorney
444 Reid Street, Suite 200
De Pere, WI 54115

To RDA: Redevelopment Authority
of the City of Green Bay
Attention: Executive Director
100 North Jefferson Street, Room 608
Green Bay, WI 54301

To CITY: City of Green Bay
Attention: City Clerk
100 North Jefferson Street
Green Bay, WI 54301

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

- L. Any provision in this Agreement which has not been fully performed prior to transfer of possession of the Property shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession of the Property and be in force and effect until performed.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed the date first above written.

Attest:

Redevelopment Authority of the City of Green Bay

Harry Maier, Chairman

Kimberly Flom, Executive Director

Attest:

City of Green Bay

James J. Schmitt, Mayor

Kris Teske, Clerk

Attest:

SBH-Green Bay, LLC

Print Name and Title: _____

EXHIBIT A
LEGAL DESCRIPTION

Lots 1 and 2, Volume 58, Certified Survey Maps, Page 186, Map No. 8323, Document No. 2630866, being part of Lot 1, Volume 51, Certified Survey Maps, Page 160, Map No. 7494, Document No. 2255416, Brown County Records, being part of the Southwest 1/4 of the Southwest 1/4, Section 11, Township 23 North, Range 21 East, City of Green Bay, Brown County, Wisconsin.

Tax Parcels 21-181-2 and 21-181-3

**EXHIBIT B
CONCEPT PLAN**

EXHIBIT C
PURCHASE AGREEMENT

**FINAL RESOLUTION AUTHORIZING
ASPHALT PAVEMENT IMPROVEMENTS
AND LEVYING SPECIAL ASSESSMENTS
AGAINST PROPERTY
APRIL 8, 2015**

WHEREAS, the Improvement & Service Committee of the City of Green Bay, Wisconsin, held a public hearing at the City Hall at 6:30 pm on the 25th day of March, 2015 for the purpose of hearing all interested persons concerning the preliminary resolution and Report of the Director of Public Works on the proposed improvement and has heard all persons desiring audience at such hearings on the following streets or portions of streets:

**S. MAPLE AVENUE – WALNUT STREET TO HOWARD STREET
S. OAKLAND AVENUE – SHAWANO AVENUE TO HOWARD STREET
MARSHALL AVENUE – MATHER STREET TO DESNOYERS STREET**

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF GREEN BAY:

1. That the Report of the Director of Public Works pertaining to the construction of the above described improvement, including plans and specifications therefore as modified, having been reviewed and discussed by members of the Improvement & Service Committee, is hereby adopted and approved.
2. That the Improvement & Service Committee is directed to advertise for bids and to carry out the work of such improvement in accordance with the Report of the Director of Public Works as approved and authorized by the appropriate Committee.
3. That the payment for improvements be made by assessing the cost to the property as indicated in said Report of the Director of Public Works.
4. That the assessments shown on and confirmed by the Report of the Director of Public Works as modified are true and correct, and found to be in the public interest are hereby confirmed.
5. That those special assessments not paid in cash shall be payable to the City of Green Bay in five (5) annual installments with interest thereon at the rate of four percent (4.00%) per annum.
6. That the City Clerk shall be directed to publish this resolution in the official newspaper of the City of Green Bay.

7. That the City Clerk shall be further directed to mail a copy of this resolution to every property owner whose name appears on the assessment roll, whose post office address is known, or can with reasonable diligence be ascertained.

Adopted _____, 2015

Approved _____, 2015

Mayor

ATTEST:

City Clerk

jld

GENERAL ORDINANCE NO. 7-15

AN ORDINANCE
CREATING SECTION 27.310,
GREEN BAY MUNICIPAL CODE,
RELATING TO PROHIBITION OF BILL-POSTING

THE COMMON COUNCIL OF THE CITY OF GREEN BAY DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 27.310, Green Bay Municipal Code, is hereby created to read:

27.310 **BILL-POSTING PROHIBITED.**

(1) Definitions.

(a) "Bill-posting" is an act defined to mean affixing, depositing, distributing, posting, placing, painting or tacking of any handbill.

(b) "Handbill" is defined to mean any bill, cards, sign, circular, flyer, leaflet, pamphlet, paper booklet, poster or any printed or written material which:

1. Advertises any business, merchandise, product, commodity or thing; or

2. Directs attention to any business, mercantile, or commercial establishment or other activity, for the purpose of either directly or indirectly promoting and or effectuating sales; or

3. Directs attention to or advertises any meeting, theatrical performance, exhibition, entertainment or event of any kind for which an admission fee is charged for the purpose of private gain or profit.

(c) "Person" is defined to mean any persons, firm, partnership, association, corporation, company or organization of any kind.

(d) "Amenity strip" is defined to mean the area between the curb and the defined pedestrian right-of-way along city streets and roadways.

(2) No person shall bill-post any handbill upon any vehicle on a public or private property, unless the owner(s) of said property consents in writing.

(3) No person shall bill-post any handbill on telephone poles, lampposts, traffic-light poles, poles used for an official sign, on the sidewalk, public or private, on any building or structure except the following:

(a) An amenity strip under the following conditions:

1. Handbill(s) is (are) affixed, posted, placed, installed or otherwise attached securely, during daylight hours only for a time period of no more than five (5) calendar days within a thirty (30) calendar day period during which the handbill(s) was (were) initially affixed, posted, placed, installed or otherwise attached AND include the name, address and phone number of the person causing the handbill to be distributed, deposited or placed.

2. No person shall bill-post any handbills on any amenity strips that contain obscene or harmful material.

(b) A dwelling under the following conditions:

1. Handbills are affixed, posted, placed, installed or otherwise attached securely, during daylight hours only AND include name, address and phone number of the person causing the handbill to be distributed, deposited or placed.

2. No person shall bill-post any handbills upon any dwelling which is temporarily or continuously uninhabited or vacant.

3. No person shall bill-post any handbills on any dwellings that contain obscene or harmful material.

(c) A billboard.

(4) This section does not apply to notices, warnings or other communications by, or on behalf of, the City.

SECTION 2. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

SECTION 3. This ordinance shall take effect on and after its passage and publication.

Dated at Green Bay, Wisconsin, this _____ day of _____, 2015.

APPROVED: _____

Mayor

ATTEST:

Clerk

JZ:bc

03/16/15