

**Community Development  
Authority**

**Wednesday, September 2,  
2020**

**7:00 PM**

**McFarland Municipal Center  
Community Room**

AGENDA

You are invited to this meeting through a Zoom webinar. The Public is strongly encouraged to watch and participate in these meetings remotely through either the webinar or telephone options listed below.

**PLEASE CLICK THE LINK BELOW TO JOIN THE ZOOM WEBINAR:**

<https://us02web.zoom.us/j/81540776500>

Or by Telephone:

+1 (312) 626-6799

Webinar ID: 815 4077 6500

1. CALL TO ORDER
2. PUBLIC APPEARANCES.
3. APPROVAL OF MINUTES.
  - a. Review and possible approval of the July 1, 2020 Community Development Authority minutes.
4. BUSINESS.
  - a. Discussion and action to make a recommendation to the Village Board regarding a Development Agreement for tax increment financing development incentives for improvements to property located at 5923 Exchange Street, TID #4, by Shaun O'Hearn.
  - b. Discussion regarding current and future Community Development Authority projects and initiatives.
5. SCHEDULE NEXT MEETING DATE.
  - a. October 7, 2020 at 7:00 pm
6. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon

reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or [cassandra.suettinger@mcfarland.wi.us](mailto:cassandra.suettinger@mcfarland.wi.us).

## Community Development Authority

### Working Draft - MINUTES

July 1, 2020

Members Present: Ken Brost, Dan Kolk, Austen Conrad, Stephanie Brassington, Jerry Dietzel, Mike Flaherty

Members Absent: Toni Stolarik (excused)

Staff Present: Andrew Bremer, Stephanie Miller, Karen Knoll

#### 1. CALL TO ORDER

Brost called the CDA meeting to order at 7:00pm.

#### 2. PUBLIC APPEARANCES

None

#### 3. APPROVAL OF MINUTES

- a. Review and possible approval of the May 6 , 2020 Community Development Authority minutes.

Flaherty moved to approve the May 6, 2020 Community Development Authority minutes. Kolk seconded the motion. Motion carried 6-0.

#### 5. BUSINESS

- a. Discussion and action to make a recommendation to the Village Board regarding a request from Ryan Quam, Waubesa Village LLC, to amend the existing Development Agreement with Waubesa Village LLC related to the construction of Phase III, a 27unit Multi-family apartment building located at 4608 Siggelkow Road.

Bremer summarized the history of the project; this building is identical to the second building of the three-phase project. The CDA and Village Board approved TIF incentives for the Phase I and Phase II buildings. Quam is looking to obtain commercial financing for the third building and as part of that will need to amend the Developers Agreement to subordinate the Villages loan on the project to the new loan amount from the bank. It is the change in the Developers Agreement that brings this back to the CDA and Village Board. Quam is not requesting any TIF incentives with Phase III, but is requesting use of a Village owned lot for staging and storage of materials through the construction project.

Ryan Quam – 4604 Siggelkow Road – advised he recently completed a 27 unit building on Terminal Drive and feels there is still high demand for units in this area, and the interest rates are good at this time. Quam reviewed the site plan as provided in packets and he has been meeting with the Fire Department to address their concerns, and a second access to the project off Terminal Drive. This building will be a mirror image to the second building. He is looking to start construction in October. Quam will be adding another rain garden, and will be submitting his storm water report to the Village Engineer.

Bremer summarized the secondary access drive was discussed when the Phase II building was approved, and minutes indicated the decision to add a second drive would be held off until the Phase III project was proposed. There were concerns over the traffic pattern on Terminal Drive, but also the Fire Department has concerns about access, and the ability to turn around on the site. The discussion was to make this a gated emergency access, and not for tenant use. Quam had indicated he was in agreement with this and will add the access to the site plan for the Plan Commission meeting.

Kolk asked for more details from Quam on the use of the Village owned land. Quam indicated he has an existing gravel drive off Terminal Drive, from past construction and would be using the site for the trusses, and deliveries. Quam indicated there are some trees along the property line, he will be verifying if they are on his site, if they are, he will be removing them, if on the Village property he would like to trim them back..

Flaherty moved to make a recommendation to the Village Board to approve a request from Ryan Quam, Waubesa Village LLC, to amend the existing Development Agreement with Waubesa Village LLC related to the construction of Phase III, a 27 unit multi-family apartment building located at 4608 Siggelkow Road. Dietzel seconded the motion. Motion carried 6-0.

- b. Discussion regarding an application for Tax Increment Financing incentives for improvements to property located at 5923 Exchange Street, Tax Increment District #4, by Shaun O'Hearn, O'Hearn Ventures LLC.

Bremer summarized per his staff report, O'Hearn is looking to add a sprinkler system to the Café and the garden house on the property. This will involve adding a new lateral from Exchange Street into the garden house, and, then through the tunnel to the café to serve that building. O'Hearn is going before the Plan Commission in July to seek a Conditional Use Permit to add two – one-bedroom apartments to the third floor. O'Hearn is not making any other improvements to the garden house at this time, but will be looking to in the future so he can diversify his revenue stream on the property. O'Hearn total budget on this project is \$260,000.00; O'Hearn has requested a TIF development incentive of \$55,000.00. Bremer summarized the breakdown of funds for the project.

O'Hearn reviewed his project proposal, and the history of the McFarland House. He is looking to see what the market is like in short-term rentals to try to turn it into something similar to an old school boarding house without the hotel amenities if that market is weak, he will use them as year round rentals. In order to complete this project per code

requirements, it is out of his financial range, which is why he is seeking the help. Bremer indicated the TIF request is 21% of the project costs.

- c. Review and discussion of the 2019 TIF Annual Reports for TID'S 3, 4, and 5.

Bremer summarized they are required to annually have the Joint Review Board meet and review the annual reports. This meeting took place in June and all reports were accepted for filing with the Department of Revenue. Bremer reviewed the reports as provided in packets, and the memo in his Directors Report. Members discussed the TIDS, statuses of them and various closing dates of them.

## 6. CLOSED SESSION.

Brassington moved to convene into Closed Session. Dietzel seconded the motion. Motion carried 6-0 on a roll call vote. CDA convened into closed session.

- a. Discussion and action in order to convene in Closed Session in accordance with Wis. Stats. 19.85(1)(e) to deliberate or negotiate the investment of public funds or other specified public business whenever competitive or bargaining reasons require a closed session, specifically related to the acquisition of property at the following locations:

- 1) Consideration regarding an application for Tax Increment Financing incentives for improvements to property located at 5923 Exchange Street, Tax Increment District #4, by Shaun O'Hearn, O'Hearn Ventures LLC.

- 2) Consideration to acquire property located at 5817 Milwaukee Street within Tax Increment District #4.

- b. Discussion and action to reconvene into Open Session.

Dietzel moved to reconvene into Open Session. Brost seconded the motion. Motion carried 6-0 on a roll call vote. The CDA returned to open session.

## 7. OPEN SESSION

- a. Discussion and action to make a recommendation to the Village Board regarding an application for Tax Increment Financing incentives for improvements to property located at 5923 Exchange Street, Tax Increment District #4, by Shaun O'Hearn, O'Hearn Ventures LLC.

Kolk moved to recommend to the Village Board an application for Tax Increment Financing incentives in the amount of \$50,000.00 for improvements to property located at 5923 Exchange Street, Tax Increment District #4, by Shaun O'Hearn, O'Hearn Ventures LLC. Brassington seconded the motion. Motion carried 6-0.

- c. Discussion and action to make a recommendation to the Village Board regarding acquiring property located at 5817 Milwaukee Street, within Tax Increment District #4.

Kolk moved to recommend to the Village Board to pursue acquiring property located at 5817 Milwaukee Street, within Tax Increment District #4. Brassington seconded the motion. Motion carried 6-0.

8. SCHEDULE NEXT MEETING DATE.

- a. August 5, 2020 @ 7:00 p.m.

9. ADJOURNMENT.

Kolk moved to adjourn. Flaherty seconded the motion. Motion carried. Meeting adjourned at 8:31 p.m.



## COMMUNITY DEVELOPMENT AUTHORITY SUMMARY SHEET

**MEETING DATE:** Wednesday, September 2, 2020

**SECTION:** Business

**DEPARTMENT:** Community Development

**CONTACT:** Andrew Bremer, Comm & Eco Dev Director

**AGENDA ITEM:** Discussion and action to make a recommendation to the Village Board regarding a Development Agreement for tax increment financing development incentives for improvements to property located at 5923 Exchange Street, TID #4, by Shaun O'Hearn.

### PREVIOUS ACTION:

August 24, 2020, Village Board unanimously recommended a \$50,000 TIF development incentive application contingent on the approval of a final development agreement by the Village Board.

### ISSUE SUMMARY:

Shaun O'Hearn, O'Hearn Ventures LLC, is seeking to add two one-bedroom apartments to the third floor of the McFarland House Cafe (5923 Exchange Street). As part of the project, the owner will include a sprinkler system for the Cafe and adjacent Garden House, to meet building and fire codes. The sprinkler system will allow for the third floor apartments without the need for additional exterior egress modifications to the building. Currently, there is a domestic water lateral that serves the Cafe House and another that serves the Garden House. These laterals would remain, and the owner would install a new 6" lateral shown on the map in the packet on the south side of the driveway to the Garden House. The owner would connect the Cafe/apartments to the sprinkler system by running the piping through the existing tunnel from the Garden House to the Cafe House to avoid disturbing the foundation of the house.

While no other improvements are being considered to the Garden House at this time, the water improvement system, will enable the owner to increase the capacity/ability of the building to be used for commercial uses in the future. The addition of the two one-bedroom apartments will allow the owner to diversify property/business revenues, which will assist in increasing the financial viability of completing additional improvements to the Garden House for commercial uses. The property is located in Tax Increment District #4.

On July 1, 2020, CDA unanimously recommended to the Village Board a \$50,000 TIF development incentive to facilitate the addition of two one-bedroom apartments to the third floor of the Cafe House and the installation of a fire sprinkler system to the Cafe House and Garden House.

On August 17, 2020, Plan Commission unanimously approved a conditional use permit for the addition of two one-bedroom apartments to the third floor of the Cafe House and the installation of a fire sprinkler system to the Cafe House and Garden House.



On August 24, 2020, Village Board unanimously recommended a \$50,000 TIF development incentive application contingent on the approval of a final development agreement by the Village Board. The packet includes a copy of the Development Agreement as prepared by the Village Attorney.

**FINANCIAL/BUDGET IMPACT:**

The applicant has estimated an increase in the property assessment from \$348,800 to \$527,800 as a result of this project. This would generate an estimated \$3,591 in annual tax increment beginning in 2022; with a total estimated tax increment collection of \$46,681 prior to closure of TID #4. The Village can either donate or advance funds from TID #3 to cover the expense; with the option of zero interest for an advance. This would improve the overall performance, but the project would still not cash flow prior to TID closure under the stated assumptions, with a small deficit of \$3,319. This assumes that there is no increase in the property value beyond the projected \$527,800 and that the tax rate would remain constant or not decrease further. Concerning the former, one of the objectives of this project is to provide infrastructure to the Garden House that will eventually enable additional structural improvements to repurpose the building for additional commercial uses, which would add additional taxable value to the property and general value to the Downtown.

In addition to property tax revenues, the project would generate additional building permit revenues and impact fee revenues. Regarding the latter, the park land impact fee is \$5,439.80 (\$2,719.90 x 2) and park improvement fee is \$1,425.04 (\$712.52 x 2), for a total of \$6,864.84. In addition, library impact fees of \$862 (\$431 x 2) would also apply to the project.

**VILLAGE PLAN REFERENCE:**

2017 Comprehensive Plan. Property is identified as Downtown use in the Village's 2017 Comprehensive Plan. Desirable land uses include commercial services, retail, restaurants, lodging, office, multiple family residential (mainly in upper stories) and institutional, including buildings that mix uses.

2020-2030 Strategic Plan. Improving business retention and enhancing commercial uses in the downtown area are also two of the strategies identified in the Village's 2020-2030 Strategic Plan. Developing affordable housing in the Village was also a theme that emerged from the Village's 2020-2030 Strategic Plan

2019-2020 Village Board Goals. Evaluation of ways to become more business friendly and flexible for economic growth is included as in objective of the 2019-2020 Village Board Goals. In addition, actively promoting and supporting affordable housing in the Village is included in the 2019-2020 Village Board Goals.

2010 Redevelopment District Plan No. 2.

2010 Downtown Strategic Market Analysis and Opportunities Assessment

2008 TIF District #4.

**ORDINANCE REFERENCE:**

Sec. 62-71, Commercial District Permitted Use

Sec. 62-105, Conditional Uses

Sec. 62-310, Site/Design Review

**BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:**



Recommend to the Village Board approval of the Development Agreement as presented.

**ATTACHMENTS:**

1. Ohearn Ventures Development Agreement\_08.28.2020

## **DEVELOPMENT AGREEMENT**

**McFarland House Café, Inc.  
O’Hearn Ventures, LLC  
Village of McFarland**

This Development Agreement ("Agreement") is entered into as of the \_\_\_\_ day of September, 2020, by and between the Village of McFarland, a Wisconsin municipal corporation ("Village"), whose principal address is 5915 Milwaukee Street, McFarland, WI 53558, McFarland House Café, Inc., a Wisconsin corporation having its principal office at 5205 Linden Parkway, McFarland, Wisconsin ("MHC"), and Ohearn Ventures, LLC, a Wisconsin limited liability company, with offices located at 5205 Linden Parkway, McFarland, Wisconsin, ("O’Hearn").

### **RECITALS**

A. O’Hearn is the owner of a parcel of commercial real estate located at 5923 Exchange Street, McFarland, Wisconsin designated as tax parcel no. 154/0610-031-6926-9 (the "Property").

B. MHC intends to make certain physical improvements to the Property to enhance its operations on the Property, and has requested tax incremental financing assistance from the Village to defray a portion of the cost thereof.

C. The Village is willing to assist MHC by providing the requested funding under the terms and conditions of this Agreement.

D. The Property is located within the boundaries of Tax Incremental District No. 4, Village of McFarland ("TID #4"), which was created to encourage redevelopment within the Village.

E. The proposed redevelopment of the Property is consistent with the Village’s Comprehensive Plan (Master Plan), adopted August 28, 2017 and the TID #4 Project Plan adopted January 14, 2008.

### **AGREEMENT**

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

**ARTICLE I  
DEFINITIONS/EXHIBITS**

- A. **Definitions.** As used in this Agreement, the following terms when having an initial capital letter shall have the following meanings:
1. **Agreement.** This Agreement between the Village, O’Hearn and MHC, as amended and supplemented from time to time.
  2. **Plans and Specifications.** The construction plans and specifications for the Project, as approved by the Village in connection with the redevelopment of the Property and the issuance of building permits for the Project.
  3. **Project.** The addition of 2 residential rental units on the property and upgrading of water service for fire sprinkler installation.
  4. **Tax Increment Law.** Wis. Stats. §66.1105, as may be amended from time to time, as such amendments may apply to TID No. 4.
  5. **Tax Increments.** The tax increments derived from the Project which have been received and retained by the Village in accordance with the provisions of the Tax Increment Law.
- B. **Exhibits.** The following exhibits are hereby attached to and incorporated into this Agreement:
- Exhibit "A"    TIF Application  
Exhibit "B"    Guarantees  
Exhibit "C"    Fixed Rate Note  
Exhibit "D"    Real Estate Mortgage

**ARTICLE II  
MHC OBLIGATIONS**

- A. **Completion of Development.** MHC shall redevelop the Property by constructing the Project. The Project shall include all material components and features as generally identified in **Exhibit A** and be constructed in accordance with all approved building plans, site plans and other applicable governmental approvals and regulations.
- B. **Guarantee of Tax Increment.**
- (1) **Required Value.** MHC shall assure that the Property shall have a taxable assessed value as of January 1, 2021, as determined under Wis. Stats. §70.32(1), of not less than \$527,800 (the “Required Value”).

(2) Payment of Tax Deficiency. If the taxable assessed value of the Property as of January 1, 2021 or on January 1 of any succeeding year during the life of TID No. 4 but prior to repayment of the TIF Loan (as defined in ARTICLE III below) is less than the Required Value, MHC shall pay to Village a sum (“Deficiency Payment”) which is the difference between the general property taxes, if any, actually generated by the Property in that year and the amount of general property taxes that would have been generated by the Property if the Required Value had been achieved. For avoidance of doubt, the Deficiency Payment required by this subsection, when added to the real property taxes actually received by the Village in a given year and attributable to the Property, shall equal the real property taxes the Village would have received if the promised Required value for that year had been achieved. Deficiency Payments shall be calculated in each year for which the taxable fair market value is less than the Required Value and shall be payable in equal installments on or before January 31 and July 31 next following the year in which the valuation shortfall occurred.

C. Personal Guaranty. The parties acknowledge that MHC is agreeing to construct improvements on property owned by O’Hearn, and that O’Hearn will directly benefit from those improvements. Similarly, Shaun T. O’Hearn, as principal of O’Hearn, will realize the benefits of the improvements. In consideration of the benefit that will accrue to the Property and thereby to O’Hearn, O’Hearn (the "Guarantor") agrees to guaranty to the Village the prompt payment and performance of all obligations of MHC under this Agreement, and to obtain the personal guaranty of Shaun T. O’Hearn for the same obligations. Concurrently with the execution of this Agreement, the Guarantor shall provide to the Village documentation of such guarantees in the form attached hereto as **Exhibit B**.

D. Application of Funds. Tax increments generated by the Property shall be applied in the discretion of the Village, provided that this Agreement and MHC’s and any Guarantor’s obligations to guaranty tax increment under the Agreement shall terminate upon the earlier of (i) the payment to the Village of aggregate tax increments attributable to the Property, plus any Deficiency Payments paid by MHC or any Guarantor, in an amount equal to the TIF Loan disbursed or (ii) the termination of TID No. 4, except that the termination of TID No. 4 shall not relieve either MHC or any Guarantor of liability for a prior breach of this Agreement. At such time as MHC’s and the Guarantor’s guarantees terminate, and upon the request of either MHC or a Guarantor, the Village shall execute an acknowledgment of termination or a release of this Agreement, the business note, the guarantees and a satisfaction of the real estate mortgage in recordable form.

E. Insurance Policies. MHC shall furnish to the Village certificates of insurance for all insurance policies required to be delivered under this Agreement. The policies shall include the following:

- (1) A commercial general liability insurance policy against all claims for personal injury, death or property damage for which MHC or O'Hearn might be liable, occurring upon, in or about the Property to the limit of not less than \$2,000,000 of combined single limit coverage.
- (2) A policy insuring the Property (including construction in progress), in an amount at least equal to the full replacement value thereof, without deduction for depreciation, against damage or destruction by fire, windstorm and any other loss or damage customarily insured in comparable structures.
- (3) MHC shall assure that any insurance policies issued hereunder shall provide the Village with 30 days' prior notice of cancellation of any such insurance policy.

F. Village Fees. The residential portion of the development is subject to fees in lieu of parkland dedication and to impact fees. MHC shall pay such fees to the Village in accordance with the established Village schedule at the same time and on the same schedule as other such development in the Village is required to pay such fees.

### **ARTICLE III TIF FINANCING**

A. The TIF Loan. In order to induce MHC to undertake redevelopment of the Property as required by this Agreement, the Village agrees to provide MHC with economic development assistance through tax increment financing pursuant to Wis. Stats. §66.1105 in the form of a loan in an amount of \$50,000 (the "TIF Loan"). The TIF Loan shall be utilized solely to pay for project costs, as defined in Wis. Stats. §66.1105(2)(f) and as specified in the project plan for TID No. 4 and including those identified in **Exhibit A**, incurred by MHC for work done at the Property for purposes directly related to the redevelopment and construction of the Project. In no event shall any portion of the TIF Loan be used to pay general property taxes or to reimburse MHC or any other person or entity for the payment of general property taxes.

B. The Village's obligation to disburse any amounts of the TIF Loan shall be conditioned upon all of the following:

- (1) MHC or O'Hearn shall have obtained final inspection approval for the entire Project and received an occupancy permit from the Village's building inspector.
- (2) MHC or O'Hearn shall have delivered to the Village certificates of insurance required to be in force by Section II.E. of this Agreement in a form acceptable to and approved by the Village Attorney, along with any policies, endorsements or other documents necessary to confirm the existence of the required coverage.
- (3) MHC and O'Hearn shall have the power and authority to enter into this transaction, to execute, deliver and perform this Agreement, to execute and

deliver each and every instrument and otherwise to consummate the transaction herein contemplated. Neither the execution, delivery nor the performance of this Agreement by MHC or O'Hearn will result in the breach of any of the contract, covenant or agreement or judgment or decree by which such entity is then bound or affected.

- (4) MHC and O'Hearn shall not be the subject of any legal proceedings in foreclosure, reorganization, assignment for the benefit of creditors, receivership, bankruptcy or insolvency.
- (5) MHC and O'Hearn shall be in full compliance with the terms and conditions of their respective promissory notes, loan agreements, mortgages and other security agreements affecting the Property or the Project.
- (6) The Project and the Property shall be in full compliance with all applicable State, Federal and local laws, ordinances and regulations (and any conditions imposed pursuant to any of the foregoing), or a compliance plan acceptable to the Village shall be in effect to achieve such compliance.

C. The TIF Loan shall be disbursed to MHC in a single installment within 15 business days of receipt by Village from MHC of a written statement itemizing the expenses paid by MHC for which payment from the TIF Loan is requested, along with the following written documentation reasonably satisfactory to the Village:

- (1) Documentation demonstrating that lien waivers have been given for each and every contractor, subcontractor and material supplier for all costs incurred for the work performed on the Property, above.
- (2) A fully executed business note for the TIF Loan in the form attached hereto as **Exhibit C**.
- (3) A fully executed mortgage securing the TIF Loan in the form attached hereto as **Exhibit D**.

D. Loan Due on Sale. Notwithstanding any other provision in this Agreement, the TIF Loan shall become fully due and payable upon any transfer of all or a portion of the fee simple interest in the Property or Project by O'Hearn to a third party without the prior written consent of the Village, such consent not to be unreasonably withheld in the event such third party assumes the obligations of MHC and O'Hearn hereunder. For purposes of this provision, a transfer of a controlling interest in MHC or O'Hearn to any third party or combination of third parties shall be deemed a transfer. MHC and O'Hearn covenant and agree to notify the Village prior to any such transfer.

E. Subordination. The Village's rights in the Property arising in connection with the TIF Loan shall be subordinate to each of the following:

1. That certain mortgage granted to Park Bank on April 27, 2018 and recorded in the Office of the Register of Deeds for Dane County on May 2, 2018 as Document No. 5406030;
2. A mortgage and related security interests to secure a letter of credit or loan in the original principal sum not to exceed Two Hundred Six Thousand Five Hundred Dollars (\$206,500) to McFarland State Bank to finance the Project.

Upon reasonable request by MHC, O'Hearn or their lenders, the Village shall execute a recordable instrument evidencing such subordination. The Village's subordination agreement shall not apply to any advances made by a mortgage lender after the date of this Agreement, other than disbursements contemplated by Section III.E.2, without the written consent of the Village.

#### **ARTICLE IV REMEDIES**

A. General. In the event of any default in or breach of this Agreement or any of its terms or conditions by any party hereto or any successor in interest to such party, such party or successor shall have the right to cure or remedy such default or breach within thirty (30) days of written notice thereof. Nothing in this Agreement shall be construed to, in any way, affect or control the Village's exercise of its police power.

B. No Waiver by Delay. Either party shall have a right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Agreement. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or deprive it of or limit such rights in any way (it being the intent of this provision that neither party shall feel compelled to institute legal action so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section because of waiver, laches, or otherwise at a time when it may still hope otherwise to resolve the problems created by the default informally); nor shall any waiver made by a party with respect to any specific default by the other party under this section be considered or treated as the waiver of the rights of the non-defaulting party with respect to any other defaults by the defaulting party under this section or with respect to the particular default except to the extent specifically waived in writing.

C. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement whether provided by law or provided by the Agreement shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same event of default or breach or of any of its remedies for any other event of default or breach by any other party. No waiver made

by either such party with respect to the performance, manner, or time thereof or any obligation of any other party or any of the conditions to its obligations under the Agreement shall be considered a waiver of any other rights of the party making the waiver or any other obligations of any other party.

D. Indemnification. MHC and its successors and assigns shall indemnify, save harmless and defend the Village and its officers, agents, attorneys, consultants and employees of and from any and all liability as well as from lawsuits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including attorneys costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property or any of them because of injuries or damages received or sustained by any persons or property on account of or arising out of the approval or construction of the Project occasioned wholly or in part from any act or omission on MHC's or O'Hearn's part or on the part of their respective agents, contractors, subcontractors, invitees or employees, at any time.

## **ARTICLE V MISCELLANEOUS PROVISIONS**

A. Entire Agreement. This Agreement represents the entire agreement between the parties hereto and may be amended only by a written agreement executed by both parties.

B. Disclaimer of Relationships. MHC and O'Hearn acknowledge that nothing contained in this Agreement or any contract between MHC or O'Hearn and the Village or any act by the Village or any third parties shall be deemed or construed by any of the parties or by third persons to create any relationship of third-party beneficiary, principal, or agent; limited or general partnership or joint venture or of any association or relationship involving the Village.

C. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Wisconsin. In the event of a dispute, venue shall lie for all parties in Dane County, Wisconsin.

D. Section Captions. The captions or headings of the various sections of this Agreement are intended for ease of reference only and shall not be deemed to define, limit or describe the scope or intent of this Agreement and are not part of this Agreement.

E. Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors or assigns. The obligations shall run with the land and be binding on any party acquiring title to the Property.

F. Non-Discrimination. MHC for itself, its successors, and assigns, agrees that in the performance of all obligations under the terms and conditions of this Agreement that neither the Project nor any portion thereof shall be used by any party in any manner to permit unlawful discrimination or unlawful restriction on the basis of race, creed, ethnic origin or identity, color, gender, marital status, familial status, age, handicap, sexual orientation, or national origin and the

construction and operation of the Project shall be in compliance with all laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds as may be in effect from time to time.

G. Neutral Construction. The parties acknowledge that this Agreement is the product of negotiations between the parties and that, prior to the execution hereof, each party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against either party because that party's attorney drafted this Agreement or any part hereof.

H. Recording. Either party may record a copy of this Agreement or a memorandum providing notice of this Agreement in the office of the Register of Deeds for Dane County.

I. Estoppel Certificates. The Village shall, within twenty (20) days of receipt of written request, furnish promptly to MHC or O'Hearn, their mortgage lenders or a purchaser of the Project, a written statement setting forth the amount of MHC's remaining liability under this Agreement and that there are, on the part of the party requesting execution of the statement, no events of default or then-existing circumstances which could, solely with the passage of time, become events of default or specifying such events and circumstances.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and year first written above.

**MHC:**

**McFarland House Café, Inc.**

By: \_\_\_\_\_  
Shaun T. O'Hearn, President

By: \_\_\_\_\_

*[Signatures continue on following page]*

**O'Hearn:**

**Ohearn Ventures, LLC**

By: \_\_\_\_\_  
Shaun T. O'Hearn, Member

By: \_\_\_\_\_  
Brett Riemen, Member

**VILLAGE OF McFARLAND**

By: \_\_\_\_\_  
Brad Czebotar, Village President

By: \_\_\_\_\_  
Cassandra Suettinger, Clerk/Treasurer



**COMMUNITY DEVELOPMENT AUTHORITY SUMMARY SHEET**

**MEETING DATE:** Wednesday, September 2, 2020

**SECTION:** Business

**DEPARTMENT:** Community Development

**CONTACT:** Andrew Bremer, Comm & Eco Dev Director

**AGENDA ITEM:** Discussion regarding current and future Community Development Authority projects and initiatives.

**PREVIOUS ACTION:**

**ISSUE SUMMARY:**

This agenda item is presented for discussion only as an opportunity to provide the CDA with an update on the progress of on-going community and economic development related projects and initiatives and to discuss potential future projects and initiatives for the remainder of 2020 and 2021. Discussion items include, but are not limited to:

- Tax Increment District #3, on-going projects and Project Plan review.
- Tax Increment District #4, on-going projects and Project Plan review.
- Tax Increment District #5, on-going projects and Project Plan review.
- Other commercial development opportunities outside of existing TIF districts
- Potential updates to the Village's Tax Increment Financing Development Incentives Policy Manual and Application.

**FINANCIAL/BUDGET IMPACT:**

**VILLAGE PLAN REFERENCE:**

The Village's TIF District Project Plans, and other community development plans, can be found at:

<https://www.mcfarland.wi.us/developmentplans>

The Village's Tax Increment Financing Development Incentives Policy Manual and Application can be found at:

<https://www.mcfarland.wi.us/communitydevelopmentforms>

**ORDINANCE REFERENCE:**



**BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:**

This agenda is presented for discussion only.

**ATTACHMENTS:**

None