

*****ATTACHMENTS*****

III

4.3

Res. No. 130 - 15 - 16. By Alderperson Hammond. January 18, 2016.

A RESOLUTION to authorize a transfer of appropriations in the 2016 Budget.

Establish estimated revenue and appropriation for 2016 Wisconsin Justice System Improvement, Beat Patrol Grant Solicitation:

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Police Department State Grant 10131100-434211	General Fund Police Department-Patrol Salaries/Benefits 10121150-5xxxxx	\$121,434

Finance

John By

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

 ORIGINAL

CONTRACT FOR
SALE OF LAND FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
CITY OF SHEBOYGAN, WISCONSIN
AND
EIGHTH - NEW JERSEY, LLC

AGREEMENT, made this 8th day of April, 2016, by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), having its principal offices at 828 Center Avenue in the City of Sheboygan, Wisconsin, and Eighth - New Jersey, LLC, a Wisconsin limited liability company (hereinafter called "Developer"), having an office for the transaction of business at 330 East Kilbourn Avenue, Suite 800, Milwaukee, WI 53202;

RECITALS

WHEREAS, the City has offered to sell and the Developer is willing to purchase certain real property more particularly described in Exhibit "A" annexed hereto and made a part hereof (which property as so described is hereinafter called "the Property") and to develop the Property by clearing the site and constructing, as determined by Developer in its sole discretion, either a mixed use building comprised of retail/commercial space and market rate residential apartments or a building comprised of solely market rate residential apartments, and all related improvements, such building to be comprised of a certain number of floors, as determined by Developer, , all at an estimated cost of Thirteen Million Five Hundred Thousand and 00/100 Dollars (\$13,500,000.00) (hereinafter called "the Project"), in accordance with this Agreement; and

WHEREAS, the City believes that the development of the Property through construction of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety and welfare of its residents.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

JAVIERO B

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**ARTICLE I.
SALE: PURCHASE PRICE**

Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Developer for, and the Developer will purchase the Property from the City and pay therefor, the total amount of Ten and 00/100 Dollars (\$10.00) dollars, hereinafter called "Purchase Price," to be paid in cash or by certified check simultaneously with the delivery of the Deed (as defined below) conveying the Property to the Developer (the "Sale").

It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals	June 2016
Issuance of Building Permits	July 2016
Start Construction	August 2016
Substantial Completion	November 2017

It is anticipated that the Sale of the Property will be sold and conveyed as of June 1, 2016.

**ARTICLE II.
CONVEYANCE OF PROPERTY**

SEC. 201. Form of Deed. The City shall convey to the Developer title to the Property described in Exhibit "A" by warranty deed (the "Deed"). Such conveyance and title shall be in addition to the condition subsequent provided for in Section 1104 hereof, and to all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, subject to:

- (a) Rights or claims of parties in possession not shown by the public records;
- (b) Easements or claims of easements, not shown by the public records;
- (c) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and inspection of the premises;

- (d) Any lien or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records.
- (e) And such other liens, encumbrances, covenants or restrictions disclosed in the title insurance commitment to be provided by the City as set forth in Section 204(d) below; provided, however, that Developer has consented to and approved of such liens, encumbrances, covenants or restrictions as permitted encumbrances. The items referenced in Subsections (a) through (d) above and this Subsection (e) are referred to herein collectively as "Permitted Liens".

Furthermore, both the City and Developer recognize and acknowledge that there may be easements, encumbrances or reservations disclosed in the title insurance commitment with respect to the Property which will be continued, or newly created or reserved in the conveyance of the Property from the City to the Developer. The City shall use its best efforts to minimize the impact upon Developer's Project of any such easement(s) or encumbrance(s), and Developer's obligation to purchase the Property shall be conditioned upon Developer satisfying itself of the feasibility and suitability of the Property, subject to such easements or encumbrances, prior to the date of closing of the Sale.

SEC. 202. Time and Place for Delivery of Deed. The closing of the Sale and conveyance of the Deed referred to herein shall occur on June 1, 2016 (the "Closing Date"), or such other date as mutually agreed to by the parties, at the principal office of the City, and the Developer shall accept such conveyance and pay the Purchase Price to the City at such time and place.

SEC. 203. Recording of Deed. The Developer shall promptly file the Deed for recording among the land records of Sheboygan County. The Developer shall pay all costs for so recording the Deed.

SEC. 204. Conditions Precedent to Developer's Obligations. The Developer's obligation to conclude the Sale contemplated herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions on or prior to ten (10) days before the Closing Date:

- (a) **Property Acquisition.** Developer determining, after receipt of the survey and the environmental audit reports referenced below, and such other information as determined appropriate by Developer, whether it will acquire the Property under this Agreement.
- (b) **Financing Contingency.** Developer obtaining a written loan commitment from a lending institution of Developer's choice in an amount and with such terms and conditions acceptable to Developer, within Developer's sole discretion, for the construction of the Project and any and all Improvements (as defined below) related thereto.
- (1) **City Contribution.** Notwithstanding other costs and expenses paid or incurred as of the date of this Agreement and in order for this Project to occur, the City shall contribute not less than One Million Seven Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,775,000.00) in new funds from the creation of Tax Increment District No. 16 in upfront developer incentive on or before June 15, 2016. In order for the Developer to receive these funds, the Developer shall provide financial documentation to the City to substantiate the remaining funds needed to complete the Project as evidenced by agreements from lenders and equity investors.
- (2) **Evidence of Equity Capital and Bank Mortgage Financing.** As promptly as possible, but not later than sixty (60) days after approval by the City of the Construction Plans, the Developer shall submit to the City evidence reasonably satisfactory to the City that the Developer has the equity capital and commitments for mortgage financing necessary for the timely completion of construction of the Project and the Improvements.
- (c) **Environmental.** The City delivering to Developer, within fifteen (15) days after execution of this Agreement, all environmental information in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental

reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental Protection Agency, the Wisconsin Dept. of Natural Resources and other such agencies), case closure letters, remedial action plans and similar information.

Developer's obligation to conclude the Sale is further contingent upon Developer determining, in Developer's sole discretion, not less than ten (10) days prior to the Closing Date, that (i) such information does not disclose the existence of any recognized environmental conditions or any other environmental issues, hazardous conditions, materials or substances located on, in or with respect to the Property to which Developer may object or (ii) Developer, at its expense, after reviewing for its own purposes and satisfying such requirement for Developer's lender, the environmental Phase II or soil and groundwater tests inspections, determines to move forward with the Sale.

For purposes of this Subsection (c), a hazardous material, condition, or substance, recognized environmental condition, or any other environmental condition shall include, but not be limited to, any condition, material or substance that does not comply with federal, state or local environmental laws, rules or regulations, any material or condition defined as hazardous within the meaning of such laws, rules or regulations, or any condition, material or substance defined as a recognized environmental condition as determined by the Standards of the American Society for Testing and Materials (ASTM), or the presence of asbestos, underground storage tanks, petroleum products or similar substances.

In the event such information, audits or reports disclose or confirm the presence of any hazardous material, condition or substance on, in or with respect to the Property, or the existence of any recognized environmental condition or any other environmental condition affecting or relating to the Property, Developer may, at Developer's sole discretion,

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale, or
 - (2) accept the Property "as-is" despite the presence of such hazardous material, condition or substance or the existence of such recognized environmental condition or other environmental condition.
- (d) **Title.** The City delivering to Developer, within thirty (30) days after execution of this Agreement, a commitment in favor of Developer for an ALTA Form (2006 or its current equivalent form) owner's policy of title insurance (the "Title Commitment") with respect to the Property, from a title insurance company agreed upon by the parties ("Title Company") (the title insurance premium for such Title Commitment shall be paid by the City).

Within twenty (20) days after Developer's receipt of the Title Commitment, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Title Commitment; in the absence of such notification, such exceptions shall be deemed accepted by Developer. The Title Commitment shall contain such endorsements required by Developer, which endorsements shall be obtained at the Developer's expense. In the event Developer disapproves of any matter pertaining to title, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be paid or satisfied by the City or insured over by the Title Company on or prior to the Closing Date.

In the event that the City elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that the City elects not to cure any defect or

disapproved matter, Developer may, within ten (10) days after receipt of written notice from the City that the City has been unable to cure or is unwilling to cure:

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
 - (2) Developer may take title to the Property "as-is".
- (e) **Survey.** Developer's receipt, of a current survey of the Property (the "Survey") from the City made by a surveyor licensed in the State of Wisconsin. Within thirty-five (35) days after execution of this Agreement and Developer's review of the Survey, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Survey; in the absence of such notification, the Survey shall be deemed accepted by Developer. In the event Developer disapproves of any matter pertaining to the Survey, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to the Survey shall be extended for a commensurate period.

If such Survey continues to show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer, within Developer's sole discretion, Developer may

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
- (2) accept the Property "as-is" despite the existence of such condition on the Survey.

- (f) **Governmental Permits, Licenses and Approvals.** Developer obtaining prior to Closing Date, all necessary permits, licenses and approvals from the City, and/or any other applicable governmental entity or agency, for the Project and related Improvements, as determined by Developer, within Developer's sole discretion. The City agrees to use its best efforts and cooperate with Developer in the application for any such permits, licenses and approvals.
- (g) **Utility Connections.** Developer obtaining written evidence, at the City's expense, that sanitary sewer, storm sewer and potable water mains are located adjacent to the Property boundary line. In the event that sewer and water laterals are not stubbed off at the mains and located at the Property boundary line, the Developer shall be solely responsible for any and all costs and expenses related to bringing such sewer and water laterals to the Property boundary line.
- (h) **Soil and Topographic Conditions.** The City delivering to Developer, within ten (10) days after execution of this Agreement, all information, reports, documentation or otherwise in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors relating to the soil and topographic conditions of the Property. Developer's obligation to conclude this Sale is further contingent upon Developer determining, in Developer's sole discretion, on or prior to the Closing Date, that such information does not disclose any soil or topographic conditions that would impair, interfere with or negatively impact, as solely determined by Developer, the Project or the Improvements related thereto. Developer's obligation to conclude this Sale is further contingent upon Developer obtaining, at Developer's sole expense, on or prior to the Closing Date,
- (1) written confirmation from a recognized and qualified soil and engineering firm (selected by Developer), that the soil and subsoil conditions of the Property are sufficient and suitable, as determined by Developer, in its sole discretion, for the Project and the Improvements related thereto, and

- (2) soil borings and soil reports which verify a minimum poundage per square foot (psf) of soil bearing capacity, as determined by Developer.

If the above written confirmation or soil reports show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer in its sole discretion within sixty (60) days after receipt and review of the information relating to the soil and topographic conditions of the Property, Developer may

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
- (2) accept the Property "as-is" despite the existence of such condition.

**ARTICLE III.
TIME FOR COMMENCEMENT AND COMPLETION OF
IMPROVEMENTS**

The construction of the Project shall be commenced in any event within three (3) months after the Closing Date of the Sale and, except as otherwise provided in this Agreement, shall be substantially completed within fifteen (15) months after commencement of construction.

**ARTICLE IV.
SPECIAL PROVISIONS**

SEC. 401. Minimum Investment. Developer shall utilize the Property by clearing the site and constructing the Project and all related improvements, at a minimum investment of Thirteen Million Five Hundred Thousand and 00/100 Dollars (\$13,500,000.00) dollars ("Minimum Investment")

Minimum Investment includes hard costs for construction of all buildings and other improvements on the Property and leasehold improvements. Minimum Investment includes all hard costs and expenditures as defined in Exhibit B (Developer's Construction Pro-forma) made or incurred by Developer, its

successors or assigns, in connection with the Project, on or before the completion date of construction of the Project on the Property as required by this Agreement, or such later date as the parties may hereafter agree, including, without limitation, any and all costs (remediation costs or otherwise) Developer may incur with respect to any environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property.

Any provision of this Agreement to the contrary notwithstanding, the City and Developer hereby acknowledge and agree that the failure of Developer, its successors or assigns, to satisfy the Minimum Investment requirements by the dates set forth herein shall not constitute a default or breach by Developer under this Agreement nor subject Developer, its successors or assigns, to any penalty, liability or remedy available to the City hereunder or otherwise available to it at law or in equity, provided that the cause of such failure by Developer, its successors or assigns, is unavoidable delay due to (a) acts of God or other matters beyond the control of Developer as referenced in Section 1107 below, or (b) environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property not arising from the act or omission of Developer, its successors or assigns; it being the purpose and intent of this provision that in the event of the occurrence or existence of such causes of delay, the time or times for satisfying the Minimum Investment requirements set forth herein shall be extended by the minimum period required for the completion of all necessary remediation of the Property, or a time period commensurate with the period of delay, as the case may be.

SEC 402. Guaranteed Property Tax Payment.

- (a) Guarantee. The Developer shall guarantee payment of an amount of real estate tax based upon the assessed value set forth in this section. The amount of real estate tax that the Developer and/or its affiliates, as the case may be, guarantee would be generated by the Project. The assessed value of the Project and related tax liability will be zero, through December 31, 2017. The initial assessed value of the Project shall be set as of January 1, 2018 and will be based

on a minimum value of Eleven Million Five Hundred Thousand Dollars (\$11,500,000) per the financial analysis submitted to the City. The assessed value shall be frozen until such time as not less than One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000) Tax Increment District No. 16 up-front developer incentive set forth in Section 204 (b)(1) plus interest is repaid in full.

- (b) Interest Rate Calculation. The interest calculation on the not less than One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000) Tax Increment District No. 16 up-front developer incentive will be calculated based on 1.5% above the City's General Obligation bond interest rate at the time of City's borrowing for this Project.

**ARTICLE V.
PREPARATION OF PROPERTY FOR DEVELOPMENT**

SEC. 501. City Responsibilities. The City shall, without expense to the Developer cooperate with the Developer, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the Developer in connection with the fulfillment of the Developer's obligations under this Agreement.

SEC. 502. Developer's Responsibilities. The Developer shall, without expense to the City:

- (a) **Assist City.** Cooperate with the City, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the City in connection with the fulfillment of the City's obligations under this Agreement.
- (c) **Conduct Studies.** Prior to the Closing Date of the Sale of the Property from the City, conduct sufficient market, architectural and engineering studies, soils analyses, environmental assessments and any other investigations deemed necessary by the Developer to satisfy Developer of the feasibility and suitability of the Property to the Project.

**ARTICLE VI.
RIGHTS OF ACCESS TO PROPERTY**

SEC. 601. Right of Entry for Utility Service. The City reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in Section 201 hereof.

SEC. 602. Developer Not to Construct Over Utility Easements. The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 201 hereof, unless such construction is provided for in such easement or has been approved by the City, and unless Developer indemnifies and agrees to hold harmless the City and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

SEC. 603. Access to Property. Prior to the Sale of the Property by the City to the Developer, the City shall permit representatives of the Developer to have access to the Property, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After the Sale of the Property by the City to the Developer, upon advance written request, the Developer shall permit the representatives of the City access to the Property at all reasonable times which the City deems necessary for the purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE VII.
CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS;
CERTIFICATE OF COMPLETION**

SEC. 701. Plans for Construction of Improvements. Plans and specifications with respect to the development of the Property and the construction of Improvements thereon shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations. As promptly as possible after the date of execution of this Agreement, but no

sooner than sixty (60) days of execution of this Agreement, the Developer shall submit to the City, for approval by the City, plans, drawings, specifications and related documents, and the proposed construction schedule (which plans, drawings, specifications, related documents and progress schedule, together with any and all changes therein that may thereafter be made and submitted to the City as herein provided are, except as otherwise clearly indicated by the context, hereinafter collectively called "Construction Plans"), with respect to the Improvements to be constructed by the Developer on the Property, in sufficient completeness and detail to show that such Improvements and construction thereof will be materially in accordance with the provisions of this Agreement.

The City shall, if the Construction Plans originally submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by the City thereof shall be required, except with respect to any material change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by the City.

If the City, in its reasonable discretion, so rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, the Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City, which approval shall not be unreasonably withheld or delayed, provided, that in any event the Developer shall submit Construction Plans which are in material conformity with the requirements of this Agreement, as determined by the City, no later than ninety (90) days after the date the Developer receives written notice from the City of the City's first rejection of the original Construction Plans submitted to it by the Developer.

All work with respect to the Improvements to be constructed or provided by the Developer on the Property shall be in material conformity with the Construction Plans as approved by

the City. The term "Improvements," as used in this Agreement, shall be deemed to have reference to the Improvements as provided and specified in the Construction Plans as approved.

SEC. 702. Changes in Construction Plans. If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 701 hereof with respect to such previously approved Constructions Plans, the City shall approve the proposed change and notify the Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the City's receipt of notice of such change.

SEC. 703. Approvals of Construction Plans and Evidence of Financing as Conditions Precedent to Conveyance. The submission of Construction Plans and their approval by the City as provided in Section 701 hereof, and the submission of satisfactory evidence of equity capital and commitments for mortgage financing as provided in Section 204(b)(2) hereof, are conditions precedent to the obligations of the Developer to purchase the Property and the City to convey the Property to the Developer pursuant to the Sale.

SEC. 704. Progress Reports. Subsequent to the Sale of the Property, or any part thereof, to the Developer, and until construction of the Improvements has been completed, the Developer shall make monthly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

ARTICLE VIII.

RESTRICTIONS UPON USE OF PROPERTY

SEC. 801. Restrictions on Use. The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Developer for itself, and such successors and assigns, that the Developer, and such successors and assigns, shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in this Agreement for a period of not less than twenty-seven (27) years from date of completion of the Project; and
- (b) not discriminate upon the basis of race, color, creed, sex, religion, ancestry, disability, sexual orientation, marital status, family status, lawful source of income, age or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SEC. 802. Covenants; Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and the Deed shall so expressly provide, that the agreements and covenants provided in Section 801 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City and any successor in interest to the Property, or any part thereof, against the Developer, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

SEC. 803. City Rights to Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its governmental successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 801 hereof, for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided in Section 801. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other

proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

**ARTICLE IX.
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

SEC. 901. Representations as to Development. The Developer represents and agrees that its purchase of the Property, and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of:

- (a) the importance of the development of the Property to the general welfare of the community; and
- (b) the below market purchase price that has been made available by the City for the purpose of making such development possible;

the qualifications and identity of the Developer are of particular concern to the community and the City. The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

SEC. 902. Prohibition Against Transfer of Ownership Interests. For the foregoing reasons, the Developer represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to completion of the Improvements as certified by the City in the form of a final Occupancy Certificate for the Project ("Occupancy Certificate"), and without the prior written approval of the City:

- (a) there shall be no transfer of ownership interests in the Developer by any party owning ten percent (10%) or more of the ownership interests in the Developer (which term shall be deemed for the purposes of this and related provisions to include successors in interest);

- (b) nor shall any such owner suffer any such transfer to be made;
- (c) nor shall there be or be suffered to be by the Developer, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, by any other method or means.

With respect to this provision, the Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

SEC. 903. Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons the Developer represents and agrees for itself, and its successors and assigns, that:

(a) Except only by way of security for, and only for,
(1) the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to constructing the Project under this Agreement, and

(2) any other purpose or as otherwise authorized by this Agreement, the Developer, its successors or assigns, (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

(b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as

reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).

- (2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the City

would have had, had there been no such transfer or change.

- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, which approval shall not be unreasonably withheld or delayed, its approval shall be indicated to the Developer in writing.

In the event, the transferee satisfies the conditions set forth in Subsections (b)(1)-(3) above, and City approves the sale, assignment, conveyance, lease or transfer to the transferee, then any and all obligations under this Agreement shall be transferred to the transferee and the Developer shall be released from any and all obligations under this Agreement. Notwithstanding anything contained in this Section 903 or this Agreement to the contrary, Developer, prior to completion of the Project, shall have the right to enter into agreements with third parties for the pre-leasing or leasing of any apartments which are part of the Project and such third parties (and the agreements entered into by Developer with them) shall not be subject to any approval by the City.

SEC. 904. Information as to Members. In order to assist in the effectuation of the purposes of this Article IX, the Developer agrees that during the period between execution of this Agreement and completion of the Project as certified by the City:

- (a) the Developer will promptly notify the City of any and all changes of greater than ten percent (10%) in the ownership of the company, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and
- (b) the Developer, its successors or assigns, shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the authorized or managing member(s) of the Developer, setting forth all of the members of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial

interest in the company their names and the extent of such interest, all as determined or indicated by the records of the Developer, by specific inquiry made by any such member, of all parties who on the basis of such records own ten percent (10%) or more interest in the Developer, and by such other knowledge or information as such authorized representative shall have. Such lists, data and information shall in any event be furnished to the City immediately prior to the delivery of the Deed to the Developer and as a condition precedent thereto and annually thereafter on the anniversary of the Closing Date.

**ARTICLE X.
MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

SEC. 1001. Limitation Upon Encumbrance of Property. Prior to the completion of the Project, as certified by the City in the form of an Occupancy Certificate, neither the Developer nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining:

- (a) funds only to the extent necessary for construction of the Project; and,
- (b) such additional funds, if any, unless requested by Developer and approved by the City in its reasonable discretion.

Except for the financing, mortgage, encumbrances or liens permitted above, the Developer (or successor in interest) shall notify the City in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Developer or otherwise.

SEC. 1002. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such 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:

- (a) any other party who thereafter obtains title to the Property or such part from or through such holder; or,
- (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself;)

shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or permitted in this Agreement.

SEC. 1003. Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City.

SEC. 1004. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 1003 hereof, which has not been cured by Developer within seventy-five(75) days (of receiving notice of such breach or default from the City as set forth in Section 1101 below, each such holder of a mortgage authorized by this Agreement shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Provided, that if the breach or default is with respect to construction of the Project, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner

provided in this Agreement, the Project on the Property or the part thereof to which the lien or title of such holder relates.

SEC. 1005. City's Option to Pay Mortgage Debt or Purchase Property. In any case, where, subsequent to the continued default or breach by the Developer (or successor in interest) under this Agreement after the cure period set forth in Section 1101 below has expired, the holder of any mortgage on the Property:

- (a) has, but does not exercise, the option to construct or complete the Project relating to the Property, and such failure continues for a period of sixty (60) days after the holder has been notified or informed that Developer did not successfully perform the cure of the default or breach within the time allowed under this Agreement or as agreed otherwise by the parties; or
- (b) undertakes construction or completion of the Project but does not complete such construction within the period as agreed upon by the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in this Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do,

the City shall (and, provided mortgage holder is in agreement therewith, every mortgage instrument made prior to completion of the Project with respect to the Property by the Developer or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of:

- (a) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) all expenses with respect to the foreclosure;

- (c) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Property;
- (d) the costs of any improvements made by such holder; and,
- (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

SEC. 1006. City's Option to Cure Mortgage Default. In the event of Developer failing to cure a default or breach within the applicable cure period as set forth in Section 1101 below prior to the completion of the Improvements by the Developer, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Property (or the part thereof to which the encumbrance or lien relates) for such reimbursement. Provided, that any such lien shall be subordinate and subject always to the lien or liens of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Property authorized by this Agreement, including but not limited to, the lien of the Developer's mortgage holder.

SEC. 1007. Mortgage and Holder. For the purposes of this Agreement: The term "mortgage" shall include mortgages, deeds of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deeds of trust.

ARTICLE XI. REMEDIES

SEC. 1101. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this

Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. 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 after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

SEC. 1102. Termination by Developer Prior to Conveyance.

In the event that:

- (a) the City does not tender conveyance of the Property, or possession thereof, by Deed as part of the Sale in the manner and condition provided in this Agreement;
or
- (b) the Developer shall, after preparation of Construction Plans satisfactory to the City, furnish evidence reasonably satisfactory to the City that Developer has been unable, after and despite diligent effort for a period of sixty (60) days after approval by the City of the Construction Plans, to obtain mortgage financing for the construction of the Project on a basis and on terms that are satisfactory to Developer;
or
- (c) the Developer is unable to satisfy (and otherwise has not waived), any of the conditions precedent contained in this Agreement;

then this Agreement shall, at the option of the Developer, be terminated by written notice thereof to the City and neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

SEC. 1103. Termination by City Prior to Conveyance. In the event that:

- (a) prior to conveyance of the Property by Deed as part of the Sale to the Developer and except as otherwise permitted under this Agreement,
 - (i) the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property; or
 - (ii) there is any change of more than ten percent (10%) in the ownership of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof; or
- (b) the Developer does not submit Construction Plans within the permitted time period, as required by this Agreement, or (except as excused under subdivision (b) of Section 1102 hereof) evidence that it has the necessary equity capital and mortgage financing, in reasonably satisfactory forms and in the manner and by the dates respectively provided in this Agreement therefor; or
- (c) the Developer does not pay the Purchase Price and take title to the Property upon tender of Deed by the City pursuant to the Sale, and if any default or failure referred to in subdivisions (a) and (b) of this Section 1103 shall not be cured within thirty (30) days after the date of written demand by the City;

then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property shall, at the option of the City, be terminated by the City by written notice thereof to the Developer, in which event, neither the Developer (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

SEC. 1104. Revesting Title in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the Property pursuant to the Sale as of the Closing Date and prior to completion of the Project as certified by the City in the form of the Occupancy Certificate:

- (a) the Developer (or successor in interest) shall materially default in or materially violate its obligations with respect to the construction of the Project (including the nature and the dates for the

beginning and completion thereof as set forth in this Agreement) and the required Minimum Investment, or shall abandon or substantially suspend construction work (except for any abandonment or suspension that is the result of any events which are beyond the control of Developer), and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the Project) after written demand by the City so to do; or

- (b) the Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement or approved by the City, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the City made for such payment, removal or discharge, within
 - (i) ninety (90) days after written demand by the City so to do, or
 - (ii) the applicable time period provided under any applicable State or local law, rule or regulation, whichever is longer, or;
 - (iii) or if, the Developer is protesting such payment of taxes and/or assessment on the Property in Year 2018 and has posted adequate reserves with the title company; or
- (c) there is, in material violation of this Agreement, any transfer of the Property or any part thereof, and such material violation shall not be cured within ninety (90) days after written demand by the City to the Developer;

then the City shall have the right to re-enter and take possession of the Property and to terminate (and revert in the City) the estate conveyed by the Deed to the Developer, it being the intent of this provision, together with other provisions of

this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the Developer specified in subdivisions (a), (b) and (c) of this Section 1104, failure on the part of the Developer to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such subdivisions, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interests in and to the Property conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Property, shall revert to the City. Provided, that such condition subsequent and any reversioning of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the lien of any mortgage authorized by this Agreement and any rights or interests provided in this Agreement for the protection of the holders of such mortgages.

SEC. 1105. Resale of Reacquired Property; Disposition of Proceeds. Upon the reversioning in the City of title to the Property or any part thereof as provided in Section 1104, the City shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests recorded against the Property) as soon as possible and in a reasonably commercial manner as to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be reasonably satisfactory to the City. Upon such resale of the Property, the proceeds thereof shall be applied:

- (a) First, to reimburse the City for all reasonable costs and expenses incurred by the City, including, but not limited to, reasonable salaries of personnel, in connection with the recapture, management and resale of the Property or any part thereof (but less any income derived by the City from the Property or any part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (unless the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City); any payments made or necessary to be made

to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any reasonable expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee; and

- (b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of the purchase price paid by it for the Property and the cash actually invested by it in making any of the Improvements on the Property, including, without limitation, any reasonable financing costs and other costs, expenses incurred and paid by Developer with respect to the Property and the Project, as well as any payments made by Developer to its lenders who provided financing for the Project. Any balance remaining after such reimbursements shall be retained by the City.

SEC. 1106. Other Rights and Remedies of City; No Waiver by Delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article XI, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Developer and its successors in interest and assigns in the Property, and the revesting of title thereto in the City. Provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article XI shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section 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 created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this

section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this section or with respect to the particular default except to the extent specifically waived in writing.

SEC. 1107. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of this Agreement, neither the City nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for development, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unavailability of materials, unusually severe weather, or delays of subcontractors due to any of the foregoing causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project, or progress in respect thereto, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this section shall, within ten (10) business days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

SEC. 1108. Rights and Remedies Cumulative. 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 either 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 default or breach or any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own 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 or any other obligations of the other party.

SEC. 1009. Indemnification. (a) Developer releases from and covenants and agrees that the City, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "City Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the City Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the City Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the City Indemnified Parties in fulfilling the obligations of the City or their agents as set forth under this Agreement.

(b) Except for any negligent acts or any willful misrepresentation of the City Indemnified Parties, Developer agrees to protect and defend the City Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by Developer under this Agreement.

(c) The City agrees to protect and defend Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agrees to hold Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of the City (or other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants,

stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

**ARTICLE XII.
MISCELLANEOUS**

SEC. 1201. Conflict of Interests; City Representatives Not Individually Liable. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement

SEC. 1202. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement:

- (a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- (b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.
- (c) The Developer will furnish all information and reports required by law and any and all applicable federal, state and local rules, regulations and orders, and will permit access to the Developer's books, records and accounts by the City, or appropriate governmental entity, for purposes of investigation to ascertain compliance with such laws, rules, regulations and orders.
- (d) In the event of the Developer's noncompliance with the nondiscrimination clauses of this section, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and such other sanctions may be imposed and remedies invoked as provided by such law, rule, regulation or order, or as otherwise provided by law.
- (e) The Developer will include the provisions of Paragraphs (a) through (d) of this section in every contract or purchase order, and will use its best efforts to require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by such rules, regulations or orders, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. The Developer will take such action with respect to any construction contract, subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of

including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Developer" shall be changed to "Contractor."

SEC. 1203. Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from the City to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

SEC. 1204. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SEC. 1205. Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, Developer may assign this Agreement by one or more successive assignments at any time prior to closing to any related entity or affiliate of Developer;. Upon any such assignment, the assignee shall have the rights and obligations of Developer hereunder and Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

SEC. 1206. Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer at 330 E. Kilbourn Avenue, Suite 800, Milwaukee, WI 53202, Attn: Scott J. Revolinski; and
- (b) in the case of the City, is addressed to or delivered personally to the City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

SEC. 1207. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

SEC. 1208. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf.) or similar electronic methods shall be deemed to be original signatures for all purposes.

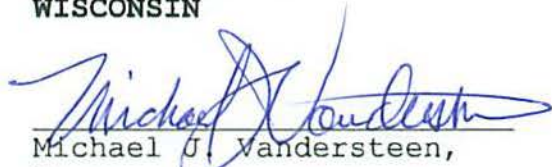
(Signature Page Follows)

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

CITY OF SHEBOYGAN,
WISCONSIN

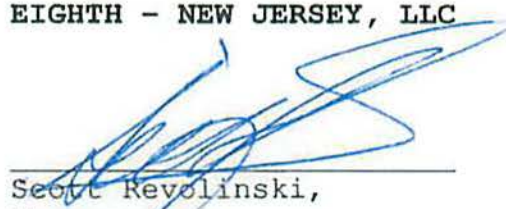
EIGHTH - NEW JERSEY, LLC

BY:




Michael J. Vandersteen,
Mayor

BY:



Scott Revolinski,
Manager

ATTEST:



Susan Richards
City Clerk

This instrument drafted by:

City Attorney Charles Adams
828 Center Ave., Suite 304
Sheboygan, WI 53081-4442
WI State Bar No.

EXHIBIT "A"
Description of Property

Lot 1 of a Certified Survey Map recorded on April 24, 2014, in Volume 26 of Certified Survey Maps, at Page 131, as Document No. 1985250, being all of Lots 1, 2, 10, 11, 12 and part of the vacated East/West Alley in Block 204, Sheboygan Original Plat, according to the Plat thereof, located in the Southwest $\frac{1}{4}$ of Section 23, Township 15 North, Range 23 East. Said land being in the City of Sheboygan, Sheboygan County, Wisconsin.

Property Address: 812 New Jersey Ave., Sheboygan, WI 53081

EXHIBIT
B

Eighth - New Jersey, LLC
Sheboygan, Wisconsin



Project Costs

Cost Item	Pro-Forma
Land and Building	\$ 10
Demolition and Sitework	650,000
Structure, Shell, Professional, Finishes	12,986,000
Appliances / FFE	278,000
<i>Architecture, Structural and Civil Engineering</i>	
Environmental Engineering, Professional, Survey	866,100
Title, Permits, Legal & Accounting, Admin.	69,000
Utilities	30,000
General Liability Insurance	14,000
Appraisal	6,000
Financing Fees	80,000
Construction Interest and Interest During Stabilization	449,000
Other Closing Costs	70,595
Total Project Costs	\$ <u>15,498,705</u>

III

DIRECT REFERRAL TO FINANCE TO THEIR 1/25/16 MEETING

Res. No. 135 - 15 - 16. By Alderperson Hammond. January 25, 2016.

A RESOLUTION approving the terms and conditions of the Contract for Sale of Land, By and Between the City of Sheboygan and Eighth-New Jersey, LLC.

RESOLVED: That the City of Sheboygan hereby approves the terms and Conditions of the Contract for Sale of Land for Private Development By and Between the City of Sheboygan and Eighth-New Jersey, LLC, in form Substantially similar to the documents attached hereto and incorporated Herein by this reference.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan.

Finance

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**CONTRACT FOR
SALE OF LAND FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
CITY OF SHEBOYGAN, WISCONSIN
AND
EIGHTH - NEW JERSEY, LLC**

AGREEMENT, made this _____ day of January, 2016, by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), having its principal offices at 828 Center Avenue in the City of Sheboygan, Wisconsin, and Eighth - New Jersey, LLC, a Wisconsin limited liability company (hereinafter called "Developer"), having an office for the transaction of business at 330 East Kilbourn Avenue, Suite 800, Milwaukee, WI 53202;

RECITALS

WHEREAS, the City has offered to sell and the Developer is willing to purchase certain real property more particularly described in **Exhibit "A"** annexed hereto and made a part hereof (which property as so described is hereinafter called "the Property") and to develop the Property by clearing the site and constructing, as determined by Developer in its sole discretion, either a mixed use building comprised of retail/commercial space and market rate residential apartments or a building comprised of solely market rate residential apartments, and all related improvements, such building to be comprised of a certain number of floors, as determined by Developer, , all at an estimated cost of Thirteen million Five Hundred Thousand and 00/100 Dollars (\$13,500,000.00) (hereinafter called "the Project"), in accordance with this Agreement; and

WHEREAS, the City believes that the development of the Property through construction of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety and welfare of its residents.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I.
SALE: PURCHASE PRICE**

Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Developer for, and the Developer will purchase the Property from the City and pay therefor, the total amount of Ten and 00/100 Dollars (\$10.00) dollars, hereinafter called "Purchase Price," to be paid in cash or by certified check simultaneously with the delivery of the Deed (as defined below) conveying the Property to the Developer (the "Sale").

It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals	May 2016
Issuance of Building Permits	June 2016
Start Construction	July 2016
Substantial Completion	September 2017

It is anticipated that the Sale of the Property will be sold and conveyed as of June 1, 2016

**ARTICLE II.
CONVEYANCE OF PROPERTY**

SEC. 201. Form of Deed. The City shall convey to the Developer title to the Property described in Exhibit "A" by warranty deed (the "Deed"). Such conveyance and title shall be in addition to the condition subsequent provided for in Section 1104 hereof, and to all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, subject to:

- (a) Rights or claims of parties in possession not shown by the public records;
- (b) Easements or claims of easements, not shown by the public records;
- (c) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and inspection of the premises;

- (d) Any lien or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records.
- (e) And such other liens, encumbrances, covenants or restrictions disclosed in the title insurance commitment to be provided by the City as set forth in Section 204(d) below; provided, however, that Developer has consented to and approved of such liens, encumbrances, covenants or restrictions as permitted encumbrances. The items referenced in Subsections (a) through (d) above and this Subsection (e) are referred to herein collectively as "Permitted Liens".

Furthermore, both the City and Developer recognize and acknowledge that there may be easements, encumbrances or reservations disclosed in the title insurance commitment with respect to the Property which will be continued, or newly created or reserved in the conveyance of the Property from the City to the Developer. The City shall use its best efforts to minimize the impact upon Developer's Project of any such easement(s) or encumbrance(s), and Developer's obligation to purchase the Property shall be conditioned upon Developer satisfying itself of the feasibility and suitability of the Property, subject to such easements or encumbrances, prior to the date of closing of the Sale.

SEC. 202. Time and Place for Delivery of Deed. The closing of the Sale and conveyance of the Deed referred to herein shall occur on June 1, 2016 (the "Closing Date"), or such other date as mutually agreed to by the parties, at the principal office of the City, and the Developer shall accept such conveyance and pay the Purchase Price to the City at such time and place.

SEC. 203. Recording of Deed. The Developer shall promptly file the Deed for recording among the land records of Sheboygan County. The Developer shall pay all costs for so recording the Deed.

SEC. 204. Conditions Precedent to Developer's Obligations. The Developer's obligation to conclude the Sale contemplated herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions on or prior to ten (10) days before the Closing Date:

- (a) **Property Acquisition.** Developer determining, after receipt of the survey and the environmental audit reports referenced below, and such other information as determined appropriate by Developer, whether it will acquire the Property under this Agreement.
- (b) **Financing Contingency.** Developer obtaining a written loan commitment from a lending institution of Developer's choice in an amount and with such terms and conditions acceptable to Developer, within Developer's sole discretion, for the construction of the Project and any and all Improvements (as defined below) related thereto.
- (1) **City Contribution.** Notwithstanding other costs and expenses paid or incurred as of the date of this Agreement and in order for this Project to occur, the City shall contribute not less than One Million Seven Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,775,000.00) in new funds from the creation of Tax Increment District No. 16 in upfront developer incentive on or before June 15, 2016. In order for the Developer to receive these funds, the Developer shall provide financial documentation to the City to substantiate the remaining funds needed to complete the Project as evidenced by agreements from lenders and equity investors.
- (2) **Evidence of Equity Capital and Bank Mortgage Financing.** As promptly as possible, but not later than sixty (60) days after approval by the City of the Construction Plans, the Developer shall submit to the City evidence reasonably satisfactory to the City that the Developer has the equity capital and commitments for mortgage financing necessary for the timely completion of construction of the Project and the Improvements.
- (c) **Environmental.** The City delivering to Developer, within fifteen (15) days after execution of this Agreement, all environmental information in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental

reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental Protection Agency, the Wisconsin Dept. of Natural Resources and other such agencies), case closure letters, remedial action plans and similar information.

Developer's obligation to conclude the Sale is further contingent upon Developer determining, in Developer's sole discretion, not less than ten (10) days prior to the Closing Date, that (i) such information does not disclose the existence of any recognized environmental conditions or any other environmental issues, hazardous conditions, materials or substances located on, in or with respect to the Property to which Developer may object or (ii) Developer, at its expense, after reviewing for its own purposes and satisfying such requirement for Developer's lender, the environmental Phase II or soil and groundwater tests inspections, determines to move forward with the Sale.

For purposes of this Subsection (c), a hazardous material, condition, or substance, recognized environmental condition, or any other environmental condition shall include, but not be limited to, any condition, material or substance that does not comply with federal, state or local environmental laws, rules or regulations, any material or condition defined as hazardous within the meaning of such laws, rules or regulations, or any condition, material or substance defined as a recognized environmental condition as determined by the Standards of the American Society for Testing and Materials (ASTM), or the presence of asbestos, underground storage tanks, petroleum products or similar substances.

In the event such information, audits or reports disclose or confirm the presence of any hazardous material, condition or substance on, in or with respect to the Property, or the existence of any recognized environmental condition or any other environmental condition affecting or relating to the Property, Developer may, at Developer's sole discretion,

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale, or
 - (2) accept the Property "as-is" despite the presence of such hazardous material, condition or substance or the existence of such recognized environmental condition or other environmental condition.
- (d) **Title.** The City delivering to Developer, within thirty (30) days after execution of this Agreement, a commitment in favor of Developer for an ALTA Form (2006 or its current equivalent form) owner's policy of title insurance (the "Title Commitment") with respect to the Property, from a title insurance company agreed upon by the parties ("Title Company") (the title insurance premium for such Title Commitment shall be paid by the City).

Within twenty (20) days after Developer's receipt of the Title Commitment, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Title Commitment; in the absence of such notification, such exceptions shall be deemed accepted by Developer. The Title Commitment shall contain such endorsements required by Developer, which endorsements shall be obtained at the Developer's expense. In the event Developer disapproves of any matter pertaining to title, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be paid or satisfied by the City or insured over by the Title Company on or prior to the Closing Date.

In the event that the City elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that the City elects not to cure any defect or

disapproved matter, Developer may, within ten (10) days after receipt of written notice from the City that the City has been unable to cure or is unwilling to cure:

(1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or

(2) Developer may take title to the Property "as-is".

- (e) **Survey.** Developer's receipt, of a current survey of the Property (the "Survey") from the City made by a surveyor licensed in the State of Wisconsin. Within thirty-five (35) days after execution of this Agreement and Developer's review of the Survey, Developer shall notify the City in writing of any unacceptable exceptions which are disclosed in the Survey; in the absence of such notification, the Survey shall be deemed accepted by Developer. In the event Developer disapproves of any matter pertaining to the Survey, Developer may request and the City shall, upon receipt of written request from Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from Developer. During such period that the City is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to the Survey shall be extended for a commensurate period.

If such Survey continues to show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer, within Developer's sole discretion, Developer may

(1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or

(2) accept the Property "as-is" despite the existence of such condition on the Survey.

- (f) **Governmental Permits, Licenses and Approvals.** Developer obtaining prior to Closing Date, all necessary permits, licenses and approvals from the City, and/or any other applicable governmental entity or agency, for the Project and related Improvements, as determined by Developer, within Developer's sole discretion. The City agrees to use its best efforts and cooperate with Developer in the application for any such permits, licenses and approvals.
- (g) **Utility Connections.** Developer obtaining written evidence, at the City's expense, that sanitary sewer, storm sewer and potable water mains are located adjacent to the Property boundary line. In the event that sewer and water laterals are not stubbed off at the mains and located at the Property boundary line, the Developer shall be solely responsible for any and all costs and expenses related to bringing such sewer and water laterals to the Property boundary line.
- (h) **Soil and Topographic Conditions.** The City delivering to Developer, within ten (10) days after execution of this Agreement, all information, reports, documentation or otherwise in the possession of the City and/or the City's agents, attorneys, consultants or independent contractors relating to the soil and topographic conditions of the Property. Developer's obligation to conclude this Sale is further contingent upon Developer determining, in Developer's sole discretion, on or prior to the Closing Date, that such information does not disclose any soil or topographic conditions that would impair, interfere with or negatively impact, as solely determined by Developer, the Project or the Improvements related thereto. Developer's obligation to conclude this Sale is further contingent upon Developer obtaining, at Developer's sole expense, on or prior to the Closing Date,
- (1) written confirmation from a recognized and qualified soil and engineering firm (selected by Developer), that the soil and subsoil conditions of the Property are sufficient and suitable, as determined by Developer, in its sole discretion, for the Project and the Improvements related thereto, and

- (2) soil borings and soil reports which verify a minimum poundage per square foot (psf) of soil bearing capacity, as determined by Developer.

If the above written confirmation or soil reports show the existence of any condition that would burden, interfere with or impair Developer's contemplated development of the Property, as determined by Developer in its sole discretion within sixty (60) days after receipt and review of the information relating to the soil and topographic conditions of the Property, Developer may

- (1) terminate this Agreement by providing written notice thereof to the City thereby cancelling the Sale; or
- (2) accept the Property "as-is" despite the existence of such condition.

**ARTICLE III.
TIME FOR COMMENCEMENT AND COMPLETION OF
IMPROVEMENTS**

The construction of the Project shall be commenced in any event within three (3) months after the Closing Date of the Sale and, except as otherwise provided in this Agreement, shall be substantially completed within fifteen (15) months after commencement of construction.

**ARTICLE IV.
SPECIAL PROVISIONS**

SEC. 401. Minimum Investment. Developer shall utilize the Property by clearing the site and constructing the Project and all related improvements, at a minimum investment of Thirteen Million Five Hundred Thousand and 00/100 Dollars (\$13,500,000.00) dollars ("Minimum Investment")

Minimum Investment includes hard costs for construction of all buildings and other improvements on the Property and leasehold improvements. Minimum Investment includes all hard costs and expenditures as defined in Exhibit B (Developer's Construction Pro-forma) made or incurred by Developer, its

successors or assigns, in connection with the Project, on or before the completion date of construction of the Project on the Property as required by this Agreement, or such later date as the parties may hereafter agree, including, without limitation, any and all costs (remediation costs or otherwise) Developer may incur with respect to any environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property.

Any provision of this Agreement to the contrary notwithstanding, the City and Developer hereby acknowledge and agree that the failure of Developer, its successors or assigns, to satisfy the Minimum Investment requirements by the dates set forth herein shall not constitute a default or breach by Developer under this Agreement nor subject Developer, its successors or assigns, to any penalty, liability or remedy available to the City hereunder or otherwise available to it at law or in equity, provided that the cause of such failure by Developer, its successors or assigns, is unavoidable delay due to (a) acts of God or other matters beyond the control of Developer as referenced in Section 1107 below, or (b) environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property not arising from the act or omission of Developer, its successors or assigns; it being the purpose and intent of this provision that in the event of the occurrence or existence of such causes of delay, the time or times for satisfying the Minimum Investment requirements set forth herein shall be extended by the minimum period required for the completion of all necessary remediation of the Property, or a time period commensurate with the period of delay, as the case may be.

SEC 402. Guaranteed Property Tax Payment.

- (a) Guarantee. The Developer shall guarantee payment of an amount of real estate tax based upon the assessed value set forth in this section. The amount of real estate tax that the Developer and/or its affiliates, as the case may be, guarantee would be generated by the Project. The assessed value of the Project and related tax liability will be zero, through December 31, 2017. The initial assessed value of the Project shall be set as of January 1, 2018 and will be based

on a minimum value of Eleven Million Five Hundred Thousand Dollars (\$11,500,000) per the financial analysis submitted to the City. The assessed value shall be frozen until such time as not less than One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000) Tax Increment District No. 16 up-front developer incentive set forth in Section 204 (b)(1) plus interest is repaid in full.

- (b) Interest Rate Calculation. The interest calculation on the not less than One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000) Tax Increment District No. 16 up-front developer incentive will be calculated based on 1.5% above the City's General Obligation bond interest rate at the time of City's borrowing for this Project.

**ARTICLE V.
PREPARATION OF PROPERTY FOR DEVELOPMENT**

SEC. 501. City Responsibilities. The City shall, without expense to the Developer cooperate with the Developer, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the Developer in connection with the fulfillment of the Developer's obligations under this Agreement.

SEC. 502. Developer's Responsibilities. The Developer shall, without expense to the City:

- (a) **Assist City.** Cooperate with the City, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the City in connection with the fulfillment of the City's obligations under this Agreement.
- (c) **Conduct Studies.** Prior to the Closing Date of the Sale of the Property from the City, conduct sufficient market, architectural and engineering studies, soils analyses, environmental assessments and any other investigations deemed necessary by the Developer to satisfy Developer of the feasibility and suitability of the Property to the Project.

**ARTICLE VI.
RIGHTS OF ACCESS TO PROPERTY**

SEC. 601. Right of Entry for Utility Service. The City reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Property boundary lines and provided for in the easements described or referred to in Section 201 hereof.

SEC. 602. Developer Not to Construct Over Utility Easements. The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 201 hereof, unless such construction is provided for in such easement or has been approved by the City, and unless Developer indemnifies and agrees to hold harmless the City and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

SEC. 603. Access to Property. Prior to the Sale of the Property by the City to the Developer, the City shall permit representatives of the Developer to have access to the Property, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After the Sale of the Property by the City to the Developer, upon advance written request, the Developer shall permit the representatives of the City access to the Property at all reasonable times which the City deems necessary for the purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE VII.
CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS;
CERTIFICATE OF COMPLETION**

SEC. 701. Plans for Construction of Improvements. Plans and specifications with respect to the development of the Property and the construction of Improvements thereon shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations. As promptly as possible after the date of execution of this Agreement, but no

sooner than sixty (60) days of execution of this Agreement, the Developer shall submit to the City, for approval by the City, plans, drawings, specifications and related documents, and the proposed construction schedule (which plans, drawings, specifications, related documents and progress schedule, together with any and all changes therein that may thereafter be made and submitted to the City as herein provided are, except as otherwise clearly indicated by the context, hereinafter collectively called "Construction Plans"), with respect to the Improvements to be constructed by the Developer on the Property, in sufficient completeness and detail to show that such Improvements and construction thereof will be materially in accordance with the provisions of this Agreement.

The City shall, if the Construction Plans originally submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by the City thereof shall be required, except with respect to any material change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by the City.

If the City, in its reasonable discretion, so rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, the Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City, which approval shall not be unreasonably withheld or delayed, provided, that in any event the Developer shall submit Construction Plans which are in material conformity with the requirements of this Agreement, as determined by the City, no later than ninety (90) days after the date the Developer receives written notice from the City of the City's first rejection of the original Construction Plans submitted to it by the Developer.

All work with respect to the Improvements to be constructed or provided by the Developer on the Property shall be in material conformity with the Construction Plans as approved by

the City. The term "Improvements," as used in this Agreement, shall be deemed to have reference to the Improvements as provided and specified in the Construction Plans as approved.

SEC. 702. Changes in Construction Plans. If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 701 hereof with respect to such previously approved Constructions Plans, the City shall approve the proposed change and notify the Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the City's receipt of notice of such change.

SEC. 703. Approvals of Construction Plans and Evidence of Financing as Conditions Precedent to Conveyance. The submission of Construction Plans and their approval by the City as provided in Section 701 hereof, and the submission of satisfactory evidence of equity capital and commitments for mortgage financing as provided in Section 204(b)(2) hereof, are conditions precedent to the obligations of the Developer to purchase the Property and the City to convey the Property to the Developer pursuant to the Sale.

SEC. 704. Progress Reports. Subsequent to the Sale of the Property, or any part thereof, to the Developer, and until construction of the Improvements has been completed, the Developer shall make monthly reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Developer with respect to such construction.

**ARTICLE VIII.
RESTRICTIONS UPON USE OF PROPERTY**

SEC. 801. Restrictions on Use. The Developer agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Developer for itself, and such successors and assigns, that the Developer, and such successors and assigns, shall:

- (a) devote the Property to, and only to and in accordance with, the uses specified in this Agreement for a period of not less than twenty-seven (27) years from date of completion of the Project; and
- (b) not discriminate upon the basis of race, color, creed, sex, religion, ancestry, disability, sexual orientation, marital status, family status, lawful source of income, age or national origin in the sale, lease or rental or in the use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

SEC. 802. Covenants; Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and the Deed shall so expressly provide, that the agreements and covenants provided in Section 801 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City and any successor in interest to the Property, or any part thereof, against the Developer, its successors and assigns and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

SEC. 803. City Rights to Enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its governmental successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 801 hereof, for and in its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided in Section 801. Such agreements and covenants shall (and the Deed shall so state) run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other

proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

**ARTICLE IX.
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

SEC. 901. Representations as to Development. The Developer represents and agrees that its purchase of the Property, and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of:

- (a) the importance of the development of the Property to the general welfare of the community; and
- (b) the below market purchase price that has been made available by the City for the purpose of making such development possible;

the qualifications and identity of the Developer are of particular concern to the community and the City. The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

SEC. 902. Prohibition Against Transfer of Ownership Interests. For the foregoing reasons, the Developer represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to completion of the Improvements as certified by the City in the form of a final Occupancy Certificate for the Project ("Occupancy Certificate"), and without the prior written approval of the City:

- (a) there shall be no transfer of ownership interests in the Developer by any party owning ten percent (10%) or more of the ownership interests in the Developer (which term shall be deemed for the purposes of this and related provisions to include successors in interest);

- (b) nor shall any such owner suffer any such transfer to be made;
- (c) nor shall there be or be suffered to be by the Developer, or by any owner of ten percent (10%) or more of the ownership interests therein, any other similarly significant change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, by any other method or means.

With respect to this provision, the Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority of all of its existing members to agree to this provision on their behalf and to bind them with respect thereto.

SEC. 903. Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons the Developer represents and agrees for itself, and its successors and assigns, that:

(a) Except only by way of security for, and only for,
(1) the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to constructing the Project under this Agreement, and

(2) any other purpose or as otherwise authorized by this Agreement, the Developer, its successors or assigns, (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the Project as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

(b) The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as

reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).

- (2) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the City

would have had, had there been no such transfer or change.

- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, which approval shall not be unreasonably withheld or delayed, its approval shall be indicated to the Developer in writing.

In the event, the transferee satisfies the conditions set forth in Subsections (b)(1)-(3) above, and City approves the sale, assignment, conveyance, lease or transfer to the transferee, then any and all obligations under this Agreement shall be transferred to the transferee and the Developer shall be released from any and all obligations under this Agreement. Notwithstanding anything contained in this Section 903 or this Agreement to the contrary, Developer, prior to completion of the Project, shall have the right to enter into agreements with third parties for the pre-leasing or leasing of any apartments which are part of the Project and such third parties (and the agreements entered into by Developer with them) shall not be subject to any approval by the City.

SEC. 904. Information as to Members. In order to assist in the effectuation of the purposes of this Article IX, the Developer agrees that during the period between execution of this Agreement and completion of the Project as certified by the City:

- (a) the Developer will promptly notify the City of any and all changes of greater than ten percent (10%) in the ownership of the company, legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership of such company, or with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its members have been notified or otherwise have knowledge or information; and
- (b) the Developer, its successors or assigns, shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the authorized or managing member(s) of the Developer, setting forth all of the members of the Developer and the extent of their respective holdings, and in the event any other parties have a beneficial

interest in the company their names and the extent of such interest, all as determined or indicated by the records of the Developer, by specific inquiry made by any such member, of all parties who on the basis of such records own ten percent (10%) or more interest in the Developer, and by such other knowledge or information as such authorized representative shall have. Such lists, data and information shall in any event be furnished to the City immediately prior to the delivery of the Deed to the Developer and as a condition precedent thereto and annually thereafter on the anniversary of the Closing Date.

**ARTICLE X.
MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

SEC. 1001. Limitation Upon Encumbrance of Property. Prior to the completion of the Project, as certified by the City in the form of an Occupancy Certificate, neither the Developer nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Property, except for the purposes of obtaining:

- (a) funds only to the extent necessary for construction of the Project; and,
- (b) such additional funds, if any, unless requested by Developer and approved by the City in its reasonable discretion.

Except for the financing, mortgage, encumbrances or liens permitted above, the Developer (or successor in interest) shall notify the City in advance of any financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Property, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Developer or otherwise.

SEC. 1002. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such 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:

- (a) any other party who thereafter obtains title to the Property or such part from or through such holder; or,
- (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself;)

shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or permitted in this Agreement.

SEC. 1003. Copy of Notice of Default to Mortgagee.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder shown in the records of the City.

SEC. 1004. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 1003 hereof, which has not been cured by Developer within seventy-five(75) days (of receiving notice of such breach or default from the City as set forth in Section 1101 below, each such holder of a mortgage authorized by this Agreement shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Provided, that if the breach or default is with respect to construction of the Project, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner

provided in this Agreement, the Project on the Property or the part thereof to which the lien or title of such holder relates.

SEC. 1005. City's Option to Pay Mortgage Debt or Purchase Property. In any case, where, subsequent to the continued default or breach by the Developer (or successor in interest) under this Agreement after the cure period set forth in Section 1101 below has expired, the holder of any mortgage on the Property:

- (a) has, but does not exercise, the option to construct or complete the Project relating to the Property, and such failure continues for a period of sixty (60) days after the holder has been notified or informed that Developer did not successfully perform the cure of the default or breach within the time allowed under this Agreement or as agreed otherwise by the parties; or
- (b) undertakes construction or completion of the Project but does not complete such construction within the period as agreed upon by the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in this Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do,

the City shall (and, provided mortgage holder is in agreement therewith, every mortgage instrument made prior to completion of the Project with respect to the Property by the Developer or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby or, in the event ownership of the Property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to it of the Property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of:

- (a) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) all expenses with respect to the foreclosure;

- (c) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Property;
- (d) the costs of any improvements made by such holder; and,
- (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

SEC. 1006. City's Option to Cure Mortgage Default. In the event of Developer failing to cure a default or breach within the applicable cure period as set forth in Section 1101 below prior to the completion of the Improvements by the Developer, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Property or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Property (or the part thereof to which the encumbrance or lien relates) for such reimbursement. Provided, that any such lien shall be subordinate and subject always to the lien or liens of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Property authorized by this Agreement, including but not limited to, the lien of the Developer's mortgage holder.

SEC. 1007. Mortgage and Holder. For the purposes of this Agreement: The term "mortgage" shall include mortgages, deeds of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deeds of trust.

ARTICLE XI. REMEDIES

SEC. 1101. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this

Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. 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 after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

SEC. 1102. Termination by Developer Prior to Conveyance.

In the event that:

- (a) the City does not tender conveyance of the Property, or possession thereof, by Deed as part of the Sale in the manner and condition provided in this Agreement; or
- (b) the Developer shall, after preparation of Construction Plans satisfactory to the City, furnish evidence reasonably satisfactory to the City that Developer has been unable, after and despite diligent effort for a period of sixty (60) days after approval by the City of the Construction Plans, to obtain mortgage financing for the construction of the Project on a basis and on terms that are satisfactory to Developer; or
- (c) the Developer is unable to satisfy (and otherwise has not waived), any of the conditions precedent contained in this Agreement;

then this Agreement shall, at the option of the Developer, be terminated by written notice thereof to the City and neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement.

SEC. 1103. Termination by City Prior to Conveyance. In the event that:

- (a) prior to conveyance of the Property by Deed as part of the Sale to the Developer and except as otherwise permitted under this Agreement,
 - (i) the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein or in the Property; or
 - (ii) there is any change of more than ten percent (10%) in the ownership of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof; or
- (b) the Developer does not submit Construction Plans within the permitted time period, as required by this Agreement, or (except as excused under subdivision (b) of Section 1102 hereof) evidence that it has the necessary equity capital and mortgage financing, in reasonably satisfactory forms and in the manner and by the dates respectively provided in this Agreement therefor; or
- (c) the Developer does not pay the Purchase Price and take title to the Property upon tender of Deed by the City pursuant to the Sale, and if any default or failure referred to in subdivisions (a) and (b) of this Section 1103 shall not be cured within thirty (30) days after the date of written demand by the City;

then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property shall, at the option of the City, be terminated by the City by written notice thereof to the Developer, in which event, neither the Developer (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

SEC. 1104. Revesting Title in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the Property pursuant to the Sale as of the Closing Date and prior to completion of the Project as certified by the City in the form of the Occupancy Certificate:

- (a) the Developer (or successor in interest) shall materially default in or materially violate its obligations with respect to the construction of the Project (including the nature and the dates for the

beginning and completion thereof as set forth in this Agreement) and the required Minimum Investment, or shall abandon or substantially suspend construction work (except for any abandonment or suspension that is the result of any events which are beyond the control of Developer), and any such default, violation, abandonment or suspension shall not be cured, ended or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the Project) after written demand by the City so to do; or

- (b) the Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement or approved by the City, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the City made for such payment, removal or discharge, within
 - (i) ninety (90) days after written demand by the City so to do, or
 - (ii) the applicable time period provided under any applicable State or local law, rule or regulation, whichever is longer, or;
 - (iii) or if, the Developer is protesting such payment of taxes and/or assessment on the Property in Year 2018 and has posted adequate reserves with the title company; or
- (c) there is, in material violation of this Agreement, any transfer of the Property or any part thereof, and such material violation shall not be cured within ninety (90) days after written demand by the City to the Developer;

then the City shall have the right to re-enter and take possession of the Property and to terminate (and re-vest in the City) the estate conveyed by the Deed to the Developer, it being the intent of this provision, together with other provisions of

this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation or other action or inaction by the Developer specified in subdivisions (a), (b) and (c) of this Section 1104, failure on the part of the Developer to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such subdivisions, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interests in and to the Property conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Property, shall revert to the City. Provided, that such condition subsequent and any reversioning of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the lien of any mortgage authorized by this Agreement and any rights or interests provided in this Agreement for the protection of the holders of such mortgages.

SEC. 1105. Resale of Reacquired Property; Disposition of Proceeds. Upon the reversioning in the City of title to the Property or any part thereof as provided in Section 1104, the City shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and leasehold interests recorded against the Property) as soon as possible and in a reasonably commercial manner as to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be reasonably satisfactory to the City. Upon such resale of the Property, the proceeds thereof shall be applied:

- (a) First, to reimburse the City for all reasonable costs and expenses incurred by the City, including, but not limited to, reasonable salaries of personnel, in connection with the recapture, management and resale of the Property or any part thereof (but less any income derived by the City from the Property or any part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (unless the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the City); any payments made or necessary to be made

to discharge any encumbrances or liens existing on the Property or part thereof at the time of reversion of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any reasonable expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee; and

- (b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of the purchase price paid by it for the Property and the cash actually invested by it in making any of the Improvements on the Property, including, without limitation, any reasonable financing costs and other costs, expenses incurred and paid by Developer with respect to the Property and the Project, as well as any payments made by Developer to its lenders who provided financing for the Project. Any balance remaining after such reimbursements shall be retained by the City.

SEC. 1106. Other Rights and Remedies of City; No Waiver by Delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article XI, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Developer and its successors in interest and assigns in the Property, and the reversion of title thereto in the City. Provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article XI shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section 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 created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this

section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this section or with respect to the particular default except to the extent specifically waived in writing.

SEC. 1107. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of this Agreement, neither the City nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for development, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unavailability of materials, unusually severe weather, or delays of subcontractors due to any of the foregoing causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project, or progress in respect thereto, as the case may be, shall be extended for the period of the enforced delay. Provided, that the party seeking the benefit of the provisions of this section shall, within ten (10) business days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

SEC. 1108. Rights and Remedies Cumulative. 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 either 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 default or breach or any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own 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 or any other obligations of the other party.

SEC. 1009. Indemnification. (a) Developer releases from and covenants and agrees that the City, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "City Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the City Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the City Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the City Indemnified Parties in fulfilling the obligations of the City or their agents as set forth under this Agreement.

(b) Except for any negligent acts or any willful misrepresentation of the City Indemnified Parties, Developer agrees to protect and defend the City Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by Developer under this Agreement.

(c) The City agrees to protect and defend Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agrees to hold Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of the City (or other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants,

stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

**ARTICLE XII.
MISCELLANEOUS**

SEC. 1201. Conflict of Interests; City Representatives Not Individually Liable. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement

SEC. 1202. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project provided for in this Agreement:

- (a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

- (b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin, ancestry, disability, marital status, arrest record, conviction record, membership in the national guard, state defense force or any reserve component of the military forces of the United States or this state or use or nonuse of lawful products off the employer's premises during nonworking hours.
- (c) The Developer will furnish all information and reports required by law and any and all applicable federal, state and local rules, regulations and orders, and will permit access to the Developer's books, records and accounts by the City, or appropriate governmental entity, for purposes of investigation to ascertain compliance with such laws, rules, regulations and orders.
- (d) In the event of the Developer's noncompliance with the nondiscrimination clauses of this section, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and such other sanctions may be imposed and remedies invoked as provided by such law, rule, regulation or order, or as otherwise provided by law.
- (e) The Developer will include the provisions of Paragraphs (a) through (d) of this section in every contract or purchase order, and will use its best efforts to require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by such rules, regulations or orders, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. The Developer will take such action with respect to any construction contract, subcontract or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of

including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows:" and the term "Developer" shall be changed to "Contractor."

SEC. 1203. Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from the City to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

SEC. 1204. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SEC. 1205. Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, Developer may assign this Agreement by one or more successive assignments at any time prior to closing to any related entity or affiliate of Developer; provided, however, that the members or owners of any such related entity or affiliate include one or more of the principals of Smet Investments, LLC or Smet Construction Services Corp. Upon any such assignment, the assignee shall have the rights and obligations of Developer hereunder and Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

SEC. 1206. Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer at 330 E. Kilbourn Avenue, Suite 800, Milwaukee, WI 53202, Attn: Scott J. Revolinski; and

(b) in the case of the City, is addressed to or delivered personally to the City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

SEC. 1207. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

SEC. 1208. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf.) or similar electronic methods shall be deemed to be original signatures for all purposes.

(Signature Page Follows)

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN,
WISCONSIN**

EIGHTH - NEW JERSEY, LLC

BY: _____
Michael J. Vandersteen,
Mayor

BY: _____
Scott Revolinski,
Manager

ATTEST:

Susan Richards
City Clerk

This instrument drafted by:

City Attorney Charles Adams
828 Center Ave., Suite 304
Sheboygan, WI 53081-4442
WI State Bar No.

EXHIBIT "A"
Description of Property

[NEED LEGAL DESCRIPTION]

EXHIBIT "B"
Hard Costs for Project

[NEED DESCRIPTION OF HARD COSTS]

4827-9459-3578, v. 9-9459-3578, v. 6

VI

6.3

R. C. No. 341 - 14 - 15. By FINANCE. April 8, 2015.

Your Committee to whom was referred R. O. No. 302-13-14 by the City Clerk submitting a Notice of Injury and Claim for Damages from Atty. Sonnenburg on behalf of James Kuester, Sr. for alleged injuries while being a passenger on a City Bus (reference R. O. No. 257-13-14); recommends that the document be referred to the new Common Council.

*refer to
new Council
(Finance)*

John R. [Signature]
Julie Kath

[Signature]
[Signature]

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

II

4.2

R. O. No. 302- 13 - 14. By CITY CLERK. March 17, 2014.

Submitting a Notice of Injury and Claim for Damages from Atty. Sonnenburg on behalf of James Kuester, Sr. for alleged injuries while being a passenger on a City Bus. (Reference R. O. No. 257-13-14).

Susan Richards
City Clerk

Finance & Transit

refer to new Council 4/8/15

*LS Schneider
16-13*

SONNENBURG & ZELPE
ATTORNEYS AT LAW
601 CENTER AVENUE
SHEBOYGAN, WISCONSIN 53081

WM. K. SONNENBURG
SAMUEL ZELPE

DAVID RABINOVITZ (1930-1986)

TELEPHONE: (920) 458-6222
FACSIMILE: (920) 458-3840
SONNENBURGANDZELPE@JUNO.COM

March 7, 2014

City Clerk
City of Sheboygan
City Hall 828 Center Avenue
Sheboygan, WI 53081

Re: Injury to James J. Kuester, Sr 12/23/2013

Dear Clerk:

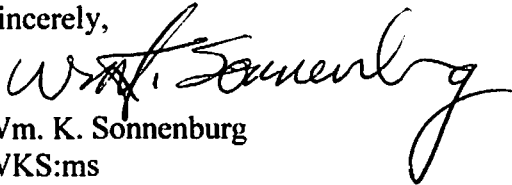
Enclosed please find a Notice of Injury and Claim being made on behalf of our client.

James S. Kuester, Sr.

Kindly file this Notice of Injury and Claim for Damages.

Thank you.

Sincerely,



Wm. K. Sonnenburg
WKS:ms
Encl.

NOTICE OF INURY
AND
CLAIM FOR DAMAGES

TO:

THE CITY OF SHEBOYGAN

CARE OF THE CITY CLERK

FOR THE CITY OF SHEBOYGAN, WISCONSIN

PLEASE TAKE NOTICE:

That we represent James J. Kuester, Sr. 2322 N. 24th Street, Sheboygan, Wisconsin who sustained injuries as the result of a City Bus driving through a red light at the intersection of N. 15th Street and Geele Avenue, on December 23, 2013, of which the City of Sheboygan had actual notice through the City of Sheboygan Police Department on the above – captioned date.

CLAIM FOR DAMAGES

Please be advised that said James J. Kuester, Sr, sustained several injuries to his body involving his legs, a cut to his upper lip, ribs, and loss of hearing as the result of the injuries, some of which are permanent, both to his left leg and his loss of normal hearing.

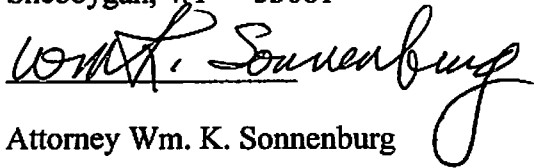
That he sustained medical expenses including the Sheboygan Fire Department, St. Nicholas Hospital, Dr. Charles Schleevogt, Dr. Howard J Kroft, and various medication for pain to his legs and ribs. Due to a previous blood condition, he had discoloration to his legs with pain for a period of two months and continues to have continual monitoring of his blood condition. He has a permanent swelling and a hardened portion of his left

knee. In addition, he has permanent loss of hearing in both ears.

The claim for the above is One Hundred Thousand Dollars (\$100,000.00)

Hereby submitted:

Sonnenburg & Zelpe
Attorneys at Law
601 Center Avenue
Sheboygan, WI 53081


Attorney Wm. K. Sonnenburg

VI

6.2

R. C. No. 340- 14 - 15. By FINANCE. April 8, 2015.

Your Committee to whom was referred R. O. No. 257-13-14 by the City Clerk submitting a communication from Atty. Sonnenburg advising the City that he has been retained by James Juester for alleged injuries he sustained on a City bus and notifying the City that he will be presenting a claim at a future date; recommends that the document be referred to the new Common Council.

*refer to
new Council
(Finance)*

John B...

Julie Kath

DA...

...

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

II

3.12

R. O. No. 257 - 13 - 14. By CITY CLERK. February 3, 2014.

Submitting a communication from Atty. Wm. Sonnenburg advising the City that he has been retained by James Kuester for alleged injuries he sustained on a City bus and notifying the City that he will be presenting a claim at a future date.

Invoice

Susan Richards

City Clerk

*4/8/15
refer to New Council*

3.8



James P. ...

Claim # 16-13
LS Schaefer

SONNENBURG & ZELPE
ATTORNEYS AT LAW
601 CENTER AVENUE
SHEBOYGAN, WISCONSIN 53081

WM. K. SONNENBURG
SAMUEL ZELPE

DAVID RABINOVITZ (1930-1986)

TELEPHONE: (920) 458-6222
FACSIMILE: (920) 458-3840
SONNENBURGANDZELPE@JUNO.COM

January 21, 2014

Transit Mutual Insurance
c/o City Clerk
Sheboygan City Hall
828 Center Avenue
Sheboygan, WI 53081

Re; Our Client: James Kuester
DOA: 12/23/13
Claim No. SHE 201054

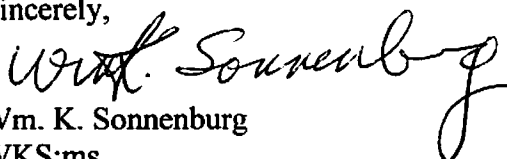
Please be advised that we have been retained by and represent James Kuester, 2224 N. 24th Street, Sheboygan, WI 53081, for injuries that he sustained as the result of the negligence of driver of a City Transit Bus which occurred on December 23, 2013.

We will be presenting a claim at a future date.

Kindly forward this communication to your insurance carrier, Transit Mutual Insurance Company so that they may communicate with us.

Thank you.

Sincerely,



Wm. K. Sonnenburg

WKS:ms

CC: James Kuester

II

4.3

R. O. No. 179 - 15 - 16. By CITY CLERK. October 19, 2015.

Submitting a claim from Sam Walker, 709 N. 8th St., for alleged damages to his property (Sonlight Books) caused by water from Green Space north of the building.

Inance

City Clerk

II

151

40

DATE RECEIVED 10-12-15

RECEIVED BY MI

CLAIM NO. 10-15

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

001 12-15 4:18

- 1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
- 2. Attach and sign additional supportive sheets, if necessary.
- 3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

- 1. Name of Claimant: Sonlight Books (Sam Walker)
- 2. Home address of Claimant: 709 North 8th Street, Sheboygan, WI 53081
- 3. Home phone number: 920-458-7888
- 4. Business address and phone number of Claimant: (same)

5. When did damage or injury occur? (date, time of day) July 13, 2015 8:30 Am

6. Where did damage or injury occur? (give full description) In the basement of Sonlight Books

7. How did damage or injury occur? (give full description) The GREEN SPACE on the northside of Sonlight Books caused aprox. 10,000 gal. of water to come into the basement.

8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:

(a) Name of such officer or employee, if known: Chad Pelishek, City Planner

(b) Claimant's statement of the basis of such liability: Did not put in any storm sewers and the ground was graded toward the store (with a 20" pitch) rather than away from it.

9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:

(a) Public property alleged to be dangerous: The Green Space next to Sonlight Books Caused Flooding

(b) Claimant's statement of basis for such liability: Flooding of Sonlight Books basement.

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

11. Name and address of any other person injured: _____

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ _____

Property: \$ 70,794

Personal injury: \$ _____

Other: (Specify below) \$ _____

TOTAL

\$ 70,794

Damaged vehicle (if applicable)

Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: _____

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.

SIGNATURE OF CLAIMANT

Swalhm

DATE

10-12-15

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED 10-12-15

RECEIVED BY MD

CLAIM NO. 10-15

Sonlight Books CLAIM

Claimant's Name: (Sam Walker)

Claimant's Address: 709 N. 8th Street
Sheboygan, WI 53081

Claimant's Phone No. 920-458-7888
Sam's cell 920-946-4546

Auto \$ _____

Property \$ 70,794

Personal Injury \$ _____

Other (Specify below) \$ _____

TOTAL \$ 70,794

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$70,794.

SIGNED [Signature] DATE: 10-12-15

ADDRESS: Sonlight Books
709 N. 8th St. Sheboygan, WI 53081

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.
MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

Sonlight Books

Flood Repair Expenses

from July 13, 2015

Hours worked:

July 13 Monday	Worked with Fire Dept. and Carpet Cleaner to remove water and phone calls.	8.0 hrs.
	Worked on salvaging books, displays and stuff found in wet cardboard boxes on the floor and took the rest to the dumpster	4.0
July 14 Tuesday	Met with mitigation company rep - Estimate \$25M	1.0
July 15 Wed	Met with 2 nd mitigation company rep from Plymouth - Estimate \$6M	1.5
	Moved furniture, equipment, and boxes of miscellaneous stuff into a dry part of the basement in preparation of the mitigation company coming in the morning (2 people x 4.5 hrs.)	9.0
July 16 Thurs.	Mitigation company came at 6:30am and I worked with them	4.0
	Cleaned out desk drawers that were affected by the water	4.5
July 21 Tuesday	Discovered more drawers that were wet	2.5
	Worked with Kevin (our tech guy) on setting up the computer	3.0
July 28 Tuesday	Met with Jennifer on a review of the North wall and water project	1.5
July 29 Wed	Setup bookkeepers office back in unfinished basement	2.0
Aug 13 Thursday	Met with Superior Waterproofing for estimate	2.5
Aug 24 Monday	Met with Sure Dry Waterproofing for estimate	2.0
	Met with Scott Thiel to look at doing repairs	1.0
Aug 27 Thursday	Took down drywall from north wall in basement (2 people x 4.0 hrs.)	8.0
Aug 28 Friday	Removed drywall from basement to dump (3 people x 2.5 hrs.)	7.5
Aug 31 Monday	Met again with Vince from Sure Dry for estimate on waterproofing	0.5
Sept 1 Tuesday	Mayor visited store, viewed soggy Green Space and basement north wall	0.5
Sept 8 Tuesday	Met with Scott Thiel, General Contractor and Steve Tenpas, Drywaller and painter to give estimates on the work needed	0.5
Sept 10 Thursday	Met with Mocco's Carpets for estimate	0.5
Ongoing	Daily emptying dehumidifier in basement and mopping as needed	6.0
	Ordering replace parts and equipment that was lost and setup	4.5
	Putting reports together	8.0

\$20 per hour X 82.5 hrs. = \$1650.00

Sonlight Books	Loss of books that were water damaged (at cost)	\$436
Alliant Energy	Extra electricity used for mitigation company's equipment and dehumidifiers	\$250
Macco's Carpet	Replacement of basement carpet	\$6334
Judy's office equip	Microsoft Office 2007 License for computer	\$130
	Printer replacement	\$120
	Computer replacement	\$100
	Power adapter for 3 in 1 copier	\$ 28
	Tech support for computer	\$303
Elsa's office equip	Computer replacement	\$538
	Tech support for computer	\$240
	Schenck Acc't phone calls and recreating master worksheet	\$500
	Paper shredder	\$106
	Expandable file folders, 10 reams of paper and envelopes	\$170
Hoffman's Cleaners Superior	Flood water removal from basement carpet and spot clean love seat	\$342
Waterproofing Scott Thiel	Waterproofing exterior and interior of north wall below grade	\$31,300
Building Contractor	Refinishing and painting	\$21,230
Advanced Disposal Badger State	Disposal of Drywall materials	\$ 54
Restoration	Removal of carpet, baseboard, drilling holes and drying equip	\$6,900
True Value	Replace wax ring	\$3
Plumber	Toilet replacement	\$60
Hours	(from first page)	\$1650
	Total	\$70,794



605 Erie Avenue, Suite 101
Sheboygan, Wisconsin 53081
(920) 783-6303
info@legacy-architecture.com
www.legacy-architecture.com

August 26, 2015

Chad Pelishek, Director of Planning & Development
City of Sheboygan Planning & Development Department
828 Center Avenue
Sheboygan, WI 53081

Re: Sonlight Books

Dear Mr. Pelishek:

We submit the attached plans and elevations to you in fulfillment of our work funded through a Historic Preservation Grant. The first floor plans show the floorplate getting divided so that the northern one-third would go to a new tenant, possibly a restaurant, with a patio spilling out into the new green space left by the former Boston Store, and the southern two-thirds would remain Sonlight Books. The second floor plan shows the floor getting divided into five new apartments, leaving as many of the existing walls in place as possible to make construction more affordable. The north elevation reacts to the new uses on the interior of the building on both the first and second floors.

The north elevation also makes an attempt to clean up the north wall, an uninsulated wall that was never meant to be exposed to the elements. We believe the brick was originally laid from the outside-in. The removal of the Boston Store building has resulted in an exterior masonry wall that is not level, plumb, or flush, with a variety of mortar conditions ranging from too much mortar spilling out from the brick to too little or missing mortar. We recommend a multilayer approach to the wall. The first step would be to knock out any areas where there is too much mortar spilling out from the brick, and filling in any areas where there is too little or missing mortar. Then the wall would be coated with a spray applied weather resistant barrier, which would prevent any water infiltration from the exterior to the interior. New insulation, furring strips, metal lath, and stucco would be applied to the wall.

Since Boston Store was removed, the owner continues to have water problems in his basement. On June 11-12, 2015, the City of Sheboygan had a significant rain event. Online records indicated an event of 1.91 inches. The north and west halves of the basement flooded with approximately 4 to 5 inches of water. The water was so deep that fire department was called to assist in removing the water, before a carpet cleaning company could come in and remove the rest. The owner had to remove approximately 1,900 square feet of carpet and approximately 400 linear feet of baseboard in the basement due to the flooding. Holes were placed in the bottom of the walls at 16 inches on center to ventilate the stud cavity spaces in an attempt to prevent mold growth. However, mold was identified on August 24, 2015. The gypsum board walls, furring, and a portion of the acoustic tile and drywall ceilings have subsequently been removed.

Several professionals have been called out to the site to take a look at the existing conditions and render their professional opinions. Their letters are attached.

Curly Broehm, a licensed plumber from Elkhart Lake, visited the site on July 20. He investigated the roof and roof drain in the light well on the north side of the building. He found the roof to be cluttered with debris from the Boston Store demolition, but the roof and the drain were dry. There was no evidence that the light well had seen water in quite some time. He ran water through the drain for 20 to 30 minutes straight with no indication of any water on the first floor ceiling, walls, floors, or in the basement. It's also

useful to point out that the light well has a roof on it, so unless there was a driving rain with a strong wind from the north, the water would not make it into the light well. In addition, the tributary area of the light well is quite small. Both of these physical attributes would not equate a lot of water seeping into the building.

I have personally visited the site on several occasions. On July 28, the weather had been very dry for the past 10 days. However, there was still water seeping into the basement. This could have only come from the irrigation system that was being used to water the sod in the grassy area to the north. It continues to seep in at that same location.

Roger Miller, from Miller Engineers and Scientists in Sheboygan, visited the site on July 30. Roger was asked to document the topography in the grassy area to the north because it appears that the new finished grade is pitched directly to the building. He took spot elevations which showed a waterflow projection pointing right to the area where the water has been entering into the basement. The grassy area to the north should be regraded so that it is pitched away from the building 6 inches for every 10 feet. Yard drains/inlets should be added in the grassy area to the north to pick up stormwater and route it to the nearest convenient storm sewer on either Seventh Street or New York Avenue.

Mike from Superior Waterproofing in Cleveland, visited the site on August 13. He also looked at the topography in the grassy area to the north and confirmed Roger Miller's findings that the grade is pitched directly to the building. He has recommended a basement waterproofing and drainage system for the north wall of the building, which will require excavation, waterproofing, backfill, and regrading.

The owner would like work to be done to correct the situation as soon as possible, before winter weather approaches, so that the water problems can be stopped before causing further damage. The owner would like the opportunity to talk to you and the city engineer so an agreeable solution can be negotiated.

Sincerely,

Legacy Architecture, Inc.

Jennifer L. Lehrke

Jennifer L. Lehrke, AIA, LEED AP, NCARB
Principal Architect & Historic Preservation Consultant

SUBJECT PRELIMINARY ANALYSIS OF

JOB NO.

PAGE

1/1

CLIENT LEGACY ARCHITECTS

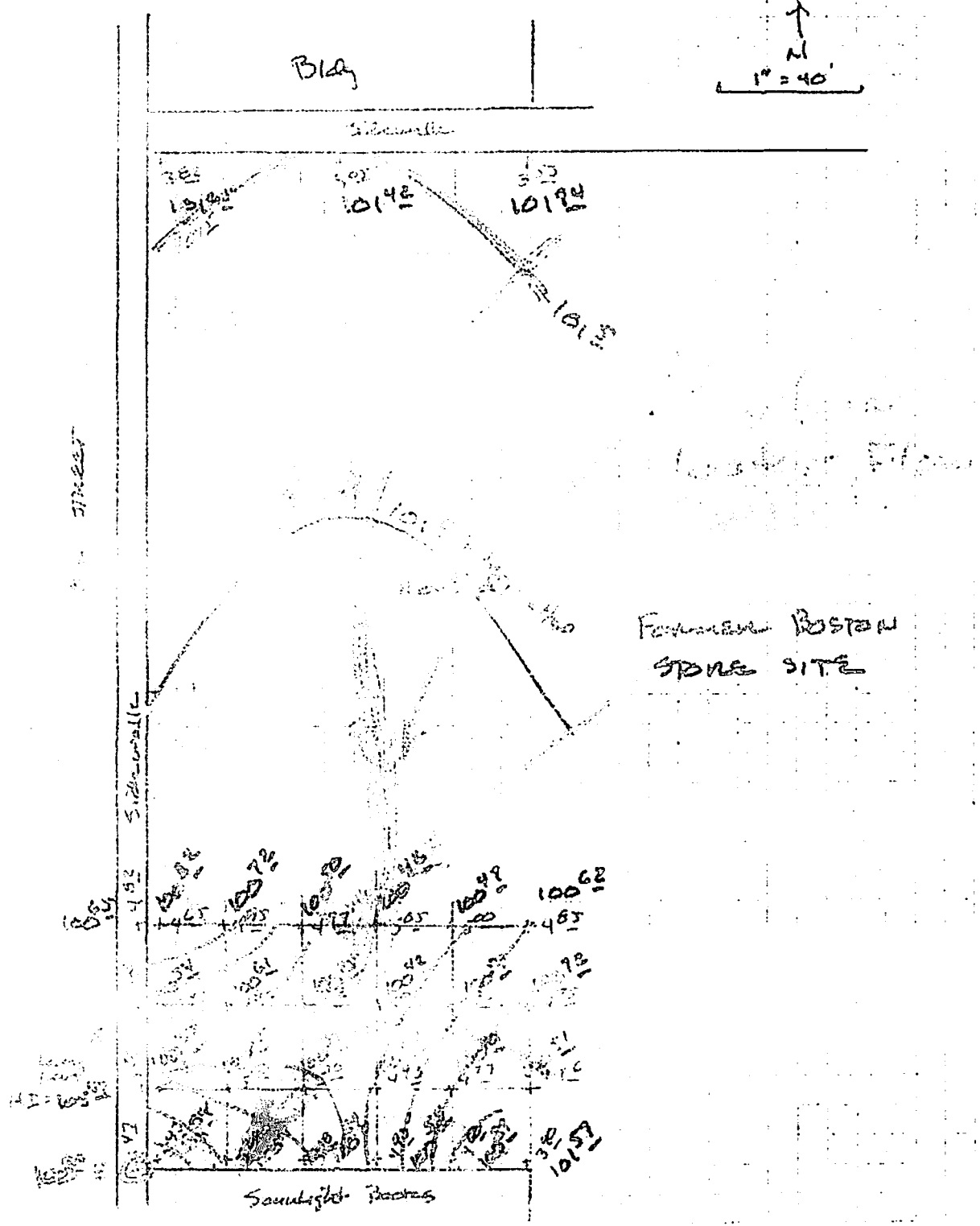
DATE 7/30/2015

BY RGM

PROJECT SUNLIGHT BOARDS DESIGN FACADE

CHECKED

BY



MILLER
ENGINEERS
SCIENTISTS

Jennifer L. Lehrke, AIA, LEED AP

From: Sam Walker <sonbks@sheboygan.parable.com>
Sent: Wednesday, August 12, 2015 10:20 PM
To: Jennifer L. Lehrke, AIA, LEED AP, NCARB
Subject: Plumbers' Statement about Skylight

To Whom it may concern:

On Tuesday July 20, 2015 Sonlight Books called and asked me to check the roof drain in the skylight on the north side of the building. When I arrived I could see debris in the area of the roof drain, including stone dust, a piece of wall edging cap, and debris from Boston Store. This debris was dry, almost in powder form. I swept the area, boxed up the sweepings, and told Sam to keep it. There is no way this area ever had water in it. I then used my medium sewer machine to open the roof drain. The drain had not been able to drain water for some time. I worked for 20-30 minutes just to get the snake to go through, during which time Sam and I used a vacuum to suck out rust and dirt. Finally, we got it open and ran water for 20 to 30 minutes. I then went to check the basement, and found no water.

Sincerely,

Curly Broehm, Licensed Plumber
N8151 Willow Rd
Elkhart Lake, WI 53020
920-207-9144

Proposal # 14859

Proposal

Bid Date: 8/18/15

Superior Waterproofing



www.DryBySuperior.com

1120 Maple St. Cleveland, WI 53015
Phone: (920) 693-8290 Fax: (920) 693-8583



Fully Insured!
Financing Available!

Superior Seamless Inc.

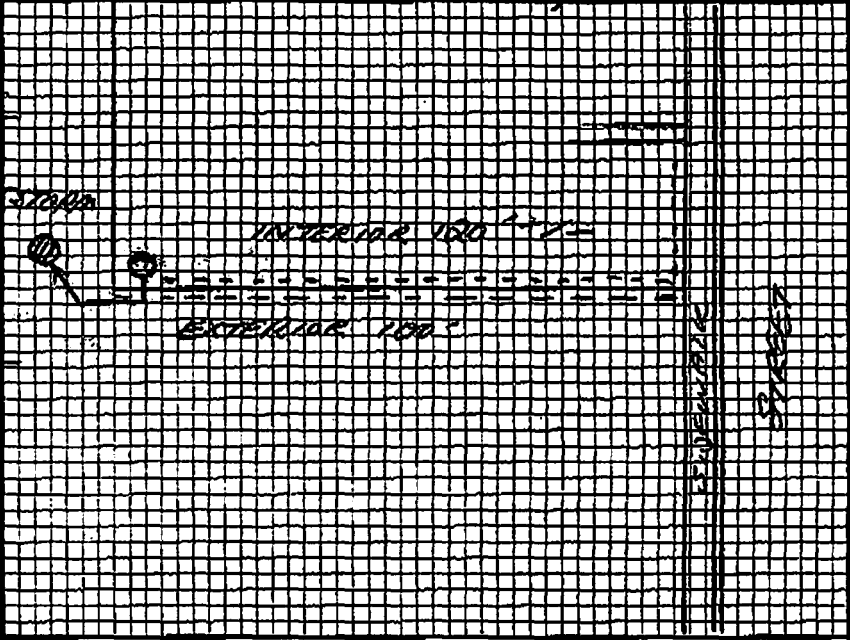


www.SuperiorSeamlessInc.com

OWNER SAM WALKER	PHONE 946-9546	ALTERNATE
STREET 709 N 8TH ST.	E-MAIL	
CITY, STATE, & ZIP SUEBOYCAN, WI	CONTRACTOR INFO	
	PHONE	FAX
	BILLING ADDRESS	

DETAILS: **INCLUDES EXCAVATION, WALL SURFACING AS NEEDED, SEAL, DRAIN MAT, GRAVEL, BACKFILL, INTERIOR + EXT. DRAIN TILE, SUMP SYSTEM (2 SUMPS / 1 BASIN) + TIE TO STORM SEWER - (PERMIT REQ'D IS SEPARATE)** WARRANTY TERMS ON REVERSE SIDE)

PRODUCT:	QUANTITY:	PRICE:
DRAIN TILE: INTERIOR	120'	5400-
DRAIN TILE: EXTERIOR	100'	1500-
LINER: BITUTHENE	800'+	2400-
PANEL: TRENDRAIN	800'+	1200-
REPAIR: SURFACING	800'+	3200 STORM
SUMP BASIN:	1	600-
SUMP PUMP:	2	600-
BACK-UP:		
DL TYPE: STORM	20'	800-
EX/FILL/300	#1	15,600-
GUTTER:		
MITRES:		
SPOUT 3"		
SPOUT 4"		
EXTENSION TYPE:		
LEAF PROTECTION:		
ICE PROTECTION:		
TEAR-OFF:		
TOTAL COST OF PROJECT:		



This proposal is based on my goals, and my best explanations of the needs it addresses.
 I have been informed of and offered all amenities listed in the columns at the left of this page.
 I have copies of the warranty and preparatory paperwork, and agree to the terms therein.

WE PROPOSE to furnish materials and labor complete in accordance with the above specifications, for the sum of:
THIRTY ONE THOUSAND, THREE HUNDRED dollars. \$ 31,300 -
 Deposit Required: \$ 15,000 - Balance Due Upon Completion: \$ REMAINDER

Payment is to be made in full, to our crew at the completion of the project. Failure to do so may result in a billing fee. Past due balances may be subject to late fees and interest up to 18% per annum. Any offers of financing or extended grace periods are issued at Contractor's discretion, and in writing above.

All material/work is guaranteed to be as specified above or equivalent, in accord with standard practices. Any variations resulting in cost changes will become written change orders and may result in an additional charge. All agreements are contingent upon accidents/delays beyond our control. Our workers are covered by Worker's Compensation insurance.

SALESMAN: MIKE DEINCH
 SIGN: [Signature]
 (BID MAY EXPIRE IN 90 DAYS)

My signature below indicates my acceptance of all the terms listed in this contract, and of the warranty on the reverse side. I have described the issues accurately and honestly, and this system has been designed according to my description. I grant the Contractor 60 days to remedy any problem arising under the warranty, and I will report all problems within 24 hours of discovering them. My work is scheduled when a deposit is made, but I understand that scheduling is subject to change without notice in case of any unforeseen circumstance. I promise to obtain all required work permits, and will absorb all liabilities if I do not do so, including compensations.

THE AFOREMENTIONED IS AGREED UPON. YOU ARE AUTHORIZED TO PERFORM THE WORK:

SIGNATURE: _____ DATE: _____

Scott Thiel Builders

709 Birch Tree Road
Sheboygan, WI 53083
920-458-5763

Estimate
Sonlight Books
709 N. 8th Street
Sheboygan, WI 53081

Description: Repair water damage in basement.

Complete work as follows:

Demo work: Cut drywall in all basement rooms, 18" up from the floor.

Carpentry work: Frame north wall area where framing was removed. Reframe soffit, remove cabinetry and reinstall in conference room. Remove existing door casings and reinstall in new drywall areas. Remove bathroom vanity and countertop and reinstall. Replace shelving that was water damaged. Adjust doors that are sticking. Reinstall suspended ceiling where necessary.

Drywall: Per quote attached from Tenpas Drywall, Inc.

Painting: Per quote attached from Tenpas Drywall, Inc.

Plumbing: Remove sink in conference room. Remove sink and toilet in bathroom, reinstall when areas are ready.

Haul away all scrap and waste materials complete.

Complete project, labor and materials: \$21,230.00

Job breakdown:

Materials:	\$ 1,250.00
Demo labor:	1,620.00
Carpentry labor:	3,780.00
Drywall work:	7,875.00
Painting:	3,955.00
Plumbing:	320.00
Dumpster:	500.00
Subtotal:	\$19,300.00
10% Profit:	1,930.00
Total:	\$21,230.00

Thank you for allowing Scott Thiel Builders the opportunity to bid this project and we look forward to working with you.

9/24/15

Scott Thiel Builders



Badger State Restoration

920-946-9477 24-HR.
11 RUSTIC STREET
PLYMOUTH, WI 53073

Invoice

Date	Invoice #
7/20/2015	864

Bill To

Sonlight Books
709 N. 8th St
Sheboygan, WI 53081

Terms
Due on receipt

Item	Description	Amount
Emergency Services	Job Site Location: 709 N. 8th Street, Sheboygan Removal of carpet Removal of wet items Dryout equipment for 3 days Antimicrobial treatment It was a pleasure working with you	6,899.83

After thirty days finance charges of 1.5% per month will be applied

Total \$6,899.83

ES521203

ESTIMATE

Sold To: SONLIGHT BOOKS. 8TH STREET SHEBOYGAN, WI 53081	Ship To: SONLIGHT BOOKS. 8TH STREET SHEBOYGAN, WI 53081
---	---

Quote Date: 09/11/15	Tele #1: 920-458-7888	PO Number: CUSHION	Quote Number: ES521203
--------------------------------	---------------------------------	------------------------------	----------------------------------

Inventory	Style/Item	Color/Description	Quantity Units	Price	Extension
	ON BASE 28 - ABAC - WELDLOK - 12FT COIN	EMERALD	1,743.00 SF	1.75	3,050.25
1	ADHESIVE	TBS	1.00 SF	200.00	200.00
BV0219	STAINMASTER PLUS RUBBER	STAINMASTER PLUS RUBBER	300.00 SF	1.05	315.00
	CUSHION				
	CARPET	TBS	300.00 SF	3.50	1,050.00

Office

09/11/15
Sales Representative(s):
NYENHUIS, MICHELLE

SPECIAL ORDER MERCHANDISE
NOT SUBJECT TO RETURN
Customer Signature
(Note: _____)

1:38PM -
Material: 4,615.25
Service: 1,718.15
Misc. Charges: 0.00
Sales Tax: 0.00
Misc. Tax: 0.00

ESTIMATE TOTAL: \$6,333.40

II

4.1

R. O. No. 193- 15 - 16. By CITY CLERK. November 2, 2015.

Submitting a Notice of Claim and Claim - Itemized Statement of Belief in the matter of Ricky J. Van Der Vaart against the City of Sheboygan.

Finance

City Clerk

III

29

1.8 1.4

007 2275 +1 1:51

NOTICE OF CLAIM AND CLAIM – ITEMIZED STATEMENT OF RELIEF

To: Susan Richards
City of Sheboygan Clerk
828 Center Avenue, Suite 100
Sheboygan, Wisconsin 53081

Pursuant to Wis. Stat. §893.80, Ricky J. Van Der Vaart (Van Der Vaart), residing at 6666 South 12th Street, Sheboygan, Wisconsin 53081, by his attorneys, Rohde Dales LLP, hereby provides this Itemized Statement of Relief sought against the City of Sheboygan (the City) as follows:

Liability

See the Notice of Claim attached hereto as Exhibit A, which was personally served upon the City on March 30, 2015, for a written notice of circumstances giving rise to the claim. See also the Discrimination Complaint attached hereto as Exhibit B.

Damages

Van Der Vaart has suffered damages as a result of the actions described in Exhibit A and Exhibit B. The following are Van Der Vaart's itemized damages:

1. Unpaid health/dental benefits in the amount of \$1911.12 (see attached May 26, 2015 letter)
2. After being terminated, the City refused to pay Mr. Van Der Vaart his holiday pay for Christmas Eve 2014, Christmas Day 2014, and 2014 New Year's Eve Day. The total amount owed is 24 hours x \$23.36 per hour which totals \$560.64.
3. Attorneys fees and costs from December 31, 2014 forward.

Dated this 21st day of October, 2015.

ROHDE DALES, LLP

By Anthony J. Resimius
Anthony J. Resimius
A Member of the Firm
State Bar No. 1037195

P.O. Address:
607 North 8th Street, Suite 700
Sheboygan, WI 53081
Telephone (920) 458-5501
Facsimile (920) 458-5874

RAM
 Process Server
 Date 10/22/15 Time 11:45 A.M. P.M.
 Served Upon Susan Richards
828 Center Avenue Sheboygan
 Personal Substitute
 Posted Corporate

Process Server
Date _____
Time _____ A.M. - P.M.
Served Upon _____

() Personal
() Substituted
() Corporate

NOTICE OF CLAIM

Process Server RMJ
Date 3/30/15 Time 9:15 A.M. - P.M.
Served Upon Susan Richards
828 Center Avenue, Sheboygan
 Personal Substitute
 Posted Corporate

To: Susan Richards
City of Sheboygan Clerk
828 Center Ave., Suite 100
Sheboygan, Wisconsin 53081

Pursuant to Wis. Stat. §893.80, Ricky Van Der Vaart, residing at 6666 South 12th Street, Sheboygan, Wisconsin 53081, by his attorneys, Rohde Dales LLP, hereby provides this Notice of Claim against the City of Sheboygan as follows:

Liability

On or about December 30, 2014, the City of Sheboygan (the City) informed Ricky Van Der Vaart that he would not be allowed to return to work and terminated his employment. The City confirmed its decision to terminate Mr. Van Der Vaart on or about January 2, 2015. The termination of Mr. Van Der Vaart and the failure to accommodate Mr. Van Der Vaart is in violation of both the Americans with Disabilities Act and the Wisconsin Fair Employment Act.

Damages

Mr. Van Der Vaart intends to seek damages including, but not limited to, reinstatement, back pay, back benefits, costs, and attorney's fees.

Dated this 27th day of March, 2015.

ROHDE DALES, LLP

By Anthony J. Resimius
Anthony J. Resimius
A Member of the Firm
State Bar No. 1037195
Jacob R. Sundelius
An Associate of the Firm
State Bar No. 1096476

P.O. Address:
607 North 8th Street, Suite 700
Sheboygan, WI 53081
Telephone (920) 458-5501
Facsimile (920) 458-5874



Discrimination Complaint Wisconsin Fair Employment Law

ERD Case #
 CR

For office use only

Authorization for this form is provided under Section 111.39(1), Wisconsin Statutes.
 Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m),
 Wisconsin Statutes].

READ instructions on page two FIRST then type or print in black ink.

1. Complainant Information

First Name RICKY		
Middle Initial J		
Last Name VAN DER VAART		
Street Address/PO Box 6666 S. 12th Street		
City Sheboygan	State WI	Zip Code 53081
Telephone Number ()		
E-Mail Address n/a		
May we call the Complainant at work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Work Telephone Number () Ext. n/a		

2. Respondent Information

The company , agency, or union you believe discriminated against you. Name only ONE Respondent per form. Do not name an individual person as Respondent.		
Name CITY OF SHEBOYGAN		
Street Address/PO Box 828 Center Avenue, Suite 204		
City Sheboygan	State WI	Zip Code 53081
Telephone Number (920) 459-4076 Ext.		
In what Wisconsin county did the violation take place? Sheboygan		

3. CHECK ONLY THE BOXES THAT WERE THE REASON FOR DISCRIMINATION

If you checked a box with an *, the statement in that box **must** be completed.

I believe the Respondent(s) discriminated or took action against me **because**

<input type="checkbox"/> of my race * which is	<input type="checkbox"/> of my conviction record	<input type="checkbox"/> of polygraph testing
<input type="checkbox"/> of my creed (religion) * which is	<input type="checkbox"/> of my age (40 or older) * my date of birth is	<input type="checkbox"/> of my military service
<input type="checkbox"/> of my sex * which is	<input type="checkbox"/> of my marital status * which is	<input type="checkbox"/> of my use or nonuse of lawful products
<input type="checkbox"/> of my pregnancy or maternity	<input type="checkbox"/> of my sexual orientation * which is	<input type="checkbox"/> of genetic testing
<input type="checkbox"/> of my national origin/ancestry * which is	<input type="checkbox"/> of my color * which is	<input type="checkbox"/> of my arrest record
<input checked="" type="checkbox"/> of my disability * which is Back Condition (See Below)	<input type="checkbox"/> I filed a previous discrimination complaint with Equal Rights Enter Case Number: CR	<input type="checkbox"/> I opposed discrimination in the workplace (refer to directions (c))
<input type="checkbox"/> I declined to attend a meeting or to participate in a Communication about Religious matters or political matters		
<input type="checkbox"/> I previously filed a family/medical leave complaint with the Equal Rights Division Enter Case Number: CR	<input type="checkbox"/> I testified or assisted with a discrimination complaint filed with the Equal Rights Division Enter Case Number: CR	
<input type="checkbox"/> I previously filed a wage and hour complaint with the Equal Rights Division Enter Case Number: LS	<input type="checkbox"/> The employer believed that I was going to file a wage and hour complaint with the Equal Rights Division	

4. Dates of discrimination (Required; estimate if unsure)

Date the discrimination began? Mm/dd/yyyy December 31, 2014	Date of the most recent discrimination? Mm/dd/yyyy continuing
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EQUAL RIGHTS COMPLAINT PROCESS INFORMATION SHEET

Please complete and return this sheet with your completed complaint. This information is necessary to process your complaint effectively.

Complainant First Name RICKY	Complainant Middle Initial J	Complainant Last Name VAN DER VAART
Current Date 10/22/2015	Complainant Date of Birth (requested for identification purposes) mm/dd/yyyy 3/27/1961	

Contact Information (Important! The Complainant must notify the Equal Rights Division, if there is a change of address or telephone number. If we are unable to locate the Complainant, the complaint may be dismissed.)

Is there a telephone number where the Complainant can be reached between 7:45 a.m. & 4:30 p.m.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, provide the area code and telephone number
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Please provide the name, address, and telephone number of someone who does not reside with the Complainant but who will know where to reach the Complainant.

Contact Person Name Attorney Anthony Resimius	Relationship to the Complainant Attorney			
Street Address 607 N. 8th St., 700	City Sheboygan	State WI	Zip Code 53081	Telephone Number 920-458-5501

Employer Information

Approximate number of employees at all of the employer's work locations <input type="checkbox"/> Less than 15 <input type="checkbox"/> 15-100 <input type="checkbox"/> 101-200 <input checked="" type="checkbox"/> 201-500 <input type="checkbox"/> More	Type of Business City
Does another company own the employer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Sure	If yes, please provide the name of that company n/a

Filing with other Agencies

Have you filed a complaint in this matter with any other agency? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, name of agency n/a	Date filed with the other agency
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Settlement Information

Complete this section if the Complainant was or still is employed by the employer.

When was the Complainant hired? 7/1/1993	What was/is the job title? Laborer I	Is the Complainant still employed by the Respondent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Complete this section if the Complainant is no longer employed by the employer.

How did the Complainant's employment end? <input type="checkbox"/> Discharged <input type="checkbox"/> Quit <input type="checkbox"/> Laid off <input type="checkbox"/> Retired <input type="checkbox"/> Other	Date Employment Ended	Pay Rate at End	Hours per Week
If the Complainant was not promoted, what was the title of the position applied for?	Rate of Pay	Hours per Week	

At this time, what is the Complainant seeking to settle the complaint?
See statement of discrimination above

Statistical Information

Complainant Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
Complainant Race (check appropriate box or boxes): <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Native Hawaiian or Pacific Islander <input type="checkbox"/> Black or African American <input type="checkbox"/> Asian <input type="checkbox"/> White <input checked="" type="checkbox"/> Unknown
National Origin

5. Statement of discrimination:

Write a brief, concise statement explaining how you were discriminated against. Give the date each action occurred and the name of the person who took the action. Explain how each action(s) was related to the box (es) you checked in section #3 on page one.

Ricky Van Der Vaart has permanent work restrictions related to his back. These permanent work restrictions are as follows: "Pt should limit lifting to a maximum of occasional 35 lbs and frequent lifting of no more than 20 lbs....Based on patients report he feels he would be able to tolerate any jobs at work except for garbage pickup." (hereinafter the "Permanent Restrictions"). The City of Sheboygan claimed that it was unable to accommodate Mr. Van Der Vaart's Permanent Restrictions and terminated his employment effective December 31, 2014. This termination was discrimination based on Mr. Van Der Vaart's disability and discrimination based on the City of Sheboygan's failure and refusal to accommodate Mr. Van Der Vaart's disability.

Following Mr. Van Der Vaart's termination, a hearing was held before the City of Sheboygan Salaries and Grievances Committee before an Independent Hearing Officer. The Recommendation of the Independent Hearing Officer is attached hereto and incorporated herein by this reference. The Salaries and Grievances Committee adopted the Recommendation of the Independent Hearing Officer and reinstated Mr. Van Der Vaart to work.

Mr. Van Der Vaart seeks the following damages:

1. Unpaid health/dental benefits in the amount of \$1911.12 (see attached May 26, 2015 letter)
2. After being terminated, the City refused to pay Mr. Van Der Vaart his holiday pay for Christmas Eve 2014, Christmas Day 2014, and 2014 New Year's Eve Day. The total amount owed is 24 hours x \$23.36 per hour which totals \$560.64.
3. Attorneys fees and costs from December 31, 2014 forward.

6. Certification and Signature

By my signature below, I certify that I have read the above complaint, and, under penalties of law, I declare that this complaint is true and correct to the best of my knowledge and belief.

Signature of Complainant or authorized representative <i>Anthony J. Meremius - Attorney for the Complainant</i>	Date signed <i>10/22/15</i>
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**IN THE CITY OF SHEBOYGAN,
SHEBOYGAN COUNTY, STATE OF WISCONSIN,
BEFORE THE SALARIES AND GRIEVANCES COMMITTEE
AND THE INDEPENDENT HEARING OFFICER APPOINTED PURSUANT TO
SHEBOYGAN EMPLOYEE HANDBOOK GRIEVANCE PROCEDURE**

In the matter of the Grievance Filed
Challenging the Termination of:

RICKY VAN DER VAART,
Grievant

**RECOMMENDATION OF
IMPARTIAL HEARING OFFICER**

**TO: Ald. Mary Lynne Donohue
Chair, Salaries & Grievances Committee
City of Sheboygan
418 St. Claire Avenue
Sheboygan, WI 53081**

**Attorney Nancy Pirkey
Buelow, Vetter, Buikema, Olson & Vliet
20855 Watertown Road, Suite 200
Waukesha, WI 53186
Attorney for the City of Sheboygan**

**Attorney Anthony Resimius
Rohde/Dales, LLP
607 North 8th Street, 7th Floor
Sheboygan, WI 53081
Attorney for Ricky Van Der Vaart**

Introduction and Jurisdiction

This matter came before the Salaries and Grievances Committee of the Sheboygan Common Council (the "Committee") through which James G. Godlewski was appointed Impartial Hearing Officer ("IHO"), in hearing on March 12, 2015 under the City of Sheboygan's Grievances Procedure (Jt. Exh. 1) (the "Procedure"). Employees grieving a termination from City employment proceed under step three of the Procedure which involves a hearing before the Committee. The Committee may enlist the assistance of an IHO "for the sole purpose of serving as a member of an official hearing set forth under" the Procedure. *Id.* The Procedure does not limit the Committee's jurisdiction and permits the Committee broad discretion in how to conduct the hearing. In this case, the Committee requested that the IHO conduct the hearing on behalf of the Committee. Both the City and grievant were permitted by the Procedure to call witnesses,

produce documents and cross examine the other party's witnesses. Likewise, the Procedure authorizes the Committee to question witnesses and compel attendance by city "officers and other persons in city service." *Id.* The subject of this grievance is the termination of Ricky Van der Vaart, effective December 31, 2014. (Ex. C-3)

Under the terms of the Procedure as well as the Committee's direction, the IHO's role is to recommend to the Committee how it should respond to the City's decision to terminate the Grievant's employment. The Procedure is silent on which party bears the burden of proof and what standard should be applied.

Facts

Based on the hearing and exhibits, the following facts were established.

1. The Grievant was hired by the City in July, 1993 as a Laborer I. (Ex. 3). During the course of his City employment, he was promoted three times, with the last promotion to Drop Off / Recycling Center Operator in August, 2010. (Exs. 4-6).

2. After the most recent promotion, the Grievant alleges¹ that he sustained a back injury while working alone at the Drop Off Center on a Saturday. (Tr. p. 166) Grievant filed a Notice of Injury in November, 2010 stating he injured his back lifting a television out of the dumpster. (Ex. C-7) During the period between the report of injury and February 2011, the Grievant underwent physical therapy for his back. He did not miss a full day of work, but did take approximately 15 hours off during that period to attend physical therapy. (*Id.*) The injury ultimately culminated in back surgery to correct a bulging disk on August 31, 2011. (Exs. 7 & 8).

3. As a result of the surgery the Grievant was off work for approximately three months. When he returned to work, in late fall, 2011, his doctor conditioned the return on

¹ For purposes of this recommendation, it is noted that the Grievant alleges his back injury is work-related solely for providing a chronology of events. The record shows that the parties are in dispute over this issue under Worker's Compensation. Nothing in this recommendation should be construed as a finding in either party's favor regarding the nature of the back injury and whether it is or is not work-related.

restrictions that, among other items, limited regular lifting to 20 pounds and occasional lifting to 40 pounds (later reduced to 35 pounds and then 30 pounds). (Exs. 9-12; *see also*, Ex. C-6) Nonetheless, when he returned to work, the City assigned Grievant the same duties as he had before the back surgery. (Tr. p. 171) The Grievant worked under these restrictions for approximately two years until he injured his ankle in a non-work-related incident in December 2013. (Tr. pp. 173-175, Ex. C-6)

4. Shortly before the Grievant's back surgery, public employers throughout Wisconsin, including the City, began dealing with the impact of Act 10. Of the 120 employees in the City's Department of Public Works ("DPW") at the time Act 10 became effective in the summer of 2011, 57 retired by the end of 2011. (Ex. C-6) Ultimately, the DPW experienced a one-third reduction in force leaving only 80 employees to do the job previously accomplished by 120. (Tr. p. 21)

5. The union representing DPW workers decertified on December 31, 2011 (Ex. C-6), leaving the employees in DPW previously represented by the decertified union no longer employed by union contract.

6. Under the City's employee handbook, City employees not covered by a collective bargaining agreement are at-will employees. (Ex. C-1, p. 5) The employee handbook was revised as of May 1, 2012 clearly identifying nonunion City employees as "at-will" employees.² (*Id.*) The Grievant is subject to, and acknowledged receipt of the handbook on April 27, 2012. (Ex. C-2)

7. As a result of the reduction in force experienced in DPW, and the decertification of the union representing DPW employees, during 2012 the City created position descriptions for the department's former union employees. This effort resulted in the creation of 4 new positions that allows the City to move employees to different jobs within

² Specifically, the Handbook provides that "[e]mployment with the City of Sheboygan is "at-will" which means The City of Sheboygan retains the right to terminate an employee at any time with or without cause, except as prohibited by law."

the department as the need arises. The four positions are named Maintenance Worker I through IV. (Ex. C-5).

8. The Grievant was assigned to the Maintenance Worker II classification. These revised position descriptions were dated January 25, 2013 and approved by the City's Common Council on March 4, 2013. (Ex. C-5)

9. All four Maintenance Worker position descriptions indicated, under physical demands, that among other items, the positions would require regular lifting of 50 to 75 pounds. Additionally, the position summary for all four descriptions state that the "position requires above average physical strength and stamina, including the ability to work outdoors under all climatic conditions..." *Id.*

10. After Grievant returned to work following his back surgery, he was able to work in the DPW under weight restrictions significantly below the restriction outlined in the 2013 position descriptions, apparently without incident. This included at least 10 months under the new position descriptions which required that employees assigned to one of the Maintenance Worker positions be able to lift 50 to 75 pounds regularly. (Tr. p. 22-24, 171; Ex. C-5)

11. When Grievant returned to work, he was primarily assigned to the recycling center along with another worker. Grievant also operated the street sweeper and snowplow, as needed. (Ex. C-6) The recycling center was staffed by two DPW employees at this time. (*Id.*)

12. After grievant injured his ankle in December 2013, he was off work for all of 2014 transitioning to inactive employment status and long term disability. (Ex. C-6) Sometime during the summer of 2014, Grievant was preparing to work under light duty, subject to restrictions related to his foot and back injuries. Although he was initially told by the Streets Superintendent that he could come back to work on light duty, Grievant was later told by the City's human resources staff that he could not return until the restrictions were lifted and he was at 100 percent. (Tr. pp. 175-76., Ex. C-6)

13. In November 2014, Grievant provided a doctor's note that he will be able to return to work with no limitations by mid-December. (Ex. C-6) Shortly thereafter, due to a dispute over whether the Grievant's back injury was work-related, the City's worker's compensation insurer arranged for an independent medical examination by a physician ("IME") which determined that Grievant's back injury would result in permanent lifting restrictions of no more than 20 pounds. The IME also determined that the Grievant is subject to a 35 percent permanent partial disability as a result of the back injury. (Ex. C-4)

14. Based on the permanent restrictions, the City's Human Resources Director undertook an evaluation of Grievant's abilities in light of the permanent restrictions and whether the Grievant could qualify for a position in DPW. The Human Resources Director along with the Public Works Director met with the Grievant on December 15, 2014 to discuss work opportunities at DPW in light of the Grievant's permanent restrictions. Grievant expressed a strong desire to return to work, even if that meant violating the lifting restrictions. (Tr. p. 18)

15. Subsequent to the December 15 meeting, the Human Resources Director, Public Works Director and street superintendent evaluated work available at DPW to determine if a suitable position was available that could accommodate the Grievant's work restrictions under all four maintenance worker positions. (Tr. pp. 19-23) In addition, the Human Resources Director reviewed City personnel files and determined that the City had never allowed an employee to return to work with permanent work restrictions. (Tr. p. 38) The Human Resources Director also expressed concern that the Grievant's willingness to violate the lifting limitations could expose him to injury and place other employees at risk. (Tr. pp. 18-19)

16. Based on the review of Grievant's restrictions and evaluation of available positions, City staff determined that reasonable accommodations could not be made for Grievant. The City's Human Resources Director met with Grievant and Attorney Resimius to inform them that Grievant's employment with the City would be terminated effective December 31, 2014. (Tr. p. 33, Exs. C-3 and C-7)

17. On December 31, 2014, the Grievant met with his personal doctor who reiterated lifting restrictions of 20 pounds regularly and occasionally up to 35 pounds. The City felt that the information confirmed their termination decision (tr. p. 34-35) while the Grievant contends the restrictions should allow him to return to work with reasonable accommodations. (Tr. p. 55-58 & Ex. 18)

18. Grievant did submit significant anecdotal evidence that many coworkers in DPW were informally accommodated as they aged and experienced various ailments. Likewise, the testimony also indicated that none of the coworkers had permanent work restrictions. (Tr. pp. 117, 124, 131, 137, 138, 140, 147, 154-155.) The City also never permitted an employee to return to work with permanent work restrictions. (Tr. p. 38.)

19. In addition to the direct evaluation of the Grievant's restrictions on his ability to qualify for the job, the significant reduction in workforce at the DPW due to Act 10 meant that Grievant's limitations could potentially have a negative impact on other employees at DPW. (Tr. pp. 19, 29, 107-108)

20. Grievant timely filed an appeal of this determination, based on the apparent stipulation of the parties.³

³ The parties spent considerable time presenting evidence regarding an appeal Grievant filed with the City's Civil Service Commission on December 12, 2014. (Ex. C-9) Ultimately, the IHO ruled that this proceeding does not have jurisdiction over whether this matter should have been heard by the Civil Service Commission. (Tr. pp. 5-6) Also, neither party provided a copy of a written grievance from his termination, but neither contested the timeliness or sufficiency of the Grievant's appeal. As a result, there is no issue regarding whether the Grievant timely filed an appeal of his termination.

City's Position

The City argues that due to Grievant's permanent restrictions, the Grievant no longer qualifies for his position with the City. As an at-will employee, the City has the inherent authority to dismiss an employee that can no longer meet the requirements of the position. In addition, there is no reasonable accommodation the City could make to allow the Grievant to return to his position. Any accommodation would either require creating a position for Grievant by eliminating duties from the established position descriptions, impose an unnecessary hardship on other public works employees by requiring them to cover for the Grievant when he is unable to perform, or impose significant costs on the City. This is especially true in light of the tight municipal budget and significant decrease in DPW staffing that resulted after Act 10. Furthermore, Grievant has not sustained his burden to show that a requested accommodation is reasonable under *Crystal Lake Cheese Factory v. LIRC*, 2003 WI 106, 264 Wis. 2d 200 and its progeny.

Grievant's Position

The Grievant showed that he was able to do the job assigned for almost two years after he returned to work following his back surgery, even with the lifting restrictions. The City's contention that the Grievant cannot be reasonably accommodated should be rejected given his actual work history. In addition, while no employee has had permanent restrictions while employed by the DPW, several employees testified that the City informally accommodated their reduced abilities. The City should recognize the policy adopted by the Civil Service Commission and accommodate employees as they grow older. Furthermore, under *Crystal Lake*, the Grievant demonstrated that reasonable accommodations were possible because he returned to work after his back surgery and worked full time under those restrictions for two years. Unlike *Crystal Lake*, where the employer had to make wholesale changes to the employee's position, accommodating Grievant would only require returning him to the status quo that existed prior to Grievant's ankle injury in December 2013.

Recommendation to the Salaries and Grievances Committee

This case presents the real employment dilemma for municipalities in the post Act 10,

levy limited budgets era. While the times demand city management make tough decisions, those decisions are always made in a context of rules that sometimes limit available choices. In this case, the City established that the Grievant was an at-will employee, subject to termination without cause. However, even the City's policy recognizes limits to exercise of that authority, "except as prohibited by law." (Ex. C-1, p. 5). One of those limitations is found in the Wisconsin Fair Employment Act, Wis. Stat. §111.31⁴ and following (the "WFEA"). Specifically, employers in Wisconsin are prohibited from discriminating in employment on the basis of, among other things, disability. Wis. Stat. §111.321.

While the Salaries and Grievances Committee is not charged with enforcing the WFEA, one of its responsibilities is to insure, as much as possible, that the City honors its obligations as an employer to comply with that Act. In this case, the City terminated Grievant's employment after determining that his lifting restrictions, which only an independent medical examiner found to be permanent, could not be reasonably accommodated without creating an unnecessary hardship. The evidence provided by the parties demonstrates, however, that the City did not reasonably accommodate Grievant's back condition, failed to show that such accommodation would impose a hardship, and therefore improperly terminated him on December 31, 2014.

Grievant's Showing Under the WFEA

In order to sustain a case of disability discrimination, the Grievant must first show that he has a physical impairment which, among other things, "limits the capacity to work." Wis. Stat. §111.32(8)(a). Based on the evidence presented in this matter, there seems to be little dispute that Grievant's back condition constitutes a disability as defined by the WFEA. In fact, the IME opined that the Grievant suffers a "permanent partial disability" of "35 percent body as a whole." Next, the Grievant must show that his back impairment impacts his ability to work. While the restrictions vary, all doctors that have submitted reports agree that lifting weight restrictions are needed for Grievant's condition. *See*, Exs. 9 through 12, C-4 and C-8. Back conditions, such as experienced by Grievant, have long been recognized by the courts as constituting a disability

⁴ All statutory references are to the 2013-14 Wisconsin Statutes.

under the WFEA. *See, Hutchinson Technology Inc. v. LIRC and Roytek*, 2004 WI 90, 273 Wis.2d 394, 682 N.W.2d 343 at ¶16.

As part of his request for accommodation, Grievant must show that a reasonable accommodation exists that could allow him to work within his restrictions. *Id.* At ¶35. In this case, he suggested that he could continue to work within his restrictions at the recycling center, street sweeping, street maintenance, fall leaf pick up, snow plowing and driving heavy equipment. The only job he claimed he couldn't do was garbage pick-up. (Tr. p. 178, Ex. C-7) In effect, Grievant's requested accommodation was to return him to the position and duties he did for two years after his back surgery under essentially identical lifting restrictions. The evidence provides that the Grievant did present a prima facie case that he has a disability under the WFEA and that the City failed to accommodate his disability as required by the WFEA. *See, Crystal Lake, supra*, ¶67.

City's Hardship Defense

While the City has an obligation to accommodate Grievant's disability, it may "profer a defense that the accommodations named by the [Grievant] would impose an unnecessary hardship." *Id.* The City attempts to show that the requested accommodation creates an unnecessary hardship by first claiming that it would impose additional burdens on other employees, especially on garbage pickup. The City identified garbage collection as one of the general job duties of a Maintenance Worker II. (Tr. p. 29) However, this is a straw man argument in that the City's practice has been to avoid assigning older workers to that task, ostensibly as employees' physical abilities wear down. Other employees called by Grievant and Grievant himself all testified that they had done garbage collection early in their career with the City. (Tr. pp. 117, 131, 137) In fact, the City's DPW director testified that "garbage collectors can be on the job 10 to 15 years before they voluntarily transfer off to a different job within the department." (Tr. p. 91) Furthermore, when asked to identify who currently does garbage collection for the City, the DPW director stated that they are "typically Maintenance Worker III's" and identified employees classified as Maintenance Worker III, backed up by several Maintenance Worker I employees. *No current garbage collector identified by the DPW director*

is classified as a Maintenance Worker II. (Tr. pp. 99-100) It would appear, then, that garbage collection is not an essential duty of employees classified as a Maintenance Worker II.

Next, the City claims the Grievant's accommodation would impose a hardship on other DPW employees by potentially requiring them to cover for Grievant's lifting restrictions or to be reassigned to other duties to allow Grievant to avoid jobs requiring heavy lifting. (Tr. p. 93) Particularly, the City claims it is not required to reassign existing staff to allow Grievant to resume staffing the recycling center. (City Brief, p. 4, Tr. p. 93) And yet, the City created the Maintenance Worker position descriptions to give City management the flexibility to reassign employees as the department's needs dictated. (Tr. pp 20-23) Last, it claims that accommodating Grievant's condition on street repairs would require the purchase of additional equipment costing \$50,000 to \$100,000 to accomplish road repairs and tarring. However, there is no explanation of what that machine would do and why it's needed. The perceived need to purchase this equipment is speculative at best and is insufficient to support a finding of unnecessary hardship.

Most telling of all is the fact that Grievant returned to work after his back surgery, resumed his duties and continued working for two years, the last 10 months under the revised position descriptions that include the lifting requirement that Grievant is unable to meet because of his medical restrictions. The record is devoid of any evidence showing that Grievant's presence created any disruption or hardship on the City's operation in DPW. In fact, the DPW director admitted that the City had enough work in DPW to provide 40 hours of work on a weekly basis for Grievant even subject to his work restrictions. (Tr. pp. 111-112) Based on the evidence gathered in this matter, the City did not show that Grievant's requested accommodations would impose a hardship on the City.

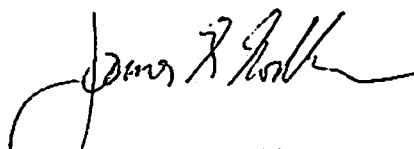
Conclusion

This case presents a difficult conundrum for a municipal employer in the employment atmosphere that exists today. Nonetheless, given the Grievant's limitations due to his back condition, his work history following his back surgery and the evidence that the City has historically provided for informal reassignments in light of employees' physical limitations, the

**CITY OF Sheboygan
Impartial Hearing Officer
Van Der Vaart Grievance Decision
City of Sheboygan IHO Hearing
April 27, 2015 – Page 11**

IHO finds that the Grievant has met his burden of demonstrating that he is a person with a disability, as defined in Wis. Stat. §111.32(8), has demonstrated that a reasonable accommodation exists through the long work history that Grievant had after his back surgery until his ankle injury and that the City failed to show that such an accommodation would create an unnecessary hardship. As a result, the IHO recommends that the Salaries and Grievances Committee restore the Grievant to his position as a Maintenance Worker II in the Streets Division of the Department of Public Works, or equivalent position within the department, subject to the lifting restrictions provided by his doctor.

Very truly yours,



James G. Godlewski
Impartial Hearing Officer



May 26, 2015

Ricky Van Der Vaart
6666 S. 12th Street
Sheboygan, WI 53081

Dear Ricky:

In accordance with the recommendation from the Salaries & Grievance committee, you returned to work in a full-time capacity as a Maintenance Worker II on Tuesday, May 26, 2015.

Back Wages: The City will pay you back wages as follows: \$17,192.96. These wages will be applied through the applicable payroll date January 1, 2015 – May 09, 2015, including 2 paid holidays. The normal pay for May 10, 2015 – May 23, 2015 will be issued on the June 5, 2015 payroll. Your back wages will be subject to all applicable tax withholdings and WRS contributions. Should you wish to contribute funds into a previously established savings account through payroll deduction, please contact Sandy Halvorsen directly. Sandy Halvorsen's direct phone number is (920) 459-4076.

In 2014, you were issued 40 hours vacation pay. This amount was a designated payout and, based on the decision, should be given credit for WRS contributions of 6.8%. This amount will also be applied to your payout.

Health & Dental Insurance: You have the option of returning to the City plan effective June 1, 2015. The family contribution is \$128.74 per month. However, it is my understanding that you would like to remain on your current plan for the remainder of the calendar year if the City would reimburse you the difference in what you would have paid for premiums from January vs. what you are actually paying with your wife's plan. The City is willing to reimburse you the difference in premium contribution. This reimbursement disqualifies you from the "opt-out" provision of \$1,200 per year, as you would need to choose either the opt out OR the reimbursement.

Please review the following calculations:

Your yearly family costs for medical insurance would have been 12 months x \$128.74 = \$1,544.88
Your costs through your wife's employer: \$144 x 24 payments or \$3,456 for the year. The difference is: \$1,911.12 The City needs supporting documents regarding your payment experience and future responsibility. Once received, we will issue you \$159.26 per month for medical insurance. For January – May, you would be issued \$796.30. Each month thereafter that you continue on that insurance, you would be issued \$159.26 with supporting documents.

The City will also follow the same reimbursement arrangement with dental insurance. Please provide the supporting documents and costs and the City will put together a payment schedule.

Open enrollment for City insurance occurs in November. If you wish to return to the City insurance programs with a January 1, 2016 date, you may enroll in November 2015.

Paid Time Off (PTO): You will be credited with the same amount of PTO you would have otherwise qualified for in January 2015.

Discretionary PTO: You will be credited with 80 hours of Discretionary PTO. This benefit is credited into an employee's accrual (PTO bank) in January but it is actually earned by working during the current year. As of this writing, you will be considered to have earned 4 full days or 32 hours for January – April, 2015. At the end of May, you will have earned 40 hours.

Vacation PTO: Vacation is an earned benefit, earned by working the previous year. Partial year worked results in partial vacation. You are not eligible for 2015 vacation. However, in accordance with the decision for the Salaries & Grievance committee, the timeframe of January – May, 2015 will be counted as earned hours towards 2016 vacation. In addition, you have no loss in seniority and the vacation will be issued vacation in 2016 according to the schedule of benefits and your seniority date.

Holiday PTO: As listed above, you will be issued 8 hours of holiday pay for New Year's Day 2015 and Good Friday 2015. Memorial Day will also be a paid holiday and should be included in your time card entry starting the week of Sunday, May 24, 2015. This will be included on the June 19, 2015 payroll (remember there is a two-week hold-back period for payroll).

Sincerely,

Sandy Rohrick
Human Resources Director

Cc: Employee File

II

4.2

R. O. No. 194 - 15 - 16. By CITY CLERK. November 2, 2015.

Submitting a claim from Melissa Kaule for alleged damages to her vehicle when a City tree split in half and fell on her parked car.

Finance

City Clerk

4.3.5.5

III

104

DATE RECEIVED 10-19-15

RECEIVED BY MD

CLAIM NO. 11-15

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

- 1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
- 2. Attach and sign additional supportive sheets, if necessary.
- 3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: MELISSA R. KAULK

2. Home address of Claimant: 399 LAKEWOOD CT, KOHLER, WI 53044

3. Home phone number: 315-651-6883 (MOBILE)

4. Business address and phone number of Claimant: WORK FROM HOME. (MOBILE PHONE)

5. When did damage or injury occur? (date, time of day) SEPTEMBER 12 2015 / AFTERNOON

6. Where did damage or injury occur? (give full description) OUR CAR WAS PARKED ON LINCOLN AVENUE INSHEBOYGAN DURING THE AFTERNOON OF SEPT 12 2015. THE ROOF WAS CRUSHED BY A CITY ^{PARKWAY} TREE AND A HOLE WAS CREATED, MAKING

7. How did damage or injury occur? (give full description) THE CAR UNDRIVABLE.

THE DAMAGE TO OUR CAR WAS CAUSED BY A CITY ^{PARKWAY} TREE SPLITTING IN HALF AND FALLING ONTO OUR CAR PARKED ON THE ROAD. POLICE ARRIVED ON SCENE, CALLED SHEBOYGAN DPW. DPW LIFTED BRANCH OFF CAR AND REMOVED DEBRIS W/ CHAINSAW TO ALLOW FOR CAR TO BE TOWED.

8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:

(a) Name of such officer or employee, if known: N/A

(b) Claimant's statement of the basis of such liability: N/A

9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:

(a) Public property alleged to be dangerous: CITY PARKWAY TREE THAT WAS ROTTED @ THE JUNCTION OF TWO MAIN ARTERY BRANCHES

(b) Claimant's statement of basis for such liability: CITY PARKWAY TREE SPLIT IN HALF ON A DAY

THAT WASN'T WINDY OR STORMING, IT WAS A PERFECTLY CALM SATURDAY AFTERNOON.

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

IF THERE WAS NOT ANY PHYSICAL INJURY TO A PERSON.

IF THE CAR/MINIVAN ~~THE~~ ROOF WAS CRUSHED, A HOLE WAS CREATED, AND THE INTERIOR OF THE CAR WAS DAMAGED.

11. Name and address of any other person injured: _____

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ 4977.47

Property: \$ _____

Personal injury: \$ _____

Other: (Specify below) \$ _____

TOTAL \$ 4977.47

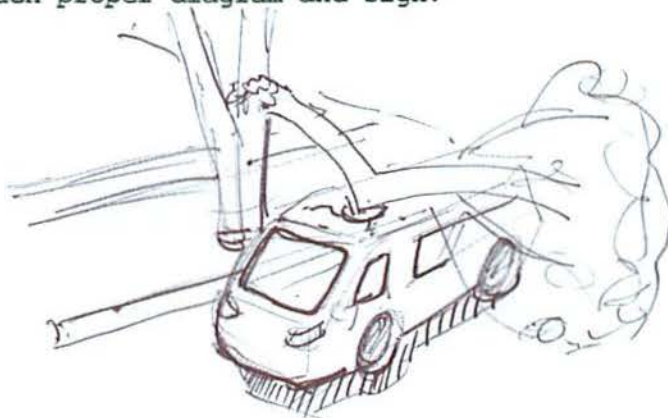
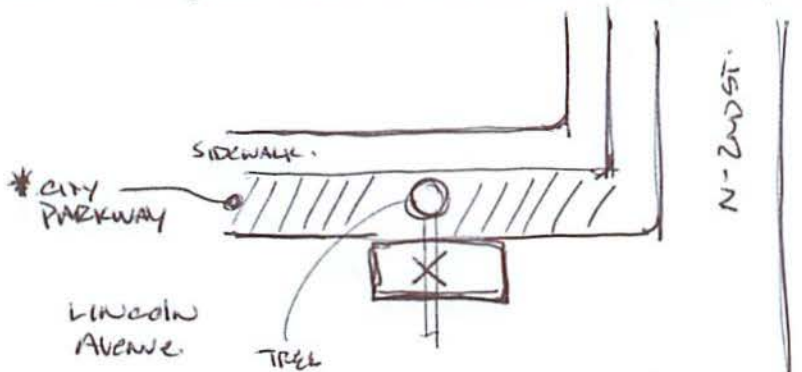
Damaged vehicle (if applicable)

Make: HONDA Model: ODYSSEY Year: 2012 Mileage: 63,090

Names and addresses of witnesses, doctors and hospitals: _____

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.



SIGNATURE OF CLAIMANT

[Handwritten signature]

DATE

10/19/2015

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED 10-19-15

RECEIVED BY MD

CLAIM NO. 11-15

CLAIM

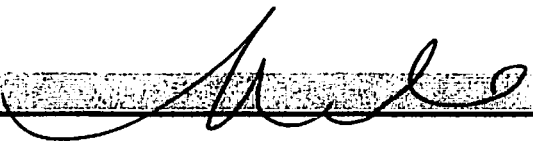
Claimant's Name: MELISSA F KAUF
Claimant's Address: 399 LAKEWOOD CT
KOHLER, WI 53044
Claimant's Phone No. 315-651-6883

Auto: \$ 4977.47
Property: \$ _____
Personal Injury: \$ _____
Other (Specify below): \$ _____
TOTAL \$ 4977.47

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 4977.47.

SIGNED  DATE: 10/19/2015
ADDRESS: 399 Lakewood Ct.
Kohler, WI 53044

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.

MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

GEICO

METRO MILWAUKEE

partners.geico.com/gvbps/Logon.aspx

VISIT US ONLINE AT GEICO.COM

MDELAPASQUA@GEICO.COM

ESTIMATE #1

Phone: (262) 416-8932

Fax: (844) 276-4213

Claim #:
Workfile ID:0348960470101045-01
91eb3dac**Estimate of Record**Written By: MATTHEW DE LA PASQUA, 9/18/2015 4:39:04 PM
Adjuster: DE LA PASQUA, MATTHEW

Insured:	Melissa Kaule	Owner Policy #:	4132198377	Claim #:	0348960470101045-01
Type of Loss:	Comprehensive	Date of Loss:	09/12/2015 07:00 PM	Days to Repair:	7
Point of Impact:	13 Rollover	Deductible:	500.00		

Owner (Insured):	Inspection Location:	Appraiser Information:	Repair Facility:
Melissa Kaule 399 Lakewood Ct Kohler, WI 53044 (315) 657-6883 Evening	residence 399 Lakewood Ct Kohler, WI 53044 Other (315) 657-6883 Day	MDELAPASQUA@GEICO.COM	Owner's Choice

VEHICLE

Year:	2012	Color:	GRAY Int:	License:	453-XBF	Production Date:	
Make:	HOND	Body Style:	4D VAN	State:	WI	Odometer:	63009
Model:	ODYSSEY EX	Engine:	6-3.5L-FI	VIN:	5FNRL5H41CB143418	Condition:	

TRANSMISSION

Automatic Transmission

POWER

Power Steering

Power Brakes

Power Windows

Power Locks

Power Mirrors

Heated Mirrors

Power Driver Seat

DECOR

Dual Mirrors

Privacy Glass

Console/Storage

CONVENIENCE

Air Conditioning

Intermittent Wipers

Tilt Wheel

Cruise Control

Rear Defogger

Keyless Entry

Alarm

Message Center

Steering Wheel Touch Controls

Rear Window Wiper

Telescopic Wheel

Climate Control

Dual Air Condition

Dual Power Sliding Doors

Home Link

RADIO

AM Radio

FM Radio

Stereo

Search/Seek

CD Player

Auxiliary Audio Connection

SAFETY

Drivers Side Air Bag

Passenger Air Bag

Anti-Lock Brakes (4)

4 Wheel Disc Brakes

Traction Control

Stability Control

Front Side Impact Air Bags

Head/Curtain Air Bags

Hands Free Device

SEATS

Cloth Seats

3rd Row Seat

Retractable Seats

Captain Chairs (2)

WHEELS

Aluminum/Alloy Wheels

PAINT

Clear Coat Paint

OTHER

Rear Spoiler

Estimate of Record

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

Line	Oper	Description	Qty	Extended Price \$	Labor	Paint
1		ROOF				
2	Repl	Roof bow	1	56.72	1.2	
3	*	Repl LKQ roof assy; w/o sunroof +25%	1	631.25	23.0	3.6
4		Add for Clear Coat				1.4
5	*	Repl Headliner w/o sunroof, EX gray	1	973.25	<u>Incl.</u>	
6		MISCELLANEOUS OPERATIONS				
7	#	Rpr Cover Car Complete			0.2	
8	#	Repl Restore Corrosion Protection	1	10.00	0.2	
9		OTHER CHARGES				
10	#	E.P.C.	1	3.00		
SUBTOTALS				1,674.22	24.6	5.0

NOTES

Prior Damage Notes:

Prior Unrelated Damage Notes:

Front Bumper: None
 LT Fender: DEEP SCRATCH
 Hood: None
 Lt Front Door: SCRATCH
 Lt Rear Door: SCRATCH
 Roof: None
 Lt Quarter Panel: SCRATCHES/SCRAPE
 Decklid/Tailgate: None
 Rear Bumper: SCRATCHES
 Interior: None
 . None
 Rt Fender: None
 Glass: None
 Rt Front Door: SCRATCHES
 Rt Rear Door: SCRATCHES
 Sunroof: None
 Rt Quarter Panel: SCRATCHES
 Rear Lamps: None
 Back Glass: None
 Tires: None

Estimate of Record

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

ESTIMATE TOTALS

Category	Basis	Rate	Cost \$
Parts			1,671.22
Body Labor	24.6 hrs @	\$ 56.00 /hr	1,377.60
Paint Labor	5.0 hrs @	\$ 56.00 /hr	280.00
Paint Supplies	5.0 hrs @	\$ 36.00 /hr	180.00
Other Charges			3.00
Subtotal			3,511.82
Sales Tax	\$ 3,511.82 @	5.6000 %	196.66
Total Cost of Repairs			3,708.48
Total Adjustments			500.00
Net Cost of Repairs			3,208.48

This is not an authorization to repair.

All GEICO customers have the right to have their vehicle repaired in the shop of their choice.

No Supplement will be honored unless authorized by GEICO.

NOTICE: Vehicles constructed of special metals may require the use of specialized welding and bonding equipment. Proper measuring and structural repair systems are required on today's vehicle to accurately accomplish vehicle repairs. Make sure your shop has the proper equipment to repair your vehicle.

ALTERNATE PARTS DISCLAIMER:

IF A QUALITY REPLACEMENT PART (A/M, LKQ, RECOND OR OPT OEM) APPEARS ON THIS ESTIMATE, IT INDICATES THAT THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF ONE OR MORE CRASH PARTS SUPPLIED BY A SOURCE OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. GUARANTEES, IF ANY, APPLICABLE TO THESE REPLACEMENT CRASH PARTS ARE PROVIDED BY THE PART MANUFACTURER OR DISTRIBUTOR RATHER THAN BY THE MANUFACTURER OF YOUR VEHICLE.

***IN ADDITION TO ANY SUCH GUARANTEES, GEICO PROVIDES THE FOLLOWING:

****OWNER LIMITED GUARANTEE**** WE GUARANTEE THAT ALL QUALITY REPLACEMENT BODY PARTS (PARTS NOT MANUFACTURED BY THE MANUFACTURER) IDENTIFIED ON YOUR ESTIMATE, ARE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP AND MEET GENERALLY ACCEPTED INDUSTRY STANDARDS. THIS PARTS AND LABOR GUARANTEE WILL BE IN EFFECT FOR AS LONG AS YOU OWN THE VEHICLE DESCRIBED IN THE ESTIMATE. THIS GUARANTEE COVERS THE COST OF THE PART, LABOR TO INSTALL, AND INCIDENTALS SUCH AS PAINT AND MATERIALS AND IS SPECIFICALLY LIMITED TO THOSE ITEMS. THIS GUARANTEE DOES NOT COVER LOSS OR DAMAGE THAT IS UNRELATED TO DEFECTS IN THE QUALITY REPLACEMENT PARTS. THIS IS NOT TRANSFERABLE. IF ANY QUALITY REPLACEMENT PARTS ARE DEFECTIVE IN EITHER MATERIAL OR WORKMANSHIP, CONTACT YOUR LOCAL GEICO REPRESENTATIVE.

MOTOR VEHICLE REPAIR PRACTICES ARE REGULATED BY CHAPTER ATCP 132, WIS. ADM. CODE, ADMINISTERED BY THE BUREAU OF CONSUMER PROTECTION, WISCONSIN DEPT. OF AGRICULTURE, TRADE AND CONSUMER PROTECTION, P.O. BOX 8911, MADISON, WISCONSIN 53708-8911.

Estimate of Record

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide ARG4429, CCC Data Date 9/9/2015, and potentially other third party sources of data; and (b) the parts presented are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2016 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category.
X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category.
M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel.
CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel.
HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non
Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace.
R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel.
Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway
Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

Estimate of Record

2012 HOND ODYSSEY EX 4D VAN 6-3.SL-FI GRAY

ALTERNATE PARTS SUPPLIERS

Line	Supplier	Description	Price
3	LKQ Smart Parts N4079 Highway E Hustisford WI 53034 (920) 349-3236	#~102051421 LKQ roof assy; w/o sunroof +25% Roof Assembly BLK,4DR,W/OSUN,EX EX,S#\$WZ697 Quote: 37727963 Expires: 11/01/15	\$ 505.00

GEICO

WISCONSIN

For supplement requests copy the link below
partners.geico.com/gvbps/Logon.aspx

PO BOX 1231
MANITOWOC, WI 54221
Phone: (920) 412-8102

ESTIMATE #2

Claim #: 0348960470101045-01
Workfile ID: 91eb3dac

Supplement of Record 1 with Summary

Written By: JEFFREY SCHMITZ, 9/25/2015 2:05:28 PM
Adjuster: DE LA PASQUA, MATTHEW

Insured: Melissa Kaule Owner Policy #: 4132198377 Claim #: 0348960470101045-01
Type of Loss: Comprehensive Date of Loss: 09/12/2015 07:00 PM Days to Repair: 7
Point of Impact: 13 Rollover Deductible: 500.00

Owner (Insured): Melissa Kaule
399 Lakewood Ct
Kohler, WI 53044
(315) 657-6883 Evening

Inspection Location: residence
399 Lakewood Ct
Kohler, WI 53044
Other
(315) 657-6883 Day

Appraiser Information:
(920) 412-8102

Repair Facility:
DICK BRANTMEIER FORD
3624 KOHLER MEMORIAL DR
SHEBOYGAN, WI 53081
(920) 458-6111 Evening
391332753 Federal ID

VEHICLE

Year: 2012 Color: GRAY Int: License: 453-XBF Production Date:
Make: HOND Body Style: 4D VAN State: WI Odometer: 63009
Model: ODYSSEY EX Engine: 6-3.5L-FI VIN: 5FNRL5H41CB143418 Condition:

TRANSMISSION Air Conditioning **RADIO** Head/Curtain Air Bags
Automatic Transmission Intermittent Wipers AM Radio Hands Free Device
POWER Tilt Wheel FM Radio **SEATS**
Power Steering Cruise Control Stereo Cloth Seats
Power Brakes Rear Defogger Search/Seek 3rd Row Seat
Power Windows Keyless Entry CD Player Retractable Seats
Power Locks Alarm Auxiliary Audio Connection Captain Chairs (2)
Power Mirrors Message Center **SAFETY** **WHEELS**
Heated Mirrors Steering Wheel Touch Controls Drivers Side Air Bag Aluminum/Alloy Wheels
Power Driver Seat Rear Window Wiper Passenger Air Bag **PAINT**
DECOR Telescopic Wheel Anti-Lock Brakes (4) Clear Coat Paint
Dual Mirrors Climate Control 4 Wheel Disc Brakes **OTHER**
Privacy Glass Dual Air Condition Traction Control Rear Spoiler
Console/Storage Dual Power Sliding Doors Stability Control
CONVENIENCE Home Link Front Side Impact Air Bags

Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
1		ROOF					
2	Repl	Roof bow	62148TK8A00ZZ	1	56.72	1.2	
3	S01 Repl	Roof panel w/o sunroof	62100TK8A00ZZ	1	1,464.90	23.0	3.6
		NOTE: time required to use liq roof is would be more than oe.					
4	S01	Add for Clear Coat					1.4
5	* S01 Repl	Headliner w/o sunroof, EX gray	83201TK8A32ZA	1	973.25	Incl.	
		NOTE: NO BETTERMENT TAKEN DUE TO HEADLINER IN EXCELLENT SHAPE.					
6		MISCELLANEOUS OPERATIONS					
7	# Rpr	Cover Car Complete				0.2	
8	# Repl	Restore Corrosion Protection		1	10.00	0.2	
9	# S01 Repl	Glass Installation Kit		1	25.00		
		NOTE: required to reinstall windshield					
10		OTHER CHARGES					
11	#	E.P.C.		1	3.00		
SUBTOTALS					2,532.87	24.6	5.0

NOTES

Prior Damage Notes:
 Prior Unrelated Damage Notes:

Front Bumper: None
 LT Fender: DEEP SCRATCH
 Hood: None
 Lt Front Door: SCRATCH
 Lt Rear Door: SCRATCH
 Roof: None
 Lt Quarter Panel: SCRATCHES/SCRAPE
 Decklid/Tailgate: None
 Rear Bumper: SCRATCHES
 Interior: None
 . None
 Rt Fender: None
 Glass: None
 Rt Front Door: SCRATCHES
 Rt Rear Door: SCRATCHES
 Sunroof: None
 Rt Quarter Panel: SCRATCHES
 Rear Lamps: None
 Back Glass: None
 Tires: None

Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

ESTIMATE TOTALS

Category	Basis	Rate	Cost \$
Parts			2,529.87
Body Labor	24.6 hrs @	\$ 56.00 /hr	1,377.60
Paint Labor	5.0 hrs @	\$ 56.00 /hr	280.00
Paint Supplies	5.0 hrs @	\$ 36.00 /hr	180.00
Other Charges			3.00
Subtotal			4,370.47
Sales Tax	\$ 4,370.47 @	5.6000 %	244.75
Total Cost of Repairs			4,615.22
Total Adjustments			500.00
Net Cost of Repairs			4,115.22

Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

SUPPLEMENT SUMMARY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Paint
Deleted Items							
3	*	Repl LKQ roof assy; w/o sunroof +25%	~102051421	1	-631.25	-23.0	-3.6
4		Add for Clear Coat					-1.4
Added Items							
3	S01	Repl Roof panel w/o sunroof NOTE: time required to use lkq roof is would be more than ce.	62100TK8A00ZZ	1	1,464.90	23.0	3.6
4	S01	Add for Clear Coat					1.4
9	#	S01 Repl Glass Installation Kit NOTE: required to reinstall windshield		1	25.00		
SUBTOTALS					858.65	0.0	0.0

NOTES

Prior Damage Notes:
 Prior Unrelated Damage Notes:

Front Bumper: None
 LT Fender: DEEP SCRATCH
 Hood: None
 Lt Front Door: SCRATCH
 Lt Rear Door: SCRATCH
 Roof: None
 Lt Quarter Panel: SCRATCHES/SCRAPE
 Decklid/Tailgate: None
 Rear Bumper: SCRATCHES
 Interior: None
 . None
 Rt Fender: None
 Glass: None
 Rt Front Door: SCRATCHES
 Rt Rear Door: SCRATCHES
 Sunroof: None
 Rt Quarter Panel: SCRATCHES
 Rear Lamps: None
 Back Glass: None
 Tires: None

Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

TOTALS SUMMARY

Category	Basis	Rate	Cost \$
Parts			858.65
Body Labor			0.00
Paint Labor	5.0 hrs @	\$ 56.00 /hr	280.00
Additional Supplement Labor			-280.00
Paint Supplies	5.0 hrs @	\$ 36.00 /hr	180.00
Additional Supplement Materials/Supplies			-180.00
Subtotal			858.65
Sales Tax	\$ 858.65 @	5.6000 %	48.08
Additional Supplement Taxes			0.01
Total Supplement Amount			906.74
NET COST OF SUPPLEMENT			906.74

CUMULATIVE EFFECTS OF SUPPLEMENT(S)

Estimate	3,708.48	MATTHEW DE LA PASQUA
Supplement S01	906.74	JEFFREY SCHMITZ
Workfile Total:	\$ 4,615.22	
TOTAL ADJUSTMENTS:	\$ 500.00	
NET COST OF REPAIRS:	\$ 4,115.22	

Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

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Supplement of Record 1 with Summary

2012 HOND ODYSSEY EX 4D VAN 6-3.5L-FI GRAY

Estimate based on MOTOR CRASH ESTIMATING GUIDE and potentially other third party sources of data. Unless otherwise noted, (a) all items are derived from the Guide ARG4429, CCC Data Date 9/9/2015, and potentially other third party sources of data; and (b) the parts presented are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blemished" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) indicates that the parts and/or labor data provided by third party sources of data may have been modified or may have come from an alternate data source. Tilde sign (~) items indicate MOTOR Not-Included Labor operations. The symbol (<>) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM, A/M or NAGS. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2016 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blnd=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

BRANTMEIER FORD BODY SHOP

3624 KOHLER MEMORIAL DRIVE
SHEBOYGAN WI. 53081
PHONE: 920-458-6111
WWW.DICKBRANTMEIER.COM

ACTUAL COST

11072KAU

RYAN KAULE 399 LAKEWOOD CT KOHLER WI 53044				VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.
				5FNRL5H41CB143418		63090	10/13/15	11072
				YEAR	MAKE	MODEL	COLOR	TAG NO.
	12	HONDA	ODYSSEY EX	GRAY	00000			
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS	
038483	453XBF	920-698-7262	- -		00/00/00	641	CASH	
CUST. LABOR RATE	DELIV. DATE	DELIV. MILBS	MILEAGE IN	DATE IN	IN-SRV DATE			
	00/00/00		63090	09/22/15	00/00/00			

LINE	OP. CODE	FAIL-CD	TECH.	HOURS/QTY	TYPE	AMOUNT
A	Com Customer states replace roof					
			B12		C	1497.30
	IH-62100TK8A00ZZ		ROOF PANEL	1	C	1464.90
	IH-83201TK8A32ZA		HEADLINER	1	C	973.25
	PO# PO# 41175		MARTIN AUTOMOTIVE	1	C	345.00
Line Total.....						4280.45

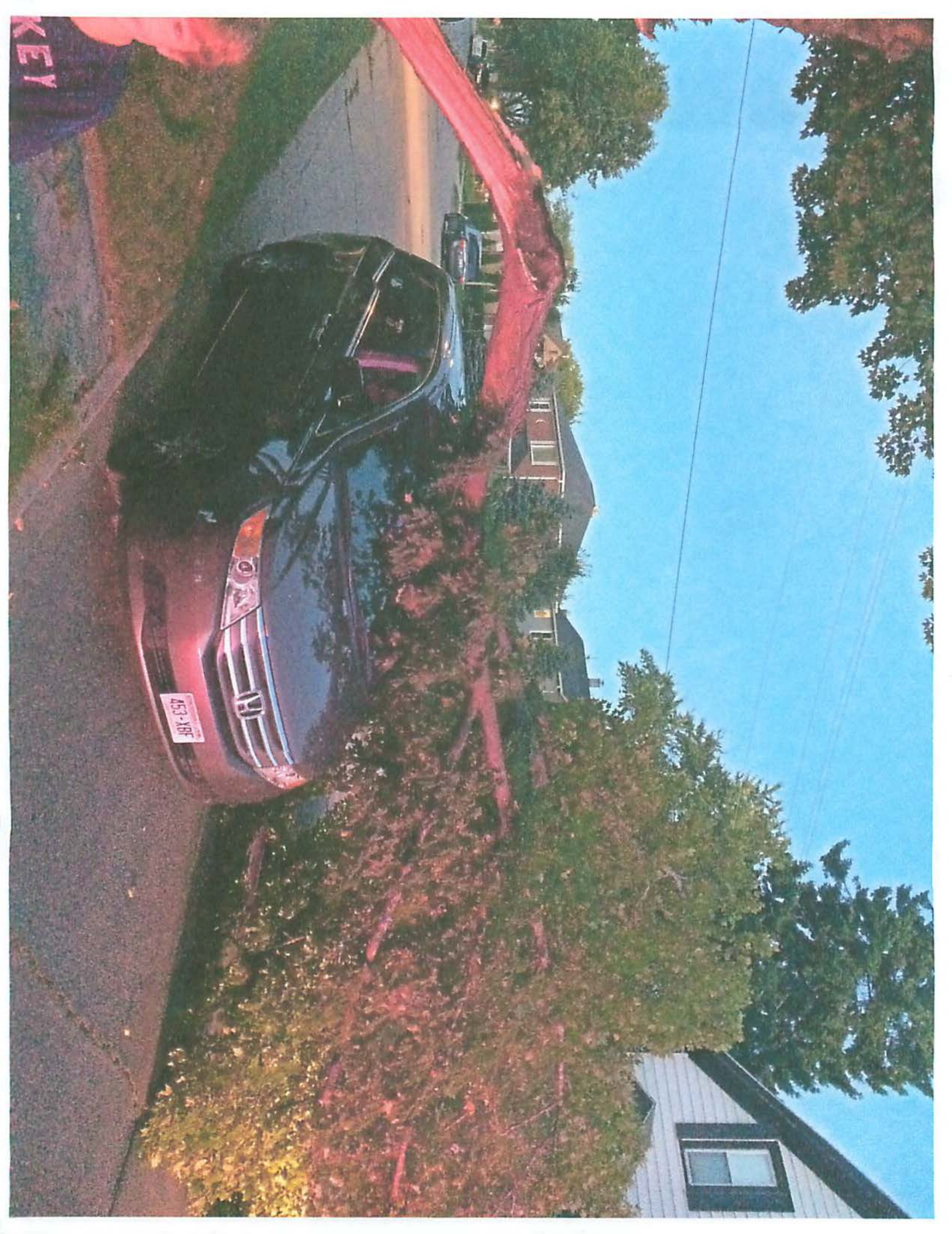
B	Com Customer states REFINISH					
	Cor REFINISH					
	PAINTE		B12		C	280.00
Code	Misc Charge		Inv#/Info	Days	Hours	
OTH	PAINT AND MATERIALS				1.0 C	180.00
Line Total.....						460.00

Labor	1777.30
Parts	2438.15
Sublets	345.00
Sales Tax	237.02
Misc Charge	180.00
TOTAL-CUST-CASH	4977.47

CUSTOMER COPY - PAGE 01

Printed: 10/13/2015 @ 15:33

<p style="text-align: center; font-size: small;">STATEMENT OF DISCLAIMER</p> <p style="font-size: x-small;">The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.</p> <p style="text-align: center; margin-top: 20px;">_____</p> <p style="text-align: center; font-size: x-small;">CUSTOMER SIGNATURE</p>	<p style="font-size: x-small;">On behalf of servicing dealer, I hereby certify that the information contained hereon is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.</p> <p style="text-align: center; margin-top: 20px;">_____</p> <p style="text-align: center; font-size: x-small;">(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)</p>
---	---





II

4.2

R. O. No. 208 - 15 - 16. By CITY CLERK. November 16, 2015.

Submitting a claim from Rosemary Mallmann for alleged injuries when she fell and sprained her ankle at the intersection on Carmen Ave. where there was construction.

Finance

City Clerk

II

DATE RECEIVED _____

RECEIVED BY _____

MMD
13-15

CLAIM NO. _____

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
2. Attach and sign additional supportive sheets, if necessary.
3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: Rosemary Mallmann
2. Home address of Claimant: 1216 Carmen Ave
3. Home phone number: 920-452-1960
4. Business address and phone number of Claimant: 5300 State Hwy 42 Sheboygan
920-565-5518
5. When did damage or injury occur? (date, time of day) 7/7/15 11:00 pm
6. Where did damage or injury occur? (give full description) Northwest corner
of 15th & Carmen Ave
7. How did damage or injury occur? (give full description) I knew there was recent
construction there because intersection on Carmen Ave. had been
barricaded but they were no longer there so I thought it was safe.
After passing barricade in street at corner I thought it was safe.
Next thing I know I fell in a hole.
8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:
 - (a) Name of such officer or employee, if known: City worker
 - (b) Claimant's statement of the basis of such liability: Negligent in placing
barricades. It is city worker's duty to place barricades
to prevent injury.
9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:
 - (a) Public property alleged to be dangerous: _____
 - (b) Claimant's statement of basis for such liability: _____

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

Severe sprained ankle

11. Name and address of any other person injured:

None

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ _____

Property: \$ _____

Personal injury: \$ 1,500.

Other: (Specify below Medical \$ 1,267. Attached

ills
TOTAL

\$ 2,767.

Damaged vehicle (if applicable)

Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: _____

Tom Mallman 1216 Carmen Ave Sheboygan

Columbia St. Mary's Marcho Clinic - Dr. Laura Field 1703 N. Taylor St. Sheboygan

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.

SIGNATURE OF CLAIMANT

Rosemary Mallman

DATE

11/5/15

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED 11-5-15

RECEIVED BY MMJ

CLAIM NO. 1315

CLAIM

Claimant's Name:	<u>Rosemary Mallmann</u>	Auto	\$	<u> </u>
Claimant's Address:	<u>1216 Carmen Ave</u>	Property	\$	<u> </u>
	<u>Sheboygan, WI 53081</u>	Personal Injury	\$	<u>4500</u>
Claimant's Phone No.	<u>920-452-1960</u>	Other (Specify below)	\$	<u>1,267. Attached</u>
		<u>Medical bills</u>		
		TOTAL	\$	<u>2,767</u>

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 2,767.

SIGNED Rosemary Mallmann DATE: 11/5/15

ADDRESS: 1216 Carmen Ave
Sheboygan, WI 53081

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.
MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081





This was next nite
7/18/15



II

4.4

R. O. No. 210 - 15 - 16. By CITY CLERK. November 16, 2015.

Submitting a claim from Douglas Leppanen for alleged injuries when he was cycling westbound on bike path under the 14th St. Bridge and got caught up in construction netting.

Finance

City Clerk

1/2

1/2

DATE RECEIVED

11-10-15

RECEIVED BY

Meredith DeBruin

CLAIM NO.

15-15

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

#111111

1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
2. Attach and sign additional supportive sheets, if necessary.
3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: Douglas Leppanen
2. Home address of Claimant: 2638 N. 20th Street, Sheboygan
3. Home phone number: (920) 917-8190
4. Business address and phone number of Claimant: 601 N. 5th St, Sheboygan, WI 53081 (920) 458-2111
5. When did damage or injury occur? (date, time of day) July 17, 2015 approx 8 p.m.
6. Where did damage or injury occur? (give full description) City bike path under the 19th Street Bridge in Sheboygan.
7. How did damage or injury occur? (give full description) Cycling westbound on path, became tangled in construction netting hanging from 19th St. bridge. As a result, fell to the left onto chain link fence and received cut to left arm.
8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:
 - (a) Name of such officer or employee, if known: Director of Dept. of Public Works
 - (b) Claimant's statement of the basis of such liability: Negligent failure to provide warning to dangerous condition; failure to provide barrier to path or to monitor the area.
9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:
 - (a) Public property alleged to be dangerous: Bike path under the 19th Street Bridge in the City of Sheboygan
 - (b) Claimant's statement of basis for such liability: see 8(b) above.

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

6.00 on laceration to left forearm; 10 sutures;
permanent scar

11. Name and address of any other person injured: _____

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ _____

Property: \$ _____

Personal injury: \$ 7,500

Other: (Specify below) \$ _____

TOTAL \$ 7,500

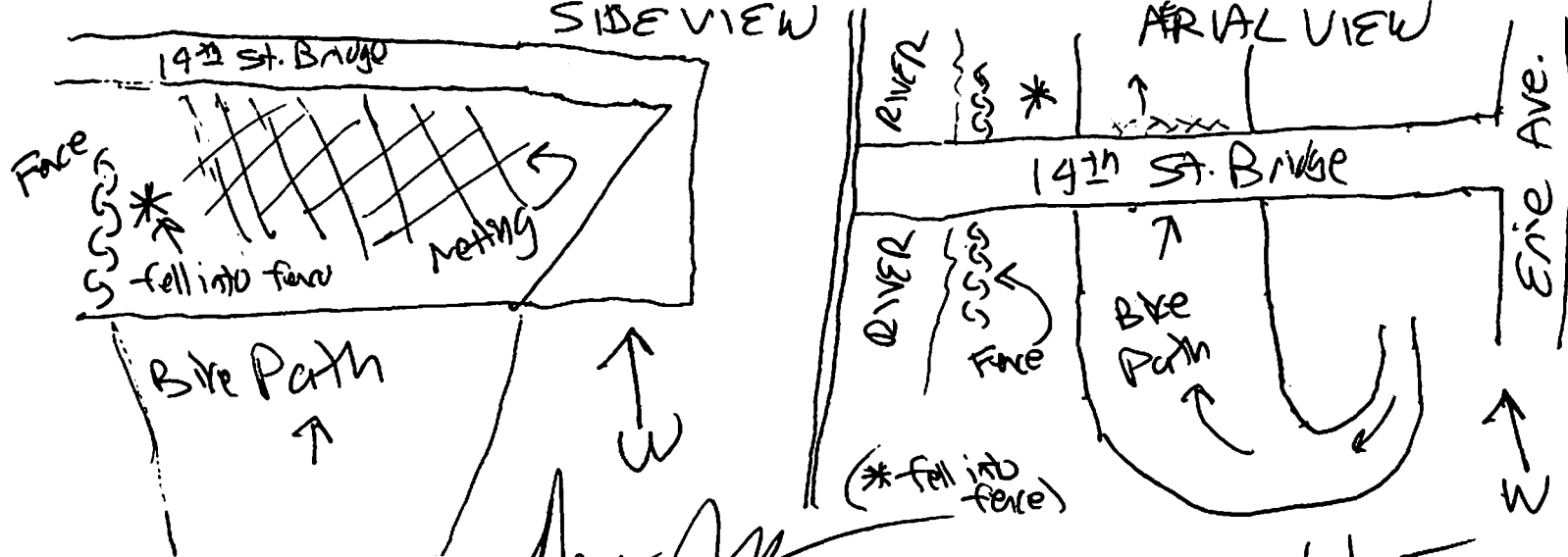
Damaged vehicle (if applicable)

Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: for cycling accident -
officer M. Lynvean, Shabagan Police; Dr. Kolar, St. Nicholas hospital;
Dr. Martins, St. Nicholas; Martha Zeppen, 2638 N. 20th St, Shabagan

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.



SIGNATURE OF CLAIMANT [Signature] DATE 11/10/15

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED 11-10-15

RECEIVED BY Meredith DeBruin

CLAIM NO. 15-15

CLAIM

Claimant's Name: Douglas Leppanen
Claimant's Address: 2038 N. 20th Street
Sheboygan, WI 53083
Claimant's Phone No. (920) 917-8190

Auto \$ _____
Property \$ _____
Personal Injury \$ 7500
Other (Specify below) \$ _____
TOTAL \$ 7500

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 7,500.

Hospital Charges - 2110.40
Doctor Charges - 1057.00
Suture Removal - 153.00
Care Supplies - 13.46
Estimate/cosmetic - 2552.00
consultation fee - 60.00
General damages - 1554.14
TOTAL \$7500.00

SIGNED *Douglas Leppanen* DATE: 11/10/15

ADDRESS: 2363 N. 20th Street, Sheboygan, WI 53083

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.
MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

Narrative**Sheboygan City Police Department
Investigation Narrative**

Squad 13, no video, photographs yes, no evidence, no proxy, no custody form.

On 7-18-15, I, Ofc Wynveen, was sent to speak with Douglas L Leppanen, 3-3-56, 2638 N 20th, 920-917-8190, about his injury when he was riding his bicycle on the bike path under the 14th St bridge. Douglas said he was riding west bound on the bike path that goes under the old rail road bridge and the 14th St bridge, when he got caught in some type of netting. He fell off his bike and sustained an injury to his left forearm, requiring stitches. He explained the general area and wanted us to be aware of the safety hazard. I explained that I remembered signs posted before the construction stating the path was closed. I went to the path and noticed there were no signs on the east side of the path stating the path was closed or construction ahead. When I reached the 14th St bridge, I noticed there was netting attached to the bottom of the bridge because of the construction on the roadway of the bridge. When I walked on the path, my head hit the netting. A section had been ripped off, assuming this was what Douglas got caught in. I noticed there was a sign at the west end where the path starts on Ontario Ave. I put police tape on the east side. I attached it to two different light poles in different locations. I was not able to attach it to the brick wall to totally block off west bound traffic. I asked Sgt Kuszynski to notify DPW of the need for barricades. He advised he was going to e-mail DPW the request.

End of report. 406MJW

II

3.2

R. O. No. 246 - 15 - 16. By CITY CLERK. January 18, 2016.

Submitting a claim from Angela Ramey for alleged damages to her basement when the sewer backed up.

France

City Clerk

DATE RECEIVED 1-4-16

RECEIVED BY MD

CLAIM NO. 17-15

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
2. Attach and sign additional supportive sheets, if necessary.
3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: Angela Ramey
2. Home address of Claimant: 514 N 26th St Sheboygan, WI 53081
3. Home phone number: 920-470-1071
4. Business address and phone number of Claimant: _____

5. When did damage or injury occur? (date, time of day) 12/8/15 approx 5:50 - 6:30 PM

6. Where did damage or injury occur? (give full description) Basement

7. How did damage or injury occur? (give full description) Sewage water back-up. standing sewage in 1/2 of basement. city was called.

8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:

(a) Name of such officer or employee, if known: _____

(b) Claimant's statement of the basis of such liability: _____

9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:

(a) Public property alleged to be dangerous: _____

(b) Claimant's statement of basis for such liability: _____

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

NO Injuries - Damage to personal effects. Photo Albums, records, Keepsakes, Books

11. Name and address of any other person injured: _____

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ _____

Property: \$ 100.00

Personal injury: \$ _____

Other: (Specify below) \$ 135.50

TOTAL

\$ 235.50

* we have a 12mo. baby & felt that the fumes were dangerous. The smell was unbearable so we stayed at a Hotel for one night.

Damaged vehicle (if applicable)

Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: _____

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.

FYI

(Clark Kleinhans (-leadman, sewer & Recycling) was the one who came out & worked on the main line)

SIGNATURE OF CLAIMANT *[Signature]*

DATE 12-18-15

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED _____

RECEIVED BY MD

CLAIM NO. 17-15

CLAIM

Claimant's Name: Angela Ramey
Claimant's Address: 514 N. 26th St
Sheboygan, WI 53081
Claimant's Phone No. 920-470-1071

Auto \$ _____
Property \$ 100.00
Personal Injury \$ _____
Other (Specify below) \$ 135.50
TOTAL \$ 235.50

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 235.50.

SIGNED Angela Ramey DATE: 12-18-15
ADDRESS: 514 N. 26th St Sheboygan, WI 53081

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.
MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

**Grandstay Residential Suites
708 Niagara Ave.
Sheboygan, WI 53081
920-208-8000
Property ID: 6303**

Folio#: 89434	CRS # A6SKCSKBHKKH_1
Ramey, Angela	
620 S 8th St #202	
SHEBOYGAN, WI 53081	
Company: Nightly	

Room: 418
Arrival: 12/8/2015
Departure: 12/9/2015

Trans #	Date	Posting Description	Charges	Payments	Balance
414526	12/8/2015	Rm: 418 Nightly	\$119.90	\$0.00	\$119.90
414527	12/8/2015	Sales Tax	\$6.00	\$0.00	\$125.90
414528	12/8/2015	Lodging Tax	\$9.60	\$0.00	\$135.50
414647	12/9/2015	Visa	\$0.00	\$135.50	\$0.00
				Balance:	\$0.00

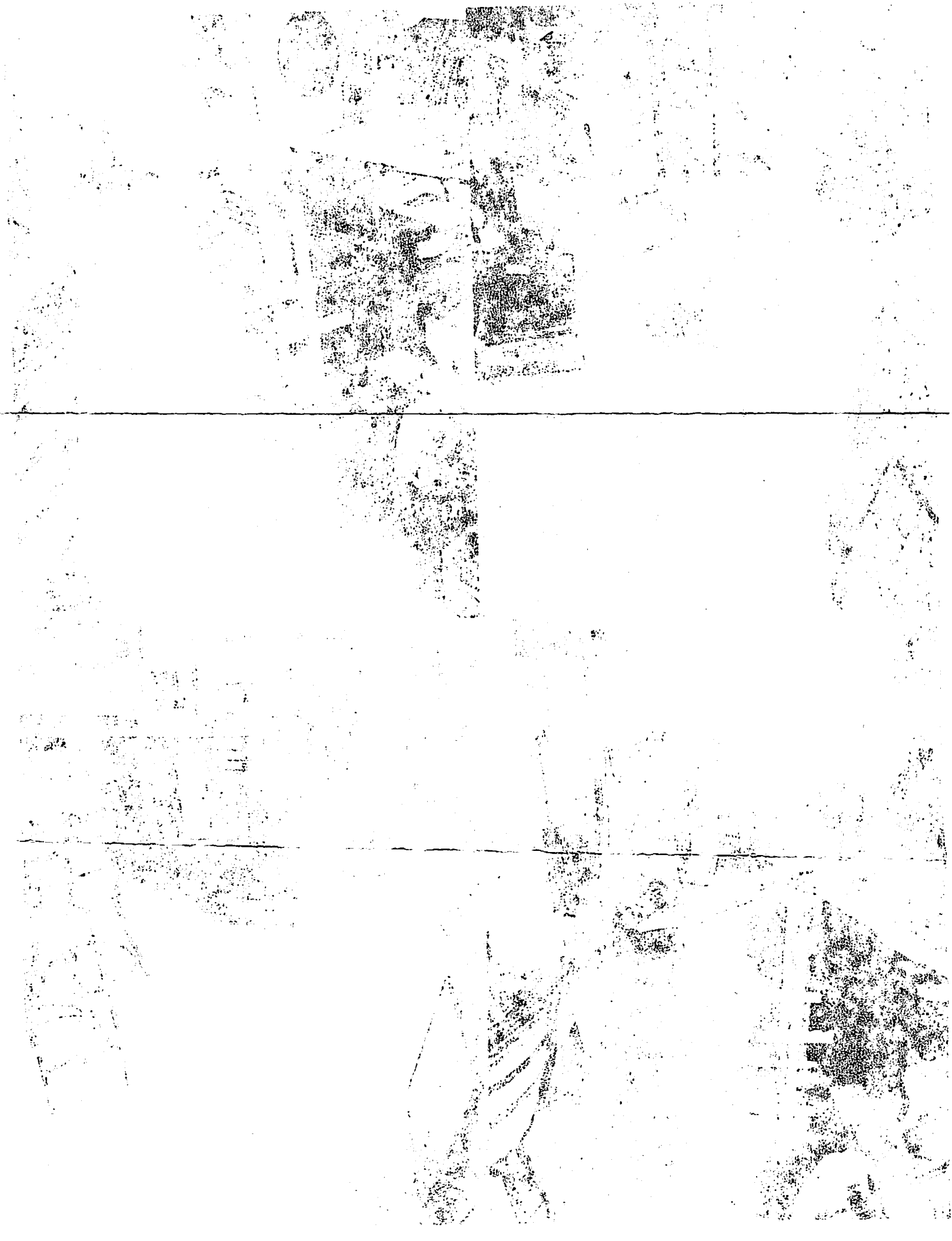
Membership#:
Method of Pay: Credit Card

Signature: 

Folio Summary	
Previous Balance:	\$0.00
Room Charges:	\$119.90
Other Charges/Credits:	\$0.00
Phone Charges:	\$0.00
Tax:	\$15.60
Less Payments:	\$135.50
Total Amount Due:	\$0.00

Please visit our website at www.grandstay.net and let us know how your stay was.





II

Other Matters

7.3

R. O. No. 247 - 15 - 16. By CITY CLERK. January 18, 2016.

Submitting a claim from Richard Woodard for alleged damages to his mailbox when a snow plow driver hit it while plowing.

Finance

City Clerk

DATE RECEIVED

1-18-16

RECEIVED BY

ORL

CLAIM NO.

18-15

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
2. Attach and sign additional supportive sheets, if necessary.
3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: RICHARD WOODARD
2. Home address of Claimant: 2628 W. RIVERDALE AVE.
3. Home phone number: 920-459-8965
- Business address and phone number of Claimant: SAME AS ABOVE

5. When did damage or injury occur? (date, time of day) 12/28/15 11:55 P.M.

6. Where did damage or injury occur? (give full description) IN FRONT OF HOUSE - MAILBOX DAMAGED BY CITY PLOW @ 11:55 PM NIGHT OF SNOWSTORM - 12/28 - WITNESSED BY NEIGHBOR WHO SAW IT HAPPEN

7. How did damage or injury occur? (give full description) HORIZONTAL PIECE OF POST REPPED OFF OF VERTICAL POST - HORIZONTAL & VERTICAL PIECE ARE PLASTIC UNIT WHICH SLEPPED OVER VERTICAL WOOD POST - COMPLETE ASSEMBLY MUST BE REPLACED. MAILBOX WAS REPPED OF HORIZONTAL POST & MUST ALSO BE REPLACED.

8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:

(a) Name of such officer or employee, if known: PLOW DRIVER - NAME UNKNOWN

(b) Claimant's statement of the basis of such liability: PLOW DRIVER WAS OBSERVED DAMAGING MAILBOXES ON 3 ADJACENT PROPERTIES.

9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:

(a) Public property alleged to be dangerous: N/A

(b) Claimant's statement of basis for such liability: N/A

10. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

NO INJURIES - ON 12/28 - JUST 3/4 MIDNIGHT -

A CITY PLOW WAS OBSERVED HEAVING AND DAMAGING BEYOND REPAIR OUR MAILBOX AND THE 3 ADJACENT MAIL BOXES

11. Name and address of any other person injured: _____

N/A

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ ϕ

Property: \$ 60.04

Personal injury: \$ ϕ

Other: (Specify below) \$ _____

TOTAL \$ 60.04

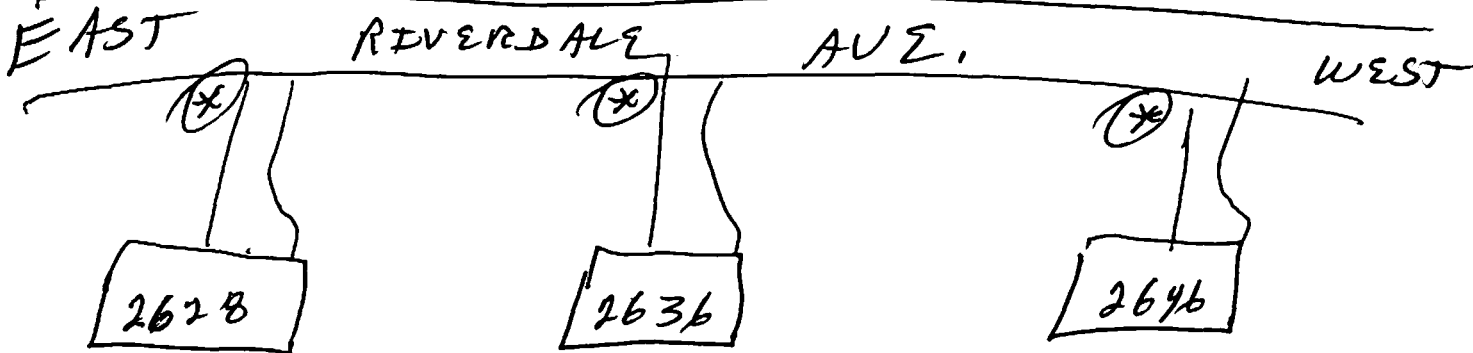
Damaged vehicle (if applicable)

Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: _____

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.



RIVERDALE AVE
⊗ = MAIL BOX LOCATION

SIGNATURE OF CLAIMANT Richard Woodard DATE 1/17/16
BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS

DATE RECEIVED _____

RECEIVED BY _____

CLAIM NO. 18-15

CLAIM

Claimant's Name:	<u>RICHARD WOODARD</u>	Auto	\$ <u> </u>
Claimant's Address:	<u>2628 W. RIVERDALE AVE</u>	Property	\$ <u>60.04</u>
	<u>SHEBOYGAN, WI 53081</u>	Personal Injury	\$ <u> </u>
Claimant's Phone No.	<u>920-459-8965</u>	Other (Specify below)	\$ <u> </u>
TOTAL			\$ <u>60.04</u>

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ 60.04.

I UNDERSTAND 7 MAILBOX MIGHT
BE A "DOOR", - BUT 3 IN A ROW?
MIGHT DRIVER HAVE BEEN INEXPERIENCED
OR DOZED OFF?
0

SIGNED Richard Woodard DATE: 1/17/16

ADDRESS: 2628 W. RIVERDALE AVE

SHEBOYGAN, WI 53081

BY SIGNING THIS I ACKNOWLEDGE I HAVE READ AND UNDERSTAND THE INSTRUCTIONS.
MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

TRANSACTION INQUIRY

Store No. : 3247
 Tran. date : 01/03/16 12:52:13 PM
 Register ID : 6
 Transaction # : 9323

Operating mode : Normal

Type of sale : Sale Transaction
 Operator : 91220
 Commission : 0
 Customer :
 PO number :

Invoice # : 0
 Ref. # 1 :
 Ref. # 2 :
 Ref. # 3 :
 Employee : 1391220
 Geocode : SEE TAX INFO BELOW
 Order number : 0

Tax exempt :
 Exempt code : 0
 Org invoice :
 Demographic :

Tran Authorization : 0
 TOS Signature : no
 Tax exempt signature: no
 Tender signature : no

Ship to name :
 Ship to address :

MERCHANDISE:
 Taxable : 59.97
 Non-tax : 0.00
 NON-MERCHANDISE:
 NON-MERCHANDISE TAXABLE.....: 0.00
 Non-merchandise non-tax:
 Non-food : - 58.54
 Food : 0.00..... -
 Tax.....: 0.07
 Additional tax.....: 0.00
 Sold lines total.....: 1.50
 Deposit.....: 0.00

 Transaction total.....: 1.50

 Allowance.....: 0.00
 Spread discount.....: 0.00
 Coupon discount.....: 0.00
 Line discount.....: 0.00

 Total discounts.....: 0.00

MAILBOX + POST

58.54 - GIFT CARD
 0.07 + TAX
 1.50 - CASH

 TOTAL = 60.04

Dick Woodard
 P/V Am 1/4

Transaction Taxes				
Tax Jurisdiction	Tax Type	Description	Tax Rate	Tax Amount
NON-TAXABLE	0		0.000%	0.00
WI5308301	STATE	STATE WI	5.000%	0.07

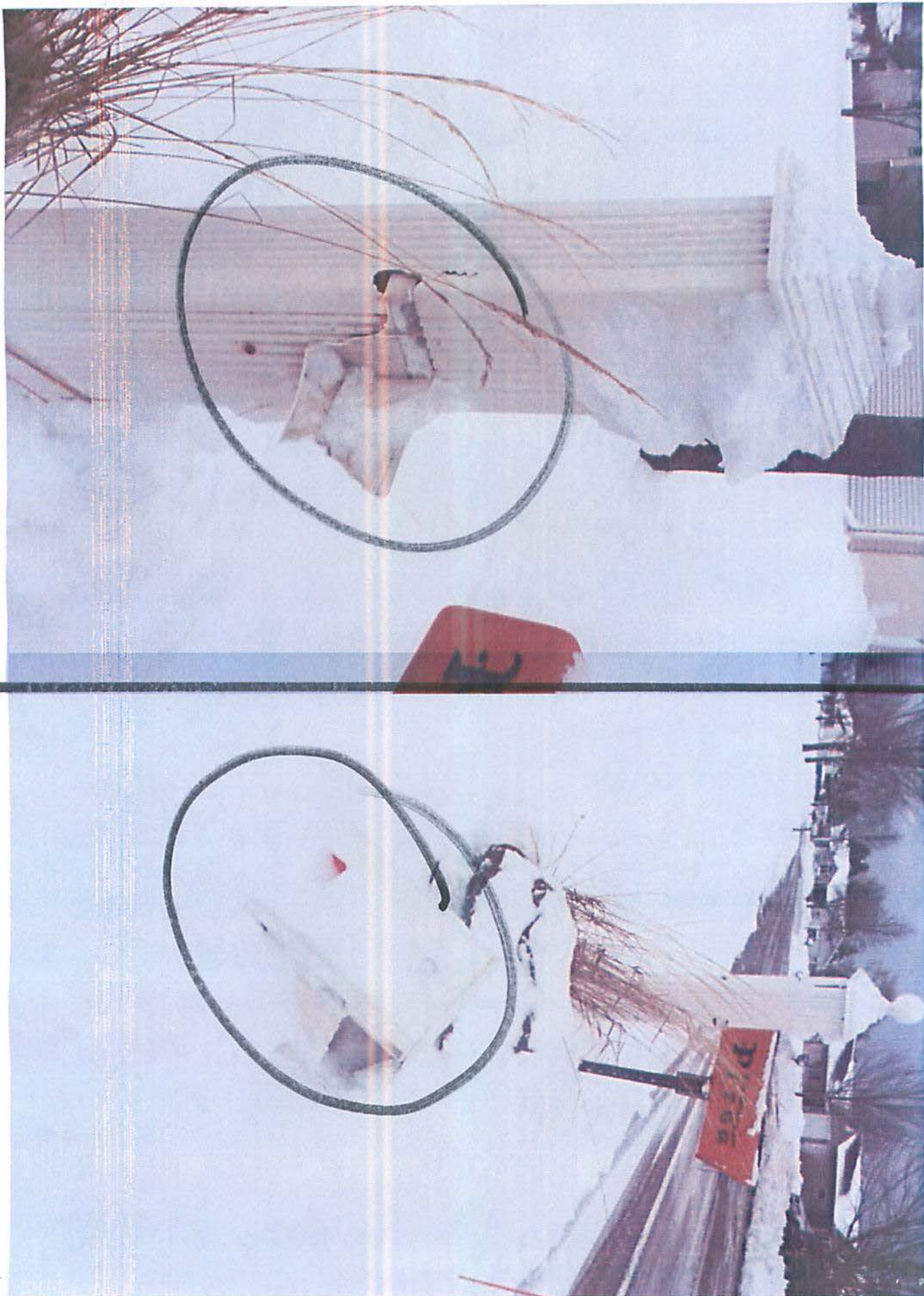
TAX

Item number	Seq#	Description	Quantity	Unit	Tax Status	Amount	Misc Number	Tax Jurisdiction	Tax Type	Description	Tax Rate	Tax Amount
2151226		GENTRY POST MOUNT CO	1.00	EACH	P TAKE	59.97		WI5308301	STATE	STATE WI	5.000%	0.07
MISC:31		MENARD REBATE	-		N TAKE	58.54	6118043912	NON-TAXABLE	0		0.000%	0.00

Transaction Tenders

Code	Description	Miscellaneous number	Amount	Auth.	Signature
1	CASH		5.50	No	
1	CASH		4.00	No	

END OF TRANSACTION DATABASE REVIEW



R. O. No. _____ - 15 - 16. By CITY CLERK. January 25, 2016.

Submitting a claim from Michael and Terri Barber for alleged damages to their mailbox when a snow plow driver hit it while plowing.

City Clerk