



**Special Meeting Agenda**  
*Owosso DDA/Main Street*  
**Tuesday April 28, 2015, 7:30 a.m.**  
**Owosso City Council Chambers,**  
**301 W Main St.**  
**Owosso, MI 48867**

**7:30 to 7:45**

**Call to order and roll call:**

**Public Comments:**

**7:45 to 8:30**

**Items of Business: Wesener Development (104-108 N. Washington St.)**

- 1) Assignment & Subordination of Construction Note..... (Resolution)

**Public Comments:**

**Board Comments:**

**Adjournment:**

[The City of Owosso will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon 72 hours notice to the City of Owosso. Individuals with disabilities requiring auxiliary aids on services should contact the City of Owosso by writing or calling Amy Kirkland, City Clerk, 301 W. Main St, Owosso, MI 48867 (989) 725-0500 or on the Internet. The City of Owosso Website address is [www.ci.owosso.mi.us](http://www.ci.owosso.mi.us).]

**Wesener Building Loan– Brief History**



## Wesener/DDA Loan – Brief History

- In 2007 the DDA advanced the property owner (Rock Solid Associates LLC) \$50,000.00 for on-site demolition, blight removal, and site security measures. These actions had to be taken as a result of the fire that destroyed the building that same year.
- In 2013, Wesener LLC assumed that debt when it purchased 104-108 N. Washington Street (Wesener Building).
- Conditions within the terms of the advance indicate that if the \$50,000.00 is *not* paid in full by December 31, 2013 interest on the \$50,000.00 shall be compounded annually at a 6% interest rate for a term of 10 years. Principle and interest payments shall be made by December 1<sup>st</sup> of each calendar year beginning in 2014.
- One payment of \$6,793.40 has already been received for the 2014 year, as the terms require.
- The documentation being voted on today is intended to provide that the debt and mortgage owed to the DDA will have a priority behind that of Bank of Holland (the primary lender for the current development). Wesener LLC will still be required to pay the \$50,000.00 but Bank of Holland will have the priority of reimbursement (mainly in the case of default).

**DDA Loan Agreement**



**REIMBURSEMENT AGREEMENT – OBRA AND WESENER, LLC**

**THE AGREEMENT** is made this 4<sup>th</sup> day of November, 2013 by WESENER, LLC with business offices at 4941 Chippewa Court, Owosso, Michigan 48867 as “Developer” and the City of Owosso Brownfield Redevelopment Authority, (a Michigan municipal corporation) at 301 West Main Street, Owosso, Michigan as “Authority,”

**WHEREAS**, Developer has received a copy of the contents of a Brownfield Redevelopment Plan (“the Plan”) for 104-108 N. Washington Street, Owosso, Michigan, and received notice of a the Authority’s public hearing prior to the Owosso City Council’s adoption of the Plan on November 1, 2010, as amended on September 16, 2013, and;

**WHEREAS**, Developer has elected to pursue an Obsolete Property Rehabilitation Exemption Certificate that, for twelve (12) years, precludes the ability of the tax increment financing plan to reimburse the City and DDA for project advances, and;

**WHEREAS**, the Brownfield Redevelopment Financing Act, MCL 125.2651 et seq., allows an Authority to reimburse a developer for eligible activities as defined in the Act through captured tax revenues;

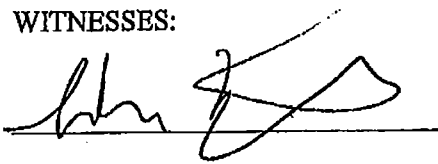
**IT SHALL BE AGREED AS FOLLOWS:**

1. Developer shall pay Authority \$50,000 for the Owosso Downtown Development Authority advances made in 2007 on site demolition, blight removal and site security measures. A separate agreement between the Authority and the Owosso DDA stipulates the terms of payment of the advances. It is understood by the parties that assurance of repayment to the DDA is provided for in a mortgage on the property.
2. As a condition of future reimbursements from tax increments, Developer shall pay the Authority the \$50,000 DDA advance on or before December 31, 2013. In the event Developer does not meet the deadline, interest on the \$50,000 shall be compounded annually at a 6% interest rate for a term of 10 years. Principle and interest payments shall be made by December 1<sup>st</sup> of each calendar year beginning in 2014.
3. With respect to paragraphs 1 and 2 above, Developer’s complete reimbursement of the \$50,000 advance shall result in the discharge of the lien and the understanding between the parties that the provisions of said paragraph become null and void.
4. Developer shall receive an annual reimbursement from local property taxes paid on the development of the site at 104-108 N. Washington Street, a city site that is more specifically described on Page 14 of the Wesener, LLC Brownfield Redevelopment Plan, District #13. The reimbursement is for Developer’s cash advances of administrative costs and the eligible investments for the restoration of the Wesener Building. Upon satisfying the terms of paragraph 3 above the \$50,000 site restoration work becomes a reimbursable eligible project expense. See the schedule on Page 16 of the Plan for a list of eligible project costs.

5. Beginning in 2026, the City will be reimbursed first for its eligible administrative plan oversight expenses at \$350 per year. In second place for reimbursement, after City is reimbursed for administrative expenses, Developer is paid the balance of tax increments available in any one year until the interest at 3% per annum and the principle in advances are paid.
6. The reimbursement shall be based on the captured real property taxes paid to the local taxing jurisdictions and detailed on Page 17 of the most recent amendment of the Wesener LLC Brownfield Redevelopment Plan.
7. Schedule 4 of the 2013 Plan Amendment shows the method of calculation for reimbursement of tax increments to Developer.
8. The Authority is not responsible for any third party cause that may invalidate the Brownfield Redevelopment Plan and thereby result in a shortfall of any amount of the planned reimbursement. The Authority is not responsible for shortfalls in tax increments resulting from any condition in any one year or for the duration of the Plan. Developer understands that reimbursements are ended in 2038, the Plan's duration, even if the Developer has not received complete reimbursement for the project costs.
9. Prior to the initial reimbursement, Developer shall conduct Developer's eligible activities and supply evidence of costs and expenditures to the Authority. The Authority retains the right to assess the costs of said site work and apply the market rate for like services conducted on city-owned parcels on other brownfield sites or elsewhere in the local governments' contracting work within Shiawassee County to determine the actual reimbursement level. The parties may agree in advance to the unit costs.
10. The annual reimbursement will be made by April 1<sup>st</sup> in the calendar year after the Developer's December tax payment is made each year. If in any year there is a tax delinquency at the site of any amount, the Authority shall not make any reimbursement until the delinquency is paid.
11. As a condition of reimbursement, Developer's project area shall remain in compliance with local, state and federal laws. No outstanding reimbursements shall be made until the violations are resolved to the satisfaction of the controlling agency.

IN WITNESS WHEREOF, the parties have executed the Reimbursement Agreement as of the date set forth above.

WITNESSES:


  
 \_\_\_\_\_

CITY:  
 OWOSSO BROWNFIELD REDEVELOPMENT  
 AUTHORITY

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

Its: CHAIRPERSON

DEVELOPER:  
WESENER, LLC

  
\_\_\_\_\_

By: David L. Acton

Its: MEMBER

**Assignment and Assumption of Construction Note**





## ASSIGNMENT AND ASSUMPTION OF CONSTRUCTION NOTE

This Assignment and Assumption of Construction Note (the “**Agreement**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2015, but effective as of December 1, 2014 (the “**Effective Date**”), by and among Wesener, LLC, a Michigan limited liability company (“**Assignor**”), Wesener Building, LLC, a Michigan limited liability company (“**Assignee**”), and Owosso Downtown Development Authority, a Michigan downtown development authority, organized and operating under the Downtown Development Authority Act, MCL 125.1651, et seq., as amended (the “**Authority**”) (Assignor, Assignee, and Authority are collectively referred to as the “**Parties**” and individually as “**Party**”).

### RECITALS

A. On October 23, 2007, Rock Solid Associates, LLC, a Michigan limited liability company (the “**Original Borrower**”) obtained a loan from the Authority in the principal amount of Fifty Thousand and No/100 Dollars (the “**Loan**”), as evidenced by that certain Construction Note of the same date (the “**Note**”).

B. Repayment of the Loan is secured by a Mortgage from the Original Borrower in favor of the Authority, dated October 23, 2007 (the “**Mortgage**”), covering the Wesener Building, located 104-108 North Washington, Owosso, Michigan, and more particularly described in the Mortgage (the “**Property**”).

C. Pursuant to that certain Reimbursement Agreement – OBRA and Wesener, LLC, dated November 4, 2013 (Reimbursement Agreement”), between Assignor and the Authority, the terms of the Note were amended and the obligations of the Original Borrower under the Note and the Mortgage were assumed by Assignor (the Note, Mortgage and Reimbursement Agreement are collectively referred to as the “**Loan Documents**”).

D. As of the Effective Date, the outstanding balance of principal due the Authority is Forty-Six Thousand Two Hundred Six and No/100 Dollars (\$46,206.00), and the outstanding balance of accrued interest due the Authority is Zero and No/100 Dollars (\$0.00) (the “**Assumed Loan Amount**”).

E. In connection with the Assignee’s acquisition of the Property from Assignor, the Assignor’s obligations to repay the Assumed Loan Amount, as set forth by the Loan Documents, is assigned to and assumed by Assignee.

NOW, THEREFORE, in consideration of the transfer of the Property, and other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The recitals set forth above are incorporated into this Agreement.

2. Assignor's obligations to repay the Assumed Loan Amount under the Loan Documents are hereby assumed by Assignee, and Assignee agrees to be bound by all terms and conditions of the Loan Documents.

3. The Authority hereby consents to the assignment and assumption of the Note.

4. The parties hereto acknowledge and agree that the Note continues to accrue interest at the rate of six percent (6%) per annum, and is repayable in annual installments in accordance with a ten year amortization. A Schedule of payments is attached hereto and incorporated herein as Schedule I. The Note may be prepaid at any time without penalty.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan applicable to agreements made and to be performed entirely therein. Each of the Parties irrevocably (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any of the transactions contemplated hereby shall be brought in the courts of the State of Michigan; (ii) consents to the jurisdiction of each such court in any suit, action, or proceeding; and (iii) waives any objection which he or it may have to the laying of venue of any such suit, action or proceeding in each of such courts.

6. This Agreement may be executed by the Parties in counterparts, all of which shall be considered one and the same agreement, and shall be binding when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

7. Nothing in this Agreement, express or implied, shall be deemed to create in any person other than the Parties hereto and successors and assigns, any right, remedy, or claim under or by reason of this Agreement.

8. This Agreement constitutes the entire agreement of the parties hereto pertaining to the subject matter contained herein and supersedes all prior agreements or letters of intent of the Parties hereto. This Agreement shall not be amended, modified, or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

*[signature pages follow]*

IN WITNESS THEREOF, the Parties have executed this Agreement the date first indicated above.

**ASSIGNOR:**

WESENER, LLC, a Michigan limited liability company

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

David L. Acton

Its: Manager

**ASSIGNEE:**

WESENER BUILDING, LLC, a Michigan limited liability company

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

Guy L. Bazzani

Its: Manager

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

Peter Skornia

Its: Manager

IN WITNESS THEREOF, the Parties have executed this Agreement the date first indicated above.

**AUTHORITY:**

OWOSSO DOWNTOWN DEVELOPMENT  
AUTHORITY, a Michigan downtown development  
authority

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

Josh Adams

Its: Executive Director

### SCHEDULE I

<b>Date</b>	<b>Payment</b>	<b>Principal</b>	<b>Interest</b>	<b>Balance</b>
12/1/2013		Starting Balance		\$50,000.00
12/1/2014	\$6,793.40	\$3,793.40	\$3,000.00	\$46,206.60
12/1/2015	\$6,793.40	\$4,021.00	\$2,772.40	\$42,185.60
12/1/2016	\$6,793.40	\$4,262.26	\$2,531.14	\$37,923.34
12/1/2017	\$6,793.40	\$4,518.00	\$2,275.40	\$33,405.34
12/1/2018	\$6,793.40	\$4,789.08	\$2,004.32	\$28,616.26
12/1/2019	\$6,793.40	\$5,076.42	\$1,716.98	\$23,539.84
12/1/2020	\$6,793.40	\$5,381.01	\$1,412.39	\$18,158.83
12/1/2021	\$6,793.40	\$5,703.87	\$1,089.53	\$12,454.97
12/1/2022	\$6,793.40	\$6,046.10	\$747.30	\$6,408.87
12/1/2023	\$6,793.40	\$6,408.87	\$384.53	\$0.00
Total	\$67,933.98	\$50,000.00	\$17,933.98	

**Mortgage and Debt Service Agreement**



## **MORTGAGE AND DEBT SUBORDINATION AGREEMENT**

THIS MORTGAGE AND DEBT SUBORDINATION AGREEMENT (this “Agreement”), dated as of this \_\_\_\_ day of April, 2015, by and among WESENER BUILDING, LLC, a Michigan limited liability company (“Borrower”), OWOSSO DOWNTOWN DEVELOPMENT AUTHORITY (“Subordinate Lender”), and THE BANK OF HOLLAND (“Senior Lender”).

### RECITALS:

WHEREAS, Borrower and Senior Lender have entered into that certain Mortgage of even date herewith (the “Senior Mortgage”), concerning the extension by Senior Lender to Borrower of a permanent loan in the original principal amount of \$730,000 and construction loan \$532,000 (the “Senior Loans”), recorded with the Register of Deeds of Shiawassee County simultaneously herewith, and encumbering the property legally described on Exhibit A attached hereto and hereby made a part hereof (the “Property”); and

WHEREAS, Borrower has certain obligations to Subordinate Lender pursuant to that certain Mortgage executed by Rock Solid Associates, LLC, a Michigan limited liability company to the City of Owosso Downtown Development Authority, a Michigan municipal corporation, dated October 23, 2007, and recorded with the Shiawassee County Register of Deeds on October 27, 2007, in Liber 1116, Page 420, which Mortgage was assigned to and assumed by Wesener, LLC, a Michigan limited liability company, and further assigned to and assumed by Wesener Building, LLC, a Michigan limited liability company, pursuant to an Assignment and Assumption Agreement dated of even date herewith and recorded simultaneously herewith with the Register of Deeds of Shiawassee County (as assigned and assumed, the “Subordinate Mortgage”); and

WHEREAS, as a condition to making the Senior Loan, Senior Lender requires that Borrower and Subordinate Lender enter into this Agreement.

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. As used herein, the following capitalized terms shall have the following meanings:

(a) “Senior Claim” shall mean all of Borrower’s indebtedness, liabilities and liens to Senior Lender arising under the Senior Mortgage (including all future advances) including all documents executed or to be executed in connection therewith, including but not limited to a Promissory Note, a Loan Agreement, and any and all documents, instruments and agreements executed by Borrower in connection with the Senior Loan.

(b) “Subordinate Claim” shall mean all of Borrower’s indebtedness, liabilities and liens to Subordinate Lender arising under the Subordinate Mortgage, including but not limited to the Construction Note dated October 23, 2007, and any and all documents, instruments and agreements executed by, or assigned to and assumed by, Borrower in connection therewith.

2. Subordination. Subordinate Lender hereby subordinates in all respects the Subordinate Claim to the Senior Claim. From and after the date hereof, any and all rights, title and interest of Subordinate Lender in and to the Property, and rents and proceeds thereof, pursuant to the Subordinate Mortgage shall be in all respects junior, subordinate and subject to the prior rights, title and interest of Senior Lender in and to the Property, and rents and proceeds thereof, pursuant to the Senior Mortgage.

3. Limitations on Payment to Subordinate Lender. No payments shall be permitted to be made to Subordinate Lender with respect to the Subordinate Claim or any part thereof unless prior to such payment, Borrower has maintained a combined minimum debt service coverage ratio of 1.00 for the Senior Loans and the Subordinate Loan (taking into consideration all Property debt with scheduled payments) at the end of each of the twelve (12) consecutive months preceding the date such annual payment is due under the Subordinate Loan. No such payment shall be made without Senior Lender’s prior written consent and confirmation that the minimum required debt-service coverage ratio has been maintained. Subordinate Lender agrees that it shall take no action with respect to the Subordinate Claim, including, without limitation, commencement of foreclosure or receivership proceedings with respect to the Property, until the Senior Claim has been paid in full.

4. Pay Over of Moneys. In the event that Subordinate Lender receives any payment or property on the Subordinate Claim in violation of the terms of this Agreement, such payments shall be held in trust by Subordinate Lender and Subordinate Lender shall forthwith pay over or deliver the same to Senior Lender to be held by Senior Lender as cash collateral securing the Senior Claim.

5. Undertakings Unaffected. Subordinate Lender’s undertakings herein shall not be affected or impaired by (a) any neglect or omission on the part of Senior Lender to look to or to preserve any collateral at any time securing payment of the Senior Claim, or (b) any act on the part of Senior Lender in releasing, canceling or surrendering all or part of such collateral, or in extending the time for payment with respect to all or any part of the Senior Claim or such collateral, or in enforcing or realizing upon such collateral. No notice whatsoever need be given to Subordinate Lender, and no consent whatsoever need be obtained from Subordinate Lender, at any time of the Senior Claim or the amount or amounts thereof, whether now existing or hereafter arising, or any increase or decrease therein, or any payments thereof, or with respect to any collateral, or in any other respect.



6. Acceleration. Any breach of this Agreement by either Borrower or Subordinate Lender (after notice to Borrower and failure to cure within thirty days) shall constitute an “Event of Default” for purposes of the Senior Loan, and Senior Lender shall thereafter have the right, at its option, and in addition to any other rights Senior Lender may have, to declare the Senior Claim immediately due and payable without notice or demand.

7. Continuing Nature of Subordination. This Agreement shall be irrevocable and shall continue effective until the Senior Claim has been paid in full and all financing arrangements between Borrower and Senior Lender have been terminated. This is a continuing agreement of subordination and Senior Lender may continue, at any time and without notice to or consent of Subordinate Lender, to extend credit or other financial accommodations and loan moneys to or for the benefit of Borrower on the faith hereof.

8. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9. Governing Law. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Michigan.

10. Notices. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon receipt when personally delivered or sent by facsimile transmission or overnight courier, or when duly deposited in the United States mails, certified or registered, with proper postage prepaid, addressed to the party to be notified as follows:

- (a) If to Borrower: Wesener Building, LLC  
  
959 Wealthy Street, SE  
Grand Rapids, MI 49506  
Attn: Guy L. Bazzani  
Fax No: (616) 774-0606
  
- (b) If to Subordinate Lender: Owosso Downtown Development Authority  
301 W. Main St.  
Owosso, MI 48867  
Attn: Josh Adams  
Fax No:
  
- (c) If to Senior Lender: The Bank of Holland  
150 Central Avenue  
Holland, MI 49423  
Attention: Marty Richardson  
Fax Number: (616) 393-0277

11. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

12. Entire Agreement. This Agreement, including the exhibits hereto and the other documents referred to herein, constitutes the entire agreement between the parties with respect to the matters discussed herein. No modification or amendment of this Agreement shall be effective unless made in writing and signed by each party hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of this \_\_\_\_\_ day of April, 2015.

[Remainder of page intentionally left blank]

BORROWER:

**WESENER BUILDING, LLC,**  
a Michigan corporation

By: \_\_\_\_\_  
Name:  
Its:

STATE OF MICHIGAN     )  
  )SS  
COUNTY OF \_\_\_\_\_)

The foregoing Mortgage and Debt Subordination Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of Wesener Building, LLC, a Michigan limited liability company, for and on behalf of said liability company.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**SIGNATURE PAGE TO MORTGAGE AND DEBT SUBORDINATION AGREEMENT**

SUBORDINATE LENDER:

OWOSSO DOWNTOWN  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Name: Josh Adams  
Its: Executive Director

STATE OF MICHIGAN     )  
  )SS  
COUNTY OF \_\_\_\_\_)

The foregoing Mortgage was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Josh Adams, Executive Director of the Owosso Downtown Development Authority for and on behalf of such authority.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_ County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**SIGNATURE PAGE TO MORTGAGE AND DEBT SUBORDINATION AGREEMENT**

SENIOR LENDER:

**THE BANK OF HOLLAND**, a Michigan banking corporation

By: \_\_\_\_\_  
Martha Richardson  
Its: Senior Vice President

STATE OF MICHIGAN     )  
  ) ss  
COUNTY OF                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Martha Richardson, the Senior Vice President of The Bank of Holland, for and on behalf of said corporation.

\_\_\_\_\_ County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT DRAFTED BY AND  
AFTER RECORDING RETURN TO:  
Tracey L. Lackman  
Loomis, Ewert, Parsley, Davis & Gotting, P.C.  
124 West Allegan, Suite 700  
Lansing, MI 48933

**SIGNATURE PAGE TO MORTGAGE AND DEBT SUBORDINATION AGREEMENT**

**EXHIBIT A**

(Legal Description)

**Resolution**



**RESOLUTION OWOSSO DOWNTOWN DEVELOPMENT  
AUTHORITY TO ENTER INTO AGREEMENTS**

The undersigned Secretary of the Owosso Downtown Development Authority, a Michigan downtown development authority, organized and operating under the Downtown Development Authority Act MCL 125.1651, et seq., as amended (the “Authority”), hereby certifies that the following resolutions were adopted by the Board of Directors of the Authority (the “Board”) on April \_\_, 2015:

WHEREAS, Wesener Building, LLC, a Michigan limited liability company (the “Owner”), intends to rehabilitate and redevelop the property known as the Wesener Building, located at 104-108 North Washington, Owosso, Michigan, for commercial and multifamily uses (the “Project”);

WHEREAS, Wesener, LLC, a Michigan limited liability company (the “Original Borrower”) is a member of Owner;

WHEREAS, in connection with the acquisition of the Project, Owner is assuming certain indebtedness of the seller of the Project, as evidenced by that certain Construction Note dated October 23, 2007, in the principal amount of Fifty Thousand and No/100 Dollars (\$50,000), from Rock Solid Associations, LLC, in favor of the Authority, as amended by that certain Reimbursement Agreement – OBRA and Wesener, LLC, dated November 4, 2013 (the “Authority Loan”);

WHEREAS, repayment of the Authority Loan is secured by the Project, as evidenced by that certain Mortgage in favor of the Authority dated October 23, 2007 (the “Authority Mortgage”);

WHEREAS, in connection acquisition of the Project, the Owner will be assuming the rights and obligations of the Original Borrower under the Authority Loan and the Authority Mortgage pursuant to that certain Assignment and Assumption Agreement between the Original Borrower, Owner and the Authority (the “Assignment”), in the form attached hereto as Exhibit A;

WHEREAS, in connection with the acquisition and construction of the Project, the Owner will obtain a loan from The Bank of Holland (the “Lender”), in a principal amount not to exceed Seven Hundred Thirty Thousand and No/100 Dollars (\$730,000) (the “Bank of Holland Loan”) pursuant to the terms of a Loan Agreement and such other agreements contemplated therein (collectively, the “Bank of Holland Loan Documents”);

WHEREAS, repayment of the Bank of Holland Loan is to be secured by the Project, as evidenced by a Mortgage in favor of the Lender (the “Bank of Holland Mortgage”);

WHEREAS, as a condition of making the Bank of Holland Loan, the Lender has required that the Authority Loan and the Authority Mortgage be subordinated to the Bank of Holland Loan and the Bank of Holland Mortgage pursuant to a Mortgage and Debt Subordination



Agreement between the Owner, the Authority and the Lender (the “Subordination Agreement”) in the form attached hereto as Exhibit B; and

WHEREAS, the Board desires to approve all aspects of the Authority’s involvement in the financing structure of the Project, so that the Project can move forward to closing; and

WHEREAS, the Board desires that each of the above actions to be approved and authorized and desire to approve the execution of any and all documents necessary to accomplish the above actions and to facilitate the closing of the Project.

RESOLVED, that the assignment and assumption of the Authority Loan by the Owner is hereby authorized by the Authority, and that Josh Adams, as Executive Director of the Authority is hereby authorized to execute the Assignment; and

FURTHER RESOLVED, that the subordination of the Authority Loan and the Authority Mortgage to the Bank of Holland Loan and Bank of Holland Mortgage is hereby authorized by the Authority, and that Josh Adams, as Executive Director of the Authority is hereby authorized to execute the Subordination Agreement.

*[signature page follows]*

We further certify that the following is the genuine signatures of the Secretary of the Authority and that the above resolutions were duly adopted on the date set forth above.

Owosso Down Town Development Authority

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By:  
Its: Secretary

**EXHIBIT A**

**Form Assignment and Assumption of Construction Note**

**EXHIBIT B**

**Form Mortgage and Debt Subordination Agreement**

**William C. Brown Memo**



**WILLIAM C. BROWN, P.C.**

114 EAST MAIN STREET, SUITE 218

OWOSSO, MICHIGAN 48867

(989) 729-0071

Fax: (989) 729-9066

William C. Brown  
Cole T. Schmidt

## MEMORANDUM

**TO:** Owosso Downtown Development Authority

**FROM:** William C. Brown

**DATE:** April 22, 2015

**RE:** Assignment and Subordination of Construction Note/Wesener Building

At the request of Josh Adams, I have reviewed:

- Assignment and Assumption of Construction Note;
- Mortgage and Debt Subordination Agreement; and
- Resolution Owosso Downtown Development Authority to Enter Into Agreement

and have the following comments.

### **Assignment and Assumption of Construction Note**

The Assignment conveys the debt and mortgage originally incurred by Rock Solid Associates, LLC in 2007 from Wesener LLC to Wesener Building LLC.

The Board will recall that Rock Solid Associates LLC borrowed \$50,000.00 from the DDA in 2007. In 2013 that debt was assumed by Wesener LLC when it purchased 104-108 North Washington Street, Owosso, Michigan.

The Assignment is a simple assignment and there are no concerns with its terms. The Assignment is beneficial to the DDA because it is my understanding that Wesener Building LLC will own the realty.

Memorandum to Owosso DDA  
Page Two  
April 22, 2015

### **Mortgage and Debt Subordination Agreement**

The Mortgage and Debt Subordination Agreement is intended to provide that the debt and mortgage owed to the DDA will have a priority behind that of the Bank of Holland. Wesener Building LLC is borrowing \$730,000.00 in one loan and \$532,000.00 in a second loan from the Bank of Holland.

There are several terms in the Agreement that require comment.

The Agreement specified that debts of \$730,000.00 and \$532,000.00 will have priority over the debt owned the DDA. It also provides if the Bank of Holland loans additional funds, those loans would have priority over the DDA loan as well. This is a standard provision but the Board should be aware of it.

The Agreement also provides that no payment may be made on the DDA loan unless Wesener Building LLC has maintained a "combined minimum debt service coverage ratio for 1.00". Further, the Bank of Holland must provide written consent to any payment to the DDA. Also, the DDA may take no action to collect its debt until the debt to the Bank of Holland is paid in full. In my experience, these provisions are very rare and extremely favorable to the Bank of Holland.

### **Resolution Owosso Downtown Development Authority to Enter Into Agreement**

The Resolution is straight forward and authorizes Josh Adams to sign the above two documents.

WCB/jmr