



**Meeting:** Village Board  
**Meeting Date:** 3/25/13  
**Agenda Item:** 6c & 6d

**Mission Statement**

Delivering quality services in a courteous, cost-effective and efficient manner.

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**VILLAGE BOARD MEETING STAFF REPORT**

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**REPORT TO:** Burt R. McIntyre, President  
Village Board of Trustees

**REPORT FROM:** Chris Haltom, Director of Administrative Services

**AGENDA ITEMS:** 6c Review and take action on Developer Agreement and Guarantee with Vandervest Harley Davidson of Green Bay, Inc.

6d Review and take action on Loan Agreement, Promissory Note and Mortgage with Vandervest Harley Davidson of Green Bay, Inc.

**ACTION REQUESTED:**  Ordinance  Resolution  Motion  Receive/File

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**POLICY ISSUE**

Should the Village Board formalize the previous vote to approve a TIF incentive for Vandervest Harley Davidson of Green Bay, Inc. in the form of a developer agreement and loan agreement?

**BACKGROUND INFORMATION**

Village Attorney Dennis Duffy has been working since mid-2012 to finalize the developer agreement and loan agreement with Vandervest Harley Davidson of Green Bay, Inc. (Vandervests). The delay in processing the documents is due to the fact Vandervests have not finalized permanent financing on the Velp Avenue property utilizing an SBA backed loan with their local bank. The current delay is a result of the DOT negotiating with Vandervests on acquiring property from the Vandervests for highway frontage.

The village board approved an incentive package at the May 14, 2012 closed session meeting through general consensus. The terms of the agreement are that the village will be giving the Vandervests a loan in the amount of \$195,000, 3% interest with a 15-year repayment period. The annual payments on the loan will be made by TIF #5 as a developer incentive for the Vandervests. The Vandervests also asked that if 50% of the tax incremental revenue generated by the Velp Avenue property exceeds the annual debt payment, then the Vandervests would receive such remaining funds. The TIF would keep the other 50% of the tax incremental revenues generated by the Velp Avenue property.

The Community Development Authority (CDA) of the village has already approved the loan for the Vandervests. Typically, the loan would not need village board approval after being approved by the CDA. Attorney Duffy is asking the village board to also approve the loan, promissory note and mortgage since these documents are a significant part of the developer agreement.

There are two agenda items related to the Vandervest developer agreement and the loan agreement. Two separate motions would be needed for complete approval.

**FISCAL IMPACT:**

Is There A Fiscal Impact?	Ranging between \$16,303-\$23,600 annually
Is it Currently Budgeted?	Yes
1. If Budgeted, Which Line?	TIF #5

**Fiscal Impact Note:** The range in the fiscal impact is based on the low end equaling the amount needed for the annual loan payment of \$16,303 and the high end equaling 50% of the tax incremental revenues generated from adding \$2.8 million of value (Vandervest estimate) to the assessment roll (using the tax rate from December 2012).

**STAFF RECOMMENDATION**

Staff recommends the board approve the developer agreement listed as agenda item 6c and the following motion could be made:

*"I move to approve the developer agreement between the village and Vandervest Harley Davidson of Green Bay, Inc."*

Staff also recommends the board approve the loan agreement listed as agenda item 6d and the following motion could be made:

*"I move to approve the loan agreement between the village and Vandervest Harley Davidson of Green Bay, Inc. in the amount of \$195,000, 3% interest with 15-year repayment period."*

**POLICY ALTERNATIVE(S)**

The Village Board could take the following actions:

- Take no action
- Table the item
- Modify the agreement

**ATTACHMENTS**

- I. Developer Agreement with Vandervest Harley Davidson of Green Bay, Inc.
- II. Loan Agreement with Vandervest Harley Davidson of Green Bay, Inc.

**VANDERVEST ENTERPRISES, INC. D/B/A  
VANDERVEST HARLEY DAVIDSON OF GREEN BAY  
DEVELOPMENT AGREEMENT TIF DISTRICT NO. 5**

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the VILLAGE OF HOWARD, WISCONSIN, (“Village”), a Wisconsin municipal corporation, and Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation, a full service Harley-Davidson Dealership, (“Vandervest”).

**WITNESSETH**

**WHEREAS**, in August, 2008 the Village of Howard created and approved the Project Plan for Tax Incremental Financial District No. 5 in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes and amended the Project Plan and Map for Tax Incremental Finance District No. 5 in August of 2011 in order to provide a viable method of financing the costs of needed public improvements within said district and create incentives and opportunities for appropriate private development which will contribute to the overall development of the Village; and

**WHEREAS**, Wis. Stats. Sec. 66.1331 and 66.1337 empower Villages to assist development projects by lending or contributing funds and performing other actions of a character which the Village is authorized to perform for other purposes; and

**WHEREAS**, Green Bay H-D Holding Company, LLC, a Wisconsin Limited Liability Company is a passive entity created for the purpose of real estate investment/holding in conjunction with the Harley Davidson Dealership operations of Vandervest; and

**WHEREAS**, Vandervest has acquired through Green Bay H-D Holding Company, LLC certain Property in the TIF District No. 5, located 1966 Velp Avenue, Village of Howard, Brown County, Wisconsin, and legally described as follows:

Tax Parcel No. VH-2651

Unit 1, together with said unit’s undivided interest in the common elements and the exclusive use of the limited common elements appurtenant to said unit, all in Rustic Rail Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Brown County, Wisconsin, March 4, 2005, as Document Number 2176274 and amended by First Amendment to and Restatement of Declaration of Condominium for Rustic Rail Condominium, recorded March 20, 2006, as Document Number 22480623, said condominium being located in the Village of Howard, Brown County, Wisconsin, on the real estate described in said Declaration and incorporated herein by this reference thereto.

**WHEREAS**, Vandervest has purchased through Green Bay H-D Holding Company, LLC the Black Forest Restaurant located at 1966 Velp Avenue, Village of Howard. Vandervest will

renovate the existing restaurant/banquet hall and construct an addition at this location for a Harley-Davidson Dealership. The forty thousand (40,000) square foot project will consist of twenty-five thousand (25,000) square foot addition along with renovations to the existing facility. The facility and addition will house an upper level banquet hall, lower level café, full line of new and used Harley-Davidson Motorcycles, parts, accessories, motor clothes and state of the art service department. This project will add approximately \$1.8 Million Dollars of New Valuation to the Village of Howard's tax rolls. The Harley-Davidson Dealership and restaurant will generate twenty (20) additional jobs in the Village of Howard, Brown County, Wisconsin, hereinafter referred to as the ("Project"); and

**WHEREAS**, the Village believes that the development described herein and fulfillment generally of this Agreement are in the vital and best interests of the Village and its residents and in accord with the public purposes and conditions of applicable state and local laws and requirements under which said development has been undertaken and is being carried out; and

**WHEREAS**, the Village has determined to pay a portion of the New Tax Incremental Value created by the Project, in order to induce and assist Vandervest in undertaking the Project and to meet the objectives of the TIF District No. 5 Project Plan.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations of the parties hereto, the parties do hereby covenant and agree as follows:

**ARTICLE I  
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Section 1.1 **Representation and Warranties of the Village.** The Village makes the following representations and warranties as of the date hereof and as of the date of closing:

- a. The Village represents and warrants to Vandervest that they have the power and authority and legal right to enter into all of the transactions and to perform all of the obligations required to be entered into or performed by them under this Agreement.
- b. The Village represents and warrants to Vandervest that they are empowered and authorized to execute and deliver this Agreement. This Agreement has been duly executed and delivered on behalf of the Village, and will constitute, when executed and when delivered, legal, valid and binding obligations of the Village, enforceable in accordance with these terms except as limited by bankruptcy, insolvency or civil laws of general application affecting the enforcement of creditors' rights.
- c. The Village represents and warrants that there are no actions, suits, or mechanic's or construction liens, and no legal proceedings before any Court or governmental agency pending or threatened for the Project.

Section 1.2 **Representation and Warranties of Vandervest.** Vandervest makes the following representations and warranties:

- a. Vandervest has power to enter into this Agreement and to perform its obligations hereunder and is not in violation of the Laws of State of Wisconsin.
- b. Vandervest shall proceed with due diligence following execution of this Agreement to cause the Project to be undertaken and constructed on the Property pursuant to the terms, conditions and limitations of this Agreement, in accordance with the terms of this Agreement, and in the accordance with the plans and specifications and all local, state, and federal laws, ordinances, and regulations (including, but not limited to, Chapter 30 Permit, Site Plan and all conditions approved by the Village Plan Commission including wetland, storm water, environmental, zoning, energy, conservation, building code and public health laws, ordinances and regulations).

## **ARTICLE II RESPONSIBILITIES OF THE PARTIES**

Section 2.1 **Responsibilities of the Village.** The Village shall be responsible for the performance and all costs incurred for the following subject to Vandervest's performance and the conditions and contingencies described below:

1. **Base Value.** The Base Value for the Property located at 1966 Velp Avenue, as of January 1, 2008 is One Million Eight Hundred Sixty-Eight Thousand Eight Hundred and 00/100 (\$1,868,800.00) Dollars.
2. **Vandervest's Value.** Pursuant to Vandervest's estimate, the new Assessed Value of the Property upon completion of the Project at 1966 Velp Avenue, shall reflect an increase of not less than \$1.8 Million Dollars over the Base Value of the Property as of January 1, 2008 and on the first day of January each year thereafter that the Village is required to make any annual payments under this Agreement.
3. **Project Completion.** Upon completion in 2012 of the Harley-Davidson Dealership/Restaurant including a banquet facility, service center, the Property at 1966 Velp Avenue, will be reassessed in accordance with Chapter 70, Wis. Stats. and have an estimated general real estate tax value of not less than \$3.5 Million Dollars as of January 1, 2013.
4. **New Value.** For each year of payment commencing in the year 2014, the New Value of the Property and buildings located at 1966 Velp Avenue, shall be calculated by subtracting the Base Value of the Property from the Assessed Value of the Property for real estate tax purposes as of January 1<sup>st</sup> for that year and each year thereafter that payments will be made by the Village.
5. **Payment Schedule.** Upon completion of the Project in 2012 and reassessment of the Property as of January 1, 2013, the Village will pay fifty percent (50%) of the tax increment real estate taxes generated and collected from the New Assessed Value of the

Property to Vandervest on an annual basis for a period of fifteen (15) years commencing in 2014 subject to the termination provisions at paragraph 8 and the cap at paragraph 6.

The current tax incremental rate that would apply to the New Assessed Value is the total net tax rate for the Village minus the tax rate for the State of Wisconsin.

For illustration purposes only, the general net tax rate for the Village of Howard for 2010 was \$17.37 per \$1,000 of value. In subtracting the State of Wisconsin's tax rate from the total net tax rate for the Village, the tax increment rate is \$17.20 per \$1,000 of valuation. Assuming there was \$1.8 Million Dollars of New Value in 2013 and the tax increment rate remained at \$17.20 the annual payment would be \$15,480.00 as follows:

$$1,800 (\$ 1,800 \text{ New Value of Property}) \times \$17.20 (\text{tax increment rate}) = \$30,960.00$$

$$\$30,960.00 \times 50\% = \underline{\$15,480.00} (\text{annual payment on New Value})$$

The annual payment shall be made on the first day of March of each year beginning March 1, 2014 contingent upon verification of the payment of real estate taxes and personal property taxes for the Property. The Village will be under no obligation to make the annual payment until such time as Vandervest has paid all outstanding personal property and real estate taxes for the Property.

6. **Cap on New Incremental Value.** The Village's annual obligation to make payment of fifty percent (50%) of the New Assessed Value of the Property is limited to not more than \$2.8 Million Dollars of New Assessed Value. There shall be no offsets, credits, carry forward or subsequent adjustments for any year's payment by the Village due to annual changes in the New Assessed Value of the Property.

7. **Termination of Payment Schedule.** The Village's obligation to make annual payments shall terminate and Vandervest will hold the Village harmless and make no further claim against the Village under the Payment Schedule upon the happening of any of the following events:

- a. Sale or other transfer of the Property without the consent of the Village, which consent shall not be unreasonably withheld.
- b. Assignment of the Property by Vandervest for the benefit of creditors or bankruptcy proceedings involving Vandervest.
- c. Stopping business operations at the Property or reducing the level of operations such as to materially impact the Value of the Property.
- d. Relocation of the business from the Property.
- e. Any change in the Tax Incremental Finance Law in the State of Wisconsin which would materially impact the Village's ability to use the tax increment generated by the Property for payment of the annual percentage value to

Vandervest or cause the Village to make all or part of the payment from the general tax levy for the Village.

- f. Foreclosure of the Property.
- g. Failure to pay when due personal property and real estate taxes for the property at 1966 Velp Avenue or failure to pay when due payments to the Village of Howard under the Revolving Loan Fund Loan Agreement and Note.

Section 2.2 **Vandervest's Responsibilities.** Vandervest shall be responsible for the performance and all costs incurred for the following:

**A. Building - Project**

Vandervest has purchased the Black Forest Restaurant located at 1966 Velp Avenue, Village of Howard. Vandervest will renovate and construct an addition at this location for a Harley-Davidson Dealership. The forty thousand (40,000) square foot project will consist of twenty-five thousand (25,000) square foot addition along with renovations to the existing facility. The facility will house an upper level banquet hall, full line of new and used Harley-Davidson Motorcycles, parts, accessories, motor clothes and state of the art service department. The Harley-Davidson Dealership and restaurant will generate twenty (20) additional jobs in the Village of Howard, Brown County, Wisconsin.

**B. Value Representation**

For payments by the Village to Vandervest, Vandervest is representing an estimated of an assessed 2013 real estate value for the Buildings and Improvements at 1966 Velp Avenue, Village of Howard, of \$3.5 Million Dollars.

**ARTICLE III  
INDEMNIFICATION**

Section 3.1 **Contractual Liability.** Each party shall be responsible for satisfying any and all contracts and/or subcontracts entered into by that party with third parties for purposes of completing its respective portion of the project, and shall indemnify and hold the other parties harmless from any such contractual liability.

**ARTICLE IV  
DEFAULT**

Section 4.1 **Acts constituting default.** Subsequent to closing, the failure of any party to observe or perform any of the covenants, conditions, or obligations applicable to that party under this Agreement in a timely or satisfactory matter, shall constitute a default under the terms of this Agreement.

Section 4.2 **Acts permissible in the event of a default.** In the event of such a default, the aggrieved party may take any one or more of the following actions after giving 30 days written notice to the defaulting party, but only if the default has not been cured within said 30 days:

- a. The party may suspend its performance under this Agreement until it receives assurance from the defaulting party, deemed adequate by the aggrieved party, that the defaulting party will cure its default in a timely matter and intends to continue performance under the Agreement.
- b. The aggrieved party may proceed to arbitration.

Section 4.3 **No implied Waiver.** In the event any covenant or provision of this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.4 **Arbitration.** In the event any dispute should arise under this Agreement, the parties agree to submit the matter to binding arbitration pursuant to Chapter 788 of the Wisconsin Statutes. Arbitration shall take place in Brown County unless otherwise agreed to by the parties. The parties shall select a mutually agreed upon arbitrator to arbitrate the matter. In the event the parties cannot agree upon the arbitrator, each party shall select their own arbitrator who shall jointly select a third arbitrator. The third arbitrator shall be the person who arbitrates the matter, and the decision shall be binding upon all parties. The parties share equally in the cost of such arbitrator.

## **ARTICLE V ADDITIONAL PROVISIONS**

Section 5.1 **Conflicts of Interest.** No member of the governing body or other officer of the Village shall have any financial interest, direct or indirect, in this Agreement, the Property, or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken there under or with respect thereto not shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the Village shall be personally liable to the Village in the event of any default or breach by Vandervest or successor or on any obligations under the terms of this Agreement.

Section 5.2 **Restrictions on Sale of the Development Area.** Without the express written consent of the Village, any lands or parcels comprising the Property may not be sold, transferred or conveyed in any manner which would under law in effect on the date of this Agreement render any portion of the Property exempt from property taxation; provided, however, that the Village's consent shall not be required in connection with the granting of any mortgage to finance or refinance lands or parcels comprising the Property or in connection with any sale or conveyance pursuant to or following any foreclosure (or acceptance of deed in lieu of foreclosure) of such mortgage. The covenants contained in this section shall bind and run with

the lands and parcels comprising the Property.

Section 5.3 **Headings.** Descriptive headings as used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 5.4 **Notice.** Any notice required under this Agreement shall be given in writing, signed by the party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the parties, and addressed as follows:

If to the Village:  
Village Administrator  
2456 Glendale Avenue  
P.O. Box 12207  
Green Bay, WI 54307-2207

If to Vandervest:  
Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay  
1966 Velp Avenue  
Green Bay, WI 54303

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

Section 5.5 **Force Majeure.** If any party hereto shall be materially delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes or walk outs, unavailability of materials, failure of power, riots, insurrections, terrorist acts, the act or failure to act of another party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period of such delay provided that the party whose performance is delayed, hindered, or prevented gives immediate written notice to the other parties and takes all reasonable actions to overcome the condition affecting its performance as expeditiously as possible. At the request of any party hereto, authorized representatives of all the parties to this Agreement shall meet to discuss any condition affecting performance hereunder and potential actions that might be undertaken to overcome such conditions.

Section 5.6 **Entire Agreement.** This document contains the entire Agreement between the parties with respect to the matter set forth herein, and shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns. This Agreement may be modified only in writing, with said written modification(s) signed by an authorized representative of all parties.

Section 5.7 **Governing Law.** This Agreement shall be construed in accordance with the Laws of the State of Wisconsin.

Section 5.8 **Cooperation.** The parties hereto agree to cooperate in the prosecution of applications made by any party for any governmental certificates, permits, or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use of occupancy of the Property. The parties agree at any time, or from time to time at the written request of another party, to sign and deliver other such documents as may be reasonably requested or may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

Section 5.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 5.10 **Relationship with Parties.** Nothing contained in this agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agenda or to create any partnership, joint venture or other association between the Village and Vandervest Development.

Section 5.11 **Further Assurances.** Village and Vandervest, each agree, at any time or from time to time at the written request of the other, to sign and deliver such other instruments, notices, conveyances, Agreements or other documents as may be reasonable requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this agreement.

Section 5.12 **No Liability of Village.** Village shall have no obligation or liability to the lending institute, architect, contractor, or subcontractor, or any other party retained by Vandervest in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Vandervest specifically agrees that no representations, statements, assurances or guarantees will be made by Vandervest to any third party or by any third party which are contrary to these provisions.

Section 5.13 **Recording of Agreement.** The Agreement and any and all subsequent modifications thereof or additions thereto may upon being duly executed, be recorded by the Village with the Register of Deeds for Brown County, Wisconsin.

Section 5.14 **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees and assigns. With the consent of the Village, which consent shall not be unreasonably withheld, Vandervest may assign this Agreement, or any part thereof, from time to time to any entity controlled or managed by Vandervest, or to any person acquiring any portion or portions of the Development Area, provided that, in the event of any such transfer, the applicable terms and conditions of this Agreement shall run with the title of the Property included in the portion of the Development Area so transferred. The Village may condition its consent upon the transferee expressly assuming all of the obligations of Vandervest as contained in this Agreement. Upon any such transfer of Vandervest's interest, Vandervest initially named herein shall be released from its obligations hereunder.

Section 5.15 **Construction of Agreement.** It is understood and agreed by Vandervest and the Village that this Agreement shall be construed without regard to any presumption or other rule regarding construction against the party causing the Agreement to be drafted. Each party having had the opportunity to have the Agreement reviewed by their respective counsel or having waived their right to do so as evidence by their signature hereon.

Section 5.16 **Severability.** In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be at all affected or impaired thereby.

In witness whereof, the parties hereto have executed this Agreement as of the date first written above.

**VILLAGE OF HOWARD, WISCONSIN**

By: \_\_\_\_\_  
Name: Burt R. McIntyre  
Title: Village President

By: \_\_\_\_\_  
Name: Christopher Haltom  
Title: Village Clerk/Director of Administrative Services

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Burt R. McIntyre, Village President and Christopher A. Haltom Village Clerk/Director of Administrative Services to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_



**UNLIMITED GUARANTY**

**LENDER:** Village of Howard  
2456 Glendale Avenue  
P.O. Box 12207  
Green Bay, Wisconsin 54307-2207

**BORROWER:** **Vandervest Enterprises, Inc.**  
d/b/a Vandervest Harley Davidson  
of Green Bay  
1966 Velp Avenue  
Green Bay, WI 54303

**GUARANTOR:** Rick Vandervest  
Lynn Vandervest  
5881 Marys Road  
New Franken, WI 54229

**1. CAPITALIZED TERMS.** Capitalized terms used in this Guaranty shall have the meanings ascribed to them in the Agreement.

**2. UNLIMITED, IRREVOCABLE GUARANTY.** To induce the Village to enter into the Agreement with the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby unconditionally and, except as otherwise provided herein, irrevocably guarantees to the Village the prompt payment of the total amount of unpaid principal, accrued interest, court costs, attorney's fees and other amounts owed by the Borrower under the Loan Agreement between the Village of Howard and Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay and the Promissory Note.

**3. ABSOLUTE, CONTINUING GUARANTY.** This Guaranty is absolute, continuing and independent and, shall not be affected, diminished or released for any reason whatsoever including but not limited to, the following:

- a) Any invalidity of the Agreement, the Promissory Note, this Guaranty, or any portion thereof;
- b) Any failure by the Village to pursue collection or enforcement of the Agreement or the Promissory Note against the Borrower;
- c) Any renewal, extension, acceleration or change in the terms for payment of amounts owed under the Agreement and Promissory Note;
- d) Any modification, amendment, waiver or other change of the terms of the Agreement and Promissory Note;
- e) Any failure by the Village to perfect and maintain a valid and duly perfected security interest in, or to preserve its rights, title and interest in, the Collateral;

- f) Any release or discharge, by operation of law or otherwise, of the Village's rights, title and security interest in the Collateral;
- g) Any judicial, administrative or governmental action or proceeding affecting the Borrower, the Collateral, the Agreement, the Promissory Note, or this Guaranty including, without limitation, the release or discharge of the Borrower's obligations and liabilities under the Agreement or the rejection or disaffirmance of the Agreement or any of the terms thereof;
- h) Any disability, defense or cessation of the liability of the Borrower;
- i) Any assignment or transfer of the Village's rights under the Agreement or the Promissory Note;
- j) Any disallowance of the Village's rights and claims against the Borrower under the United States Bankruptcy Code, as amended, or any other federal, state or local law, rule, regulation or ordinance; or
- k) Any other circumstance which might otherwise constitute a defense or a discharge of the Borrower or Guarantor.

**4. WAIVERS.** As a further inducement to the Village and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor irrevocably:

- a) Waives, disclaims and relinquishes any and all claims, whether based in equity or law, whether by contract, statute or otherwise, that the Guarantor now or hereafter may have against the Borrower including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim or remedy of the Village against the Borrower or any collateral security that the Village now has or hereafter may acquire until the obligations of the Borrower have been paid in full; provided, however, that nothing herein shall be construed to waive, disclaim or relinquish any claims that the Guarantor now or hereafter may have against the Borrower for salary, bonuses and deferred compensation payable to the Guarantor in the capacity as President of the Borrower;
- b) Waives diligence, presentment, demand for payment, protest, and notice of any default or nonperformance by the Borrower;
- c) Waives any right the Guarantor otherwise might have to require the Village to proceed against and exhaust its remedies against the Borrower or any collateral or security for the payments and obligations guaranteed hereunder, or to pursue any other remedy that may be available to the Village;
- d) Waives any defenses arising from or relating to:
  - (i) Any disability or other affirmative defense of the Borrower or Guarantor;

- (ii) Any lack of authority of the Borrower or Guarantor to enter into the Agreement, the Promissory Note, and this Guaranty; or
- (iii) Any invalidity or illegality of the Agreement, the Promissory Note, or Guaranty;
- e) Waives any and all other affirmative defenses, offsets and counterclaims that the Borrower, or Guarantor now or hereafter may have against the Village; and
- f) Waives any failure by the Village to acquire title to, or perfect a valid, enforceable security interest in the Collateral.

**5. CONTINUING GUARANTY.** This is a continuing Guaranty and shall not be revoked or terminated by the Guarantor so long as any amount owed to the Village under the Agreement and Promissory Note remain unpaid. The Guarantor hereby acknowledges and agrees that this continuing Guaranty applies to and covers any and all future alterations, changes and modifications to the Agreement and Promissory Note that now or hereafter may be agreed to by the Village and the Borrower, regardless of whether such alterations, changes and modifications are agreed to by the Guarantor. This Guaranty shall be reinstated if and to the extent that, for any reason, any payment of amounts owed to the Village under the Agreement and Promissory Note is rescinded or must be otherwise restored, whether as a result of any proceedings in bankruptcy, a reorganization or otherwise.

**6. WARRANTIES AND REPRESENTATIONS BY GUARANTORS.** To induce the Village to accept this Guaranty and enter into this Agreement with the Borrower, the Guarantor hereby warrants and represents that:

- a) The Guarantor has read, fully understands, and agrees to all of the terms and conditions set forth in this Guaranty;
- b) This Guaranty is valid and enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, reorganization or other similar laws affecting generally the enforceability of the rights of creditors;
- c) The Guarantor is financially solvent and able to comply with all the terms and conditions set forth in the Agreement and this Guaranty;
- d) The Guarantor has fully investigated the Borrower's creditworthiness, and has determined that the Borrower is financially able to comply with all of the terms and conditions of the Agreement and Promissory Note;
- e) In making those determinations, the Guarantor has not relied upon any information furnished by the Village;
- f) The financial statements and other information provided by the Guarantor and the Borrower to the Village are complete and accurate, and may be relied upon by the Village in deciding whether to accept this Guaranty and to enter into the Agreement with the Borrower; and

- g) The warranties and representations set forth herein are complete and accurate as of the date of this Guaranty, and shall survive the execution of this Guaranty.

**7. COST AND EXPENSES; INTEREST.** The Guarantor agrees to pay all reasonable collection costs and expenses, including, without limitation, court costs, legal fees and expenses, that hereafter may be incurred by the Village in connection with its enforcement and collection of amounts owed under the Agreement, the Promissory Note, and this Guaranty.

**8. FINANCIAL REPORTS.** For so long as the Guarantor shall have any obligations or liability under the Agreement, the Promissory Note and this Guaranty, the Guarantor hereby agrees to deliver to the Village:

- a) The Guarantor's financial statements within ninety (90) days after the end of each calendar year, prepared in accordance with generally accepted accounting principles;
- b) Such other financial information concerning the Agreement, the Promissory Note, the Borrower, the Project and the Collateral as the Village may reasonably request.

**9. ENTIRE AGREEMENT.** This document contains the entire agreement of the parties concerning the Guarantor's personal Guaranty of the Borrower's payments and obligations under the Agreement and the Promissory Note. This Guaranty may not be amended, modified or altered except in writing signed by the Guarantor and the Village.

**10. CHOICE OF LAW. THIS GUARANTY IS AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF WISCONSIN.** If any provisions of this Guaranty shall be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this Guaranty.

**11. VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this Guaranty, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the Brown County Circuit Court in Green Bay, Wisconsin. **THE GUARANTOR HEREBY CONSENTS TO PERSONAL JURISDICTION IN THOSE WISCONSIN COURTS AND WAIVES ANY DEFENSES THAT THE GUARANTOR OTHERWISE MIGHT HAVE RELATING THERETO.**

**12. WAIVER OF RIGHT TO JURY TRIAL.** **THE GUARANTOR HEREBY WAIVES THE GUARANTOR'S RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN THE VILLAGE AND THE GUARANTOR CONCERNING THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS GUARANTY, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY'S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE GUARANTOR HEREUNDER.**

**13. CAPTIONS.** The captions in this Guaranty are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty.

Date: \_\_\_\_\_

By: Rick Vandervest, Individually

Date: \_\_\_\_\_

By: Lynn Vandervest, Individually

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Rick Vandervest, \_\_\_\_\_ and Lynn Vandervest, \_\_\_\_\_ to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_

**LOAN AGREEMENT  
BETWEEN  
THE VILLAGE OF HOWARD  
AND  
VANDERVEST ENTERPRISES, INC. D/B/A  
VANDERVEST HARLEY DAVIDSON OF GREEN BAY**

**THIS AGREEMENT**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the Village of Howard, a municipal corporation organized and existing under and by virtue of the laws of the State of Wisconsin, hereinafter referred to as the "Village" and Vandervest Enterprises, Inc., d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, and qualified to do and doing business in the State of Wisconsin, and Green Bay H-D Holding Company, LLC, a Wisconsin Limited Liability Company, hereinafter referred to as the "Vandervest Harley Davidson".

**WITNESSETH:**

**WHEREAS**, Vandervest Enterprises, Inc., d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin Corporation, licensed to do and doing business in the State of Wisconsin intends to expand its business operations in the Village of Howard, Brown County, Wisconsin. Vandervest Harley Davidson has purchased the Black Forest Restaurant located at 1966 Velp Avenue, Village of Howard. Vandervest Harley Davidson will renovate the existing restaurant/banquet hall and construct an addition at this location for a Harley-Davidson Dealership. The forty thousand (40,000) square foot project will consist of twenty-five thousand (25,000) square foot addition along with renovations to the existing facility. The facility and addition will house an upper level banquet hall, lower level café, full line of new and used

Harley-Davidson Motorcycles, parts, accessories, motor clothes and state of the art service department. This project will add approximately \$1.8 Million Dollars of New Assessed Valuation to the Village of Howard's tax rolls. The Harley-Davidson Dealership and restaurant will generate twenty (20) additional jobs in the Village of Howard, Brown County, Wisconsin; and

**WHEREAS**, Vandervest Harley Davidson has requested that the Village provide financial assistance through the Village of Howard Economic Development Revolving Loan Fund in order that its intended business purpose may be established, within the corporate limits of the Village of Howard, thereby enabling employment opportunities to be made available principally to low- and moderate-income persons within the community; and

**WHEREAS**, incentive financing is essential to insure the establishment of the Harley-Davidson Dealership and restaurant and the creation of employment opportunities in the Village of Howard which will result in greater support of the community's environment and economy; and

**WHEREAS**, the Village and the Community Development Authority of the Village of Howard, have approved the administration and lending of the proceeds to Vandervest Harley Davidson upon the terms and conditions herein stated, and have required execution and delivery of this loan agreement;

**NOW, THEREFORE**, for and in consideration of the premises and of the covenants and undertakings herein expressed, the Village and Vandervest Harley Davidson agree as follows:

**I. LOAN**. The Village will lend to Vandervest Harley Davidson One Hundred Ninety-Five Thousand (\$195,000.00) Dollars for the renovations and additions to the existing facility at

and for the purchase of the real estate located at 1966 Velp Avenue in the Village of Howard legally described as:

Tax Parcel No. VH-2651

Unit 1, together with said unit's undivided interest in the common elements and the exclusive use of the limited common elements appurtenant to said unit, all in Rustic Rail Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Brown County, Wisconsin, March 4, 2005, as Document Number 2176274 and amended by First Amendment to and Restatement of Declaration of Condominium for Rustic Rail Condominium, recorded March 20, 2006, as Document Number 22480623, said condominium being located in the Village of Howard, Brown County, Wisconsin, on the real estate described in said Declaration and incorporated herein by this reference thereto.

The terms of the loan are as follows:

Term - Fifteen (15) years

Interest Rate - 3.0 percent

Payment Schedule: Principal, interest and accrued interest shall be paid in fifteen (15) annual payments with the first payment of principal and interest commencing on March 1, 2014 and on March 1<sup>st</sup> of each year thereafter.

Security - Will be in the form of a third mortgage against the property subordinate only to a first mortgage in favor of Baylake Bank, Green Bay, Wisconsin, and a second mortgage in favor of the Wisconsin Business Development Finance Corporation, in the total amount of approximately Three Million Three Hundred Eighty Thousand (\$3,380,000.00) Dollars. Personal Guarantee from Rick Vandervest and Lynn Vandervest. Vandervest Harley Davidson unconditionally agrees to repay the loan, together with interest thereon, in the amounts and at the times specified in accordance with the terms of this loan agreement and the promissory notes. All such payments shall be in lawful money of the United States of America and shall be paid directly to the Village of Howard, 2456 Glendale Avenue, Green Bay, Wisconsin.

**II. PROJECT DESCRIPTION.** Vandervest Harley Davidson has purchased the Black Forest Restaurant located at 1966 Velp Avenue, Village of Howard. Vandervest Harley

Davidson will renovate the existing restaurant/banquet hall and construct an addition at this location for a Harley-Davidson Dealership. The forty thousand (40,000) square foot project will consist of twenty-five thousand (25,000) square foot addition along with renovations to the existing facility. The facility will house an upper level banquet hall, lower level café, full line of new and used Harley-Davidson Motorcycles, parts, accessories, motor clothes and state of the art service department. The facility and addition will house an upper level banquet hall, full line of new and used Harley-Davidson Motorcycles, parts, accessories, motor clothes and state of the art service department. This project will add approximately \$1.8 Million Dollars of New Assessed Valuation to the Village of Howard's tax rolls. The Harley-Davidson Dealership and restaurant will generate twenty (20) additional jobs in the Village of Howard, Brown County, Wisconsin; and

**III. EMPLOYMENT.** During the project term (beginning at the signing of this loan agreement and ending December 31, 2014, a total of twenty (20) full-time equivalent (FTE - based on 40 hours per week - 2080 hours per year) jobs will be created or retained by Vandervest Harley Davidson. Twelve (12) of the FTE jobs will be provided to persons of low- to moderate-income (LMI) households as per U.S. Department of Housing and Urban Development guidelines. The twelve (12) jobs will be created no later than December 31, 2014.

**IV. OTHER FINANCING OR INVESTMENT.** The Village's obligation for the disbursement of loan funds is conditioned upon Vandervest Harley Davidson verifying the financing commitment of the other parties as follows:

- A. Baylake Bank and Wisconsin Business Development Finance Corporation lends Vandervest Harley Davidson approximately Three Million Three Hundred Eighty Thousand (\$3,380,000.00) Dollars for the acquisition of real estate and

improvements thereto at 1966 Velp Avenue in the Village of Howard, Brown County, Wisconsin.

**V. DISBURSEMENT OF LOAN FUNDS.** The Village will distribute the loan funds to Vandervest Harley Davidson as follows:

- A. Upon the execution of the Loan Agreement between the Village of Howard and Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, ; and
- B. The execution of a TIF Assistance Agreement between the Village of Howard and Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay,

**VI. PROJECT COMPLETION AND PROGRESS REPORTS.** Vandervest Harley Davidson's project shall be completed within eighteen (18) months from the date of this agreement and Vandervest Harley Davidson shall provide to the Village a schedule not exceeding eighteen (18) months for project completion. The time table should include a hiring schedule, construction and completion schedule.

Vandervest Harley Davidson shall submit progress reports quarterly to the Director of Administrative Services. These reports shall give an update on the project and shall include minimum current and projected employment levels and the financial statements for the previous three (3) months.

**VII. RECORDS.** In addition, Vandervest Harley Davidson will maintain those records which are necessary to enable the Village to determine whether the performance of Vandervest Harley Davidson complies with the terms of this agreement. The records shall include, at a minimum, bills, invoices and checks for payments made toward the renovation and purchase of the property and payrolls for new employees hired to meet the terms of this agreement. The

Village will have access to all records pertinent to this agreement for the purpose of examination and transcription during normal working hours.

**VIII. FAILURE TO CREATE JOBS.** Pursuant to U.S. Department of Housing and Urban Development and Village of Howard Economic Development Revolving Loan Fund guidelines, the primary thrust of this program is to create or retain jobs, particularly LMI positions. Since Vandervest Harley Davidson has committed to create or replace twelve (12) LMI positions in the Village of Howard during the course of this contract, performance regarding job creation/replacement is a major criteria in determining if Vandervest Harley Davidson has lived up to the intent of this program. Hence, the following penalty will be invoked by the Village in the event of less than committed job creation/replacement as per Section III of this agreement.

For every job less than the twelve (12) positions committed to by Vandervest Harley Davidson, the interest rate during the final fourteen (14) years of this agreement will increase by .25 percent for each unfilled LMI jobs. For example, a failure to create three (3) jobs will result in an interest rate of 3.0 percent plus .75 percent for the remainder of the loan. The total interest increase for failure to create LMI jobs shall not exceed a total of 2.0 percent.

**IX. NONDISCRIMINATION.** Vandervest Harley Davidson will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap.

**X. NOTICE.** Any notice required under this Agreement shall be given in writing, signed by the party giving notice, and personally delivered or mailed by first class mail, postage prepaid, to the parties, and addressed as follows:

If to the Village:  
Village Administrator  
2456 Glendale Avenue  
P.O. Box 12207  
Green Bay, WI 54307-2207

If to Vandervest:  
Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay  
1966 Velp Avenue  
Green Bay, WI 54303

Notice shall be deemed delivered, in the case of personal delivery on the date when personally delivered, or in the case of mail, on the date when said notice is deposited in the United States mail with sufficient postage to affect such delivery.

**XI. DEFAULT.** Failure by Vandervest Harley Davidson to make payment of any principal or interest within thirty (30) days after the same is due and payable or the failure of Vandervest Harley Davidson to comply with any condition of this agreement other than the increase of employment contained in Section III, is a default. In addition, the following shall also be considered as a default:

- A. Defaulting on other loans with private lenders.
- B. Cessation of operations or movement of the business from the Village of Howard.
- C. The business is sold or if a controlling interest passes to parties other than the present owners or present owners' immediate family.

In the event of a default, all sums due and owing to the Village shall, at its option, become immediately due and payable. The Village may exercise this option by giving written notice to Vandervest Harley Davidson which specifies the default, the action required to cure the default and a date, not less than thirty (30) days from the date of the notice, by which the default must be cured to avoid a foreclosure or other collection action.

**XII. GOVERNING LAW.** The laws of the State of Wisconsin shall govern this Loan Agreement and the Mortgage and Promissory Note issued hereunder.

**XIII. COUNTERPARTS.** This Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were on the same instrument.

**XIV. SEVERABILITY.** If any provisions of this Loan Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provisions in questions inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Loan Agreement shall not affect the remaining portions of this Loan Agreement, or any part thereof.

**XV. TERMINATION.** Upon full and final payment of the promissory note, this Loan Agreement shall terminate and the Village shall cause the promissory note to be canceled and delivered to Vandervest Harley Davidson; and the Village shall cause the mortgage to be satisfied and to be discharged of record.

**XVI. AMENDMENTS.** Any amendments to this agreement requires the written agreement of the Village and Vandervest Harley Davidson.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first written above.

**VILLAGE OF HOWARD**

BY: \_\_\_\_\_  
Burt R. McIntyre, Village President

BY: \_\_\_\_\_  
Christopher A. Haltom,  
Village Clerk/Director of Administrative Services

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Burt R. McIntyre, Village President and Christopher A. Haltom, Village Clerk/Director of Administrative Services, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_



## PROMISSORY NOTE

For value received, the undersigned Borrower, Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation, promises to pay to the Village of Howard the principal sum of One Hundred Ninety-Five Thousand (\$195,000.00) Dollars together with interest on the unpaid principal balance as provided herein. The term of this note will be for a period of fifteen (15) years with interest at the rate of 3.0 percent. Principal, interest and accrued interest shall be paid in fifteen (15) annual payments and attached is a loan repayment schedule identified as Exhibit 1 which is incorporated herein by reference and made part of this Note with the first payment of principal and interest commencing on March 1, 2014 and March 1<sup>st</sup> of each year thereafter. All payments of principal and/or interest as called for in the repayment schedule shall be made annually on the 1<sup>st</sup> day of March to the Village of Howard at 2456 Glendale Avenue, Green Bay, Wisconsin, 54313.

This Note is secured by a mortgage on real estate dated the \_\_\_\_\_ day of \_\_\_\_\_, 2013 from the Borrower to the Village of Howard and the mortgaged real estate at 1966 Velp Avenue, Village of Howard, Brown County, Wisconsin, more particularly described as follows:

Tax Parcel No. VH-2651

Unit 1, together with said unit's undivided interest in the common elements and the exclusive use of the limited common elements appurtenant to said unit, all in Rustic Rail Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Brown County, Wisconsin, March 4, 2005, as Document Number 2176274 and amended by First Amendment to and Restatement of Declaration of Condominium for Rustic Rail Condominium, recorded March 20, 2006, as Document Number 22480623, said condominium being located in the Village of Howard, Brown County, Wisconsin, on the real estate described in said Declaration and incorporated herein by this reference thereto.

This mortgage is given to secure the repayment of One Hundred Ninety-Five Thousand (\$195,000.00) Dollars according to the terms of this Note dated \_\_\_\_\_, 2013, executed by the mortgagor to the mortgagee. This is a third mortgage in a subordinate position only to the first position mortgage holder Baylake Bank and a second position mortgage holder Wisconsin Business Development Finance Corporation in the total amount of approximately Three Million Three Hundred Eighty Thousand (\$3,380,000.00) Dollars.

All payments shall be applied first to interest and then to principal and other sums due under the note or the mortgage. The Borrower may prepay this note in full or in part at any time without penalty. If the Borrower fails to make payment due under this note within thirty (30) days after it has become due or upon any default under the mortgage securing this note which is not cured within thirty (30) days following the date of mailing of a written notice to Borrower, the Holder may accelerate the entire balance of this note and declare the same immediately due and payable without notice or demand.

In the event that any installment becomes more than fifteen (15) days past due, the Borrower shall pay a late payment charge to Holder equal to five percent (5%) of the entire unpaid amount of the installment. All late charges will be secured by the mortgage and if not prohibited by applicable law, interest shall also accrue on delinquent principal amounts at the interest rate then in effect. Presentment, protest and notice of dishonor are hereby waived.

The Note shall be further subject to and include by reference those terms and conditions of the Loan Agreement between the Village of Howard and Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, dated \_\_\_\_\_,

2013, and written amendments thereto and the same is incorporated herein by reference as though fully set forth.

The Borrower further acknowledges that pursuant to the terms and conditions of the Loan Agreement, Borrower's failure to create or retain at least twelve (12) jobs for low and moderate income households, as required by the Loan Agreement, shall result in an increase in the interest rate of one-quarter of a percent (.25%) for each job not created and such interest increase not to exceed a total of two percent (2.0%). The Village of Howard shall give written thirty (30) day notice of any increase in the interest rate pursuant to this provision.

Failure of Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay to comply with any condition of the Loan Agreement other than the increase of employment contained in Section III is a default. In the event of a default, all sums due and owing to the Village shall, at its option, become immediately due and payable. The Village may exercise this option by giving written notice to Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay which specifies the default, the action required to cure the default and a date, not less than thirty (30) days from the date of the notice, by which the default must be cured to avoid a foreclosure or other collection action.

Except as otherwise provided herein with respect to a sale or other transfer of the secured property or an assignment by Borrower for the benefit of creditors or bankruptcy proceedings involving the Borrower, as described below, upon a default occurring under the terms or conditions of this Note, or upon the acceleration of Borrower's indebtedness hereunder as provided in the Loan Agreement, and incorporated by reference herein, the entire balance of the principal of this Note together with interest thereon, at the rate aforesaid shall, at the option

of Village and in the sole discretion of Village, become immediately due and payable, together with reasonable attorney's fees, costs, and other expenses incurred by Village in enforcing payment of this note, the Loan Agreement. Village may exercise this option by giving written notice to the Borrower which specifies the default, any action required to cure the default, and a date not less than thirty (30) days from the date of the notice by which such default must be cured to avoid foreclosure or other collection action. In the event that the Village exercises any such option and any such default is cured by Borrower in a timely fashion, Borrower shall have the right to continue to make the annual installment payment as provided in this Note.

Any sale, assignment, conveyance, or other transfer (whether by contract or otherwise, and whether voluntary or by operation of law) of all or any part of the secured property shall except for the sale or transfer to the immediate family of the Vandervests, at the option of the Village and in the sole discretion of Village, and without presentation, demand, protest, or further notice of any kind, all of which are hereby expressly waived, cause the entire unpaid balance of the Note and all accrued interest thereon to become immediately due and payable, together with reasonable attorney's fees, costs, and other expenses incurred by Village in enforcing said payment. In addition, the unpaid principal balance of this Note, together with all interest due thereon, shall, at the option of Village and without presentation, demand, protest, or further notice of any kind, all of which are hereby expressly waived, become immediately due and payable in case Borrower shall make a general assignment for the benefit of creditors or shall become or be adjudicated bankrupt or shall voluntarily file a petition in bankruptcy or for reorganization, or effect a plan or other arrangement with creditors.

Unless expressly waived in writing, all options of Village to declare the unpaid balance immediately due and payable shall be continuing options. The failure to exercise any of such options at the time of the notice of such breach and/or the acceptance of payments thereafter shall not deemed a waiver or such option.

The laws of the State of Wisconsin shall control the interpretation and enforcement of the Loan Agreement and this Note.

Borrower shall pay all costs and expenses of collection or foreclosure, including (without limitation) reasonable attorneys fees, except to the extent limited or prohibited by applicable law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**VANDERVEST ENTERPRISES, INC. D/B/A  
VANDERVEST HARLEY DAVIDSON  
OF GREEN BAY**

BY: \_\_\_\_\_  
President

BY: \_\_\_\_\_  
Secretary

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Rick Vandervest, \_\_\_\_\_ and Lynn Vandervest, \_\_\_\_\_ to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_

Green Bay H-D Holding Company, LLC, a Wisconsin Limited Liability Company is a passive entity created by Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation , for the purpose of real estate investment/holding in conjunction with the Harley Davidson Dealership operations of Vandervest Enterprises, Inc. and hereby acknowledges and consents to the terms and conditions of this Promissory Note and the Mortgage to be recorded against real estate located at 1966 Velp Avenue, Village of Howard, Brown County, Wisconsin as legally described herein.

**GREEN BAY H-D HOLDING COMPANY, LLC**

BY: \_\_\_\_\_  
President

BY: \_\_\_\_\_  
Secretary

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Rick Vandervest, \_\_\_\_\_ and Lynn Vandervest, \_\_\_\_\_ to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_

## **MORTGAGE**

Know all men, that Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation, of Brown County, Wisconsin, hereinafter called the mortgagor, mortgages to the Village of Howard, a municipal corporation of Brown County, Wisconsin, hereinafter called the mortgagee, the following described real estate at 1966 Velp Avenue, Village of Howard, Brown County, Wisconsin:

Tax Parcel No. VH-2651

Unit 1, together with said unit's undivided interest in the common elements and the exclusive use of the limited common elements appurtenant to said unit, all in Rustic Rail Condominium, a condominium declared and existing under and by virtue of the Condominium Ownership Act of the State of Wisconsin and recorded by a Declaration as such condominium in the Office of the Register of Deeds for Brown County, Wisconsin, March 4, 2005, as Document Number 2176274 and amended by First Amendment to and Restatement of Declaration of Condominium for Rustic Rail Condominium, recorded March 20, 2006, as Document Number 22480623, said condominium being located in the Village of Howard, Brown County, Wisconsin, on the real estate described in said Declaration and incorporated herein by this reference thereto.

This mortgage is given to secure the repayment of One Hundred Ninety-Five Thousand (\$195,000.00) Dollars according to the terms of the Note dated \_\_\_\_\_, 2013, executed by the mortgagor to the mortgagee. This is a third mortgage subordinate only to a first position mortgage holder Baylake Bank and a the second position mortgage holder of

Wisconsin Business Development Finance Corporation in the total amount of approximately Three Million Three Hundred Eighty Thousand (\$3,380,000.00) Dollars.

The mortgagor agrees to pay all taxes and assessments on said real estate; to keep the premises insured for fire and extended coverage for the sum of at least Four Million (\$4,000,000.00) Dollars, to pay the premiums thereon when due and to comply with any co-insurance provisions with companies approved by the mortgagee with the loss payable to the mortgagee as interest may appear, and all policies covering the premises shall be deposited with the mortgagee or a certificate of insurance will be provided.

In case of default in the payment of taxes and assessments, or in case of failure to keep the premises so insured, the mortgagee may pay such taxes and assessments, and effect such insurance and pay the premiums thereon, and the amounts paid shall immediately be repaid and unless repaid shall be added to the indebtedness secured hereby and bear interest from the date of the payment at the rate shown on the mortgage note. In case of default in payment of any principal, interest, taxes, assessments and insurance premiums when the same shall become due, the whole amount of the unpaid principal shall, at the option of the mortgagee, become due and payable with notice as required in the Mortgage Note. In case of default, the mortgagee may sue at law or foreclosure by action or advertisement and the mortgagee may sell the same and give deeds of conveyance to the purchasers pursuant to the statutes.

In case of foreclosure proceedings, whether abated or not, all foreclosure expenses, including reasonable attorneys fees, shall be added to the principal, become due as incurred, and in case of judgment, shall be included therein.

IN WITNESS WHEREOF, this mortgage has been executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**VANDERVEST ENTERPRISES, INC. D/B/A  
VANDERVEST HARLEY DAVIDSON  
OF GREEN BAY**

BY: \_\_\_\_\_  
President

BY: \_\_\_\_\_  
Secretary

STATE OF WISCONSIN    )  
  )  
COUNTY OF BROWN    )    SS

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, Rick Vandervest \_\_\_\_\_, and Lynn Vandervest, \_\_\_\_\_, of the above named Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay to me known to be such persons who executed the foregoing instrument and acknowledged that they executed the same.

\_\_\_\_\_  
\*  
Notary Public, State of Wisconsin  
My Commission expires \_\_\_\_\_

Green Bay H-D Holding Company, LLC, a Wisconsin Limited Liability Company is a passive entity created by Vandervest Enterprises, Inc. d/b/a Vandervest Harley Davidson of Green Bay, a Wisconsin corporation, for the purpose of real estate investment/holding in conjunction with the Harley Davidson Dealership operations of Vandervest Enterprises, Inc. and hereby acknowledges and consents to the terms and conditions of the Promissory Note and this

Mortgage to be recorded against the real estate located at 1966 Velp Avenue, Village of Howard, Brown County, Wisconsin as legally described herein.

**GREEN BAY H-D HOLDING COMPANY, LLC**

BY: \_\_\_\_\_  
President

BY: \_\_\_\_\_  
Secretary

State of Wisconsin    )  
                                  ) ss.  
Brown County         )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the above named Rick Vandervest, \_\_\_\_\_ and Lynn Vandervest, \_\_\_\_\_ to me known to be the persons who executed the foregoing instrument and acknowledge the same.

\_\_\_\_\_  
\*  
Notary Public, Brown County, Wisconsin  
My commission expires \_\_\_\_\_

This instrument was drafted by:  
Attorney Dennis M. Duffy

After recording return to:  
Attorney Dennis M. Duffy  
P.O. Box 488  
Green Bay, WI 54305-0488