

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

CIV. 14CIV24-000064

Plaintiff,

vs.

GENERATIONS ON 1ST, LLC,
WATERTOWN DEVELOPMENT
COMPANY, BORDER BANK,
MULINDA CRAIG, JESSE CRAIG, AND
CODINGTON COUNTY, SOUTH
DAKOTA,

**ANSWER AND
COUNTERCLAIM OF
DEFENDANTS GENERATIONS
ON 1ST, LLC, MULINDA
CRAIG AND JESSE CRAIG**

Defendants.

[¶1] Defendants, Generations on 1st, LLC, Mulinda Craig and Jesse Craig (hereinafter “Defendants”), for their Answer to Plaintiff’s Complaint, state:

[¶2] Except as otherwise answered or specifically admitted, qualified, or explained, each and every allegation and statement of Plaintiff’s Complaint is denied.

[¶3] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of Plaintiff’s Complaint and, therefore, deny the allegations therein.

[¶4] Defendants admit the allegations set forth in paragraphs 2, 3, 4, 5 and 6 of Plaintiff’s Complaint.

[¶5] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶6] Defendants admit that paragraph 8 is a summation of the relief sought by Plaintiff. To the extent that it implies or suggests anything other than said summary, such allegations are denied.

COUNT I – PROMISSORY NOTES (GENERATIONS AND MULINDA CRAIG)

[¶7] Paragraph 9 is an incorporation paragraph for which no response is required.

[¶8] Defendants admit the allegations set forth in paragraph 10(a)-(j) insofar as Generations on 1st, LLC, through its principals, did execute certain notes. To the extent these allegations imply or allege anything other than executed copies of the Notes, those allegations and implications are denied.

[¶9] Defendants admit the allegations set forth in paragraph 11(a)-(d) insofar as Defendant Mulinda Craig did execute certain notes. To the extent these allegations imply or allege anything other than that executed copies of the Notes, those allegations and implications are denied.

[¶10] Defendants admit the allegations set forth in paragraph 12 to the extent certain modifications were made to the Mulinda Craig Notes but deny the remaining allegations in paragraph 12.

[¶11] Defendants deny the allegations in paragraphs and place Plaintiff to its strictest proof of the allegations contained therein.

[¶12] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶13] Paragraph 16 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT II – GUARANTY (JESSE CRAIG)

[¶14] Paragraph 17 is an incorporation paragraph for which no response is required.

[¶15] Defendant Jesse Craig admits the allegations in paragraph 18 to the extent a commercial guaranty was executed but denies any other allegations or implications.

[¶16] Paragraphs 19, 20, and 21 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT III – FORECLOSURE OF PERSONAL PROPERTY SECURITY

INTERESTS

[¶17] Paragraph 22 is an incorporation paragraph for which no response is required.

[¶18] Defendants admit that certain security agreements were executed as alleged in paragraph 23. To the extent that any other allegations or implications are made or implied, those are denied.

[¶19] Defendants deny the allegations made in paragraph 24 and affirmatively assert that Plaintiff fails to clearly identify the specific security interests at issue, but merely sets forth an unnumbered copy of a contract clause.

[¶20] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 and, therefore, deny the allegations therein.

[¶21] Paragraph 26 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶22] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of Plaintiff's Complaint and, therefore, deny the allegations therein.

COUNT IV - FORECLOSURE OF MORTGAGES

[¶23] Paragraph 28 is an incorporation paragraph for which no response is required.

[¶24] Paragraph 29 is admitted to the extent that certain mortgages were executed by Generations on 1st, LLC. To the extent that that any other allegations are made, those allegations or implications are denied.

[¶25] Paragraph 30 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶26] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶27] Paragraphs 32 and 33 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶28] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 34, 35, and 36 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶29] Paragraphs 37, 38, 39, and 40 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT V – APPOINTMENT OF A RECEIVER (GENERATIONS)

[¶30] Paragraph 41 is an incorporation paragraph for which no response is required.

[¶31] Defendants admit that the document specified in paragraph 42 states what is recited, but to the extent any other allegation or implication is made, those are denied.

[¶32] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 43 and 44 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶33] Paragraph 45 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶34] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶35] Paragraph 47(A)-(O) is a prayer for relief for which no response is required. To the extent a response is required, this paragraph is denied.

AFFIRMATIVE DEFENSES

[¶36] Plaintiff's Complaint fails to state a claim upon which relief may be granted.

[¶37] Plaintiff's Complaint fails to join a necessary party.

[¶38] Plaintiff's Complaint is barred by contributory negligence.

[¶39] Plaintiff's Complaint is barred by the statute of frauds.

[¶40] Plaintiff's Complaint is barred by duress.

[¶41] Plaintiff's Complaint is barred by estoppel.

[¶42] Plaintiff's Complaint is barred by fraud.

- [¶43] Plaintiff's Complaint is barred by laches.
- [¶44] Plaintiff's Complaint is barred by license.
- [¶45] Plaintiff's Complaint is barred by waiver.
- [¶46] Plaintiff's Complaint is barred by agreement.
- [¶47] Plaintiff's Complaint is barred by reliance.
- [¶48] Plaintiff's Complaint is barred by modification.
- [¶49] Plaintiff's Complaint is barred by accord and satisfaction.
- [¶50] Plaintiff's Complaint is barred by acceptance.
- [¶51] Plaintiff's Complaint is barred by release.
- [¶52] Plaintiff's Complaint is barred by setoff.
- [¶53] Plaintiff's Complaint is barred by assumption of risk.
- [¶54] Plaintiff's Complaint is barred by unclean hands.
- [¶55] Plaintiff's Complaint is barred by payment.
- [¶56] Plaintiff's Complaint is barred by its failure to mitigate damages.
- [¶57] Plaintiff's Complaint is barred by election of remedies.
- [¶58] Plaintiff's Complaint is barred by failure of consideration.
- [¶59] Plaintiff's Complaint is barred by the applicable statute of limitations.
- [¶60] Defendants affirmatively assert that Plaintiff lacks standing in this matter.
- [¶61] Defendants affirmatively assert breach of an implied contract.
- [¶62] Defendants affirmatively assert that any liability for Plaintiff's damages, if any, is limited by law and the terms of the contract.

[¶63] Plaintiff's claim for attorney's fees is frivolous and not supported by any law or contract.

[¶64] Pending completion of discovery, Defendants reserve their right to amend and allege all affirmative defenses and/or counterclaim and/or crossclaims available pursuant to the South Dakota Rules of Civil Procedure, including, but not limited to, those set forth in SDCL 15-6-8(c).

COUNTERCLAIM AGAINST RED RIVER STATE BANK

[¶65] Defendants, as and or their Counterclaim against Plaintiff, Red River State Bank, state and allege as follows:

FACTUAL BACKGROUND

[¶66] Several years prior to 2017, Martin Peterson, a banker with Town and Country Credit Union, in Fargo, North Dakota, had been involved with financing various projects for Defendant Jesse Craig, a well-known developer.

[¶67] Based upon information and belief, along with a history of working with Jesse Craig, Martin Peterson was familiar and aware of Defendant Jesse Craig's ability to develop commercial and residential property.

[¶68] Around May of 2017, Martin Peterson began working at Plain Commerce Bank in Watertown, South Dakota.

[¶69] Sometime around 2017, Martin Peterson began contacting Defendant Jesse Craig to elicit the development of roughly three hundred (300) apartment units in the City of Watertown, South Dakota.

[¶70] Martin Peterson made certain introductions to employees and members the City of Watertown, as well as certain employees and members of the Watertown Development Company.

[¶71] In an effort to attract economic development in Watertown, South Dakota, the City of Watertown, along with various members of the Watertown Development Company, offered certain favorable Tax Increment Financing “TIF” options to defray the front-end building and operational costs of undertaking development efforts for multiple apartment buildings in the City of Watertown, South Dakota.

[¶72] Based upon the economic development offerings from the City of Watertown and the Watertown Development Company, Defendant Jesse Craig began development plans for multiple apartment buildings totaling around 300 units, provided adequate and commercially viable financing could be attained.

[¶73] At all relevant times, Martin Peterson was aware of Defendant Jesse Craig’s plan to sequentially begin construction of four (4) large mixed use apartment buildings in Watertown, namely: The Lofts, Parkside Place, Generations on 1st, and The Ruins.

[¶74] In and around October 2019, Defendant Jesse Craig began construction of The Lofts, financed with another lender, with the other planned buildings to begin as scheduled.

[¶75] Martin Peterson was aware of Defendant Jesse Craig’s development plan and financing terms.

[¶76] In and around the Spring of 2020, Martin Peterson went to work as a banker for Plaintiff, Red River State Bank (“RRSB”).

[¶77] Martin Peterson, on behalf of his employer, RRSB, as well as RRSB's shareholder and Executive Vice President, Charles Aarestad, began contacting Defendant Jesse Craig in an effort to entice him into financing his remaining three (3) Watertown development projects using RRSB.

[¶78] Charles Aarestad and Martin Peterson represented that RRSB would finance the remaining three (3) apartment buildings at a competitive rate and terms.

[¶79] Defendant Jesse Craig relied upon the representations and statements of Charles Aarestad and Martin Peterson and undertook business efforts to begin the financing package for all three remaining buildings.

[¶80] RRSB, by and through its employees and officers, Martin Peterson and Charles Aarestad, made specific oral and written representations to Defendant Jesse Craig that RRSB would have other banks "participate" in the series of loans to "offset [the] internal lending limit of RRSB."

[¶81] Defendant Jesse Craig relied on the statements and representations and believed there would be no internal lending limitation issues for the three (3) anticipated projects.

[¶82] Defendant Jesse Craig initiated financing for construction, as well as the commitment for permanent financing, under the belief that adequate financing would be provided as promised by RRSB.

[¶83] Defendant Jesse Craig, in good faith, relied upon the statements and representations made by both Martin Peterson and Charles Aarestad.

[¶84] RRSB, by and through its employee, Martin Peterson, approved by the Executive Vice President, Charles Aarestad, offered “*construction* financing” for the apartment building known as “Parkside Place” in the amount of \$4.2 million dollars.

[¶85] RRSB, by and through its employee, Martin Peterson, and approved by Executive Vice President, Charles Aarestad, also offered to provide permanent financing for Parkside Place upon the completion of construction, for an amount equal to 80% LTV (loan to value).

[¶86] Relying on the RRSB’s commitment to finance, in and around May of 2020, Defendant Jesse Craig began construction of the complex known as “Parkside Place.”

[¶87] Relying on RRSB’s commitment to finance the three (3) building projects, shortly thereafter, on or about November, 2020, and as planned, construction began on the second apartment building known as “Generations on 1st”.

[¶88] During construction of Parkside Place, RRSB agreed to provide certain “overlines” in the form of short-term loans to Defendant Jesse Craig and his wife, Defendant Mulinda Craig, to meet certain construction costs.

[¶89] Defendants Jesse Craig and Mulinda Craig, relying on RRSB’s commitment for permanent financing in the amount of 80% LTV upon completion, borrowed funds on a short-term basis to cover various construction costs.

[¶90] During the overlapping construction of Generations on 1st, RRSB agreed to provide similar “overlines” in the form of short-term loans to Defendant Jesse Craig, and his wife, Defendant Mulinda Craig, to meet certain construction costs related to Generations on 1st.

[¶91] Prior to completion of Parkside Place, and during the construction phase of Generations on 1st, Defendant Jesse Craig began the construction of The Ruins, as planned.

[¶92] In and around March of 2020, with construction ongoing, the United States was hit with the Covid 19 Pandemic, resulting in supply shortages and labor delays.

[¶93] After completion of Parkside Place, in or about August, 2021, the “as-built” appraised value was \$6,640,000.

[¶94] Despite having an “as-built” appraisal of \$6,640,000, RRSB was unable or unwilling to provide permanent financing for Parkside Place, consistent with 80% of the “as-built” LTV or \$5,312,000.

[¶95] RRSB provided permanent financing for \$4,200,000, rather than the full amount as agreed.

[¶96] RRSB failed to include the “overlines” related to Parkside Place into the permanent financing package.

[¶97] Charles Aarestad made various representations and assurances that the overlines related to Parkside would be included with Generations’ permanent financing.

[¶98] Charles Aarestad repeatedly and regularly extended the “term” of overlines related to Parkside and Generations while Generations on 1st was being completed.

[¶99] Defendant Jesse Craig relied upon Charles Aarestad’s representations and assurances, including the regular extensions of the various overlines related to Parkside Place and Generations.

[¶100] After opening for lease in and around August, 2021, Parkside Place became financially stable and was able to support its permanent financing obligations, as well as all operating expenses.

[¶101] In and around February, 2022, Generations on 1st obtained its Certificate of Occupancy.

[¶102] Defendant Jesse Craig requested an “as-built” appraisal for Generations upon its completion.

[¶103] RRSB failed or refused to obtain an “as-built” appraisal Generations on 1st.

[¶104] Contrary to RRSB’s numerous representations and assurances, RRSB again failed or refused to provide permanent financing according to the 80% LTV commitment, thereby causing the short-term “overlines” to remain unsatisfied.

[¶105] After opening for lease on or about March 31, 2022, Generations on 1st also became financially stable and was able to support its debt and all operating expenses.

[¶106] RRSB has never obtained an “as built” appraisal.

[¶107] Defendant Jesse Craig objected to RRSB’s unwillingness to provide permanent financing at the 80% LTV for Generations on 1st.

[¶108] RRSB has yet to provide permanent financing despite providing written commitment to do so on November 23, 2020.

[¶109] On or about January 1, 2023, with The Ruins construction nearing completion, RRSB, claimed various defaults associate with the overlines and construction delays due to Covid 19.

[¶110] Based upon information and belief, RRSB, Charles Aarestad, and others affiliated with RRSB, failed to *timely* disclose that RRSB was unable to provide financing for both Parkside Place and Generations on 1st at levels necessary to meet the 80% LTV on an “as-built” basis, as otherwise promised.

[¶111] Based upon information and belief, RRSB, Charles Aarestad, and others affiliated with RRSB had failed to *timely* disclose that RRSB was unable to finish construction financing for The Ruins.

[¶112] On or about January 31, 2023, RRSB presented a Forbearance Agreement without disclosing the material fact that RRSB would be unable to continue to provide construction and ultimately permanent financing for The Ruins, as well as permanent financing for Generations on 1st.

[¶113] Had RRSB, Charles Aarestad, or others affiliated with RRSB, *timely* disclosed the material fact that RRSB was unable to continue to provide financing as otherwise agreed, Defendant Jesse Craig would not have entered into the Forbearance Agreement.

[¶114] Had RRSB been able to provide permanent financing based upon the 80% LTV of the “as-built” appraisal for Parkside Place, as promised, and relied upon by Defendants Jesse and Mulinda Craig, all “overlines”/short-term financing would have been timely retired as otherwise agreed.

[¶115] Had RRSB been able to provide permanent financing based upon the 80% LTV of the “as-built” appraisal for Generations on 1st, as promised, and relied upon by Defendants Jesse and Mulinda Craig, all “overlines”/short-term financing would have been timely retired as otherwise agreed.

[¶116] Based upon information and belief, RRSB was unable or unwilling to fund the remaining construction draws to complete the project known as The Ruins.

[¶117] Based upon information and belief, and contrary to the promises and representations made by RRSB, Charles Aarestad, and other affiliates of RRSB, to Defendant Jesse Craig,

RRSB was unable to use “participants” to avoid internal lending limits for this development project.

[¶118] Had Defendant Jesse Craig known RRSB was unable to provide adequate construction financing he would have found an alternative lender.

[¶119] Had RRSB obtained the “as-built” appraisals for both Parkside Place and Generations on 1st and provided permanent financing at the promised 80% LTV level, all overlines would have been retired or otherwise satisfied.

[¶120] The Second Forbearance Agreement was initially presented to Defendant Jesse Craig on or about June 29, 2023, and contained a provision releasing any and all claims Defendant Jesse Craig, or the various entities would possibly have against RRSB.

[¶121] Defendant Jesse Craig declined to sign the second proposed Forbearance Agreement.

[¶122] In or around November, 2023, Charles Aarestad, individually and as an officer of RRSB, began pressuring Defendant Jesse Craig into selling the two stabilized projects, Parkside Place and Generations on 1st, to Charles Aarestad, individually, for an amount equal to what was owed against each project.

[¶123] The amount Charles Aarestad offered for the two projects was well below Fair Market Value.

[¶124] Defendant Jesse Craig did not agree to sell Parkside Place and Generations on 1st to Charles Aarestad for the price he demanded.

[¶125] Defendant Jesse Craig demanded that RRSB provide adequate and accurate note payoff amounts, and the application of payments that had been made.

[¶126] RRSB repeatedly failed to provide Defendant Jesse Craig with an adequate payoff amount reflecting payment allocations.

[¶127] A dispute between Defendant Jesse Craig and Charles Aarestad and other affiliates of RRSB, arose as to the amounts and prior payments being applied to each separate project.

[¶128] After Defendant Jesse Craig refused to voluntarily sell the two performing properties to Charles Aarestad at a below market price, Defendant Jesse Craig was served with a default notice demanding, among other things, that Defendant Jesse Craig, on behalf of Parkside Place, LLC, and Generations on 1st, execute a Purchase Agreement for the sale of each to Charles Aarestad, at the unagreed upon price, or face a foreclosure action along with RRSB invoking its assignment of rents thereby cutting off all cashflow to the various entities.

[¶129] The following notice was sent to Defendant Jesse Craig, and the entities:

[¶130] The Attached Notice, as marked as **Exhibit C**, contains the following:

- a. The Bank hereby demands the following actions be taken:
- b. On or before Wednesday, December 20, 2023, provide copies of the debt instruments for the loan with Border State Bank (i.e., note, security agreement, mortgage, business loan agreement, etc.) that encumbers the Parkside Property.
- c. On or before Wednesday, December 20, 2023, the payment due on Note #51438 for 12/1/23 (\$22,525.00) must be remitted to the Bank. Payments for Note #51438 need to be made current and all subsequent payments timely made.
- d. On or before Friday, December 29, 2023, deliver to the Bank a written commitment or executed loan modification from Border State Bank to release the Border State Bank mortgage on the Parkside Property.
- e. On or before December 31, 2023, execute and deliver a signed purchase agreement for the sale of the Parkside Property acceptable to the Bank. The closing must occur on or before March 31, 2024. In that it does not appear a

sale to a third party is viable at this point, Charles Aarestad and/or his assignors will provide a draft purchase agreement for the sum of \$5,440,771.81. It is anticipated this draft purchase agreement will be provided to Mr. Grossman on Wednesday, December 20, 2023.

[¶131] The notice contains a demand for Defendants to sign a purchase agreement for the sale of Parkside Property, and to sell it to a personal officer of the bank for a substantially lower price than what it is worth.

[¶132] Based upon information and belief, RRSB invoked its assignment of rents against each entity to economically pressure Defendant Jesse Craig into selling the performing properties to Charles Aarestad and his father, individually.

[¶133] New default notices were drafted, devoid of the mandate to sell the two performing properties and were served upon Defendants Jesse Craig, Mulinda Craig, and Parkside Place, LLC, as well as Generations on 1st, LLC.

[¶134] Based upon information and belief, the banks alleged default, which is the gravamen of their now three complaints, and the only operative allegations in them, was based not only on a demand to pay certain amounts due, but to force the sale of the properties to an inside bank officer at RRSB.

[¶135] RRSB was dealing in bad faith by making certain loans to avoid their inside lending limits.

[¶136] RRSB served the first demand to force Defendant Jesse Craig to sell the properties at a significant discount to the shareholders of the bank, namely Charles Aarestad.

[¶137] Based upon information and belief, RRSB failed to properly and adequately “participate” the loans to other banks to provide enough lending limit to the Craig projects.

COUNT I – BREACH OF CONTRACT

[¶138] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶139] RRSB and Defendants have multiple loans agreements.

[¶140] In particular, the term sheets and loan documents set forth that RRSB was to participate out certain portions of the loans to other banks and to obtain permanent financing. The loan documents, which are cross-collateralized, also set forth loan amounts which were not available to finish the projects.

[¶141] RRSB failed to perform and/or breached their obligations under the loan agreements and contracts.

[¶142] By failing to perform under the contracts, RRSB has caused damages to Defendants in an amount to be determined at trial.

COUNT II - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR

DEALING

[¶143] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶144] Every contract contains an implied covenant of good faith and fair dealing which prohibits either contracting party from preventing or injuring the other party's right to receive the agreed benefits of the contract. Good faith is derived from the transaction and conduct of the parties. Its meaning varies with the context and emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

[¶145] RRSB breached the implied covenant of good faith and fair dealing in several ways.

[¶146] RRSB and its agents, including Charles Aarestad and Martin Peterson, made and serviced loans on projects they were not fully capable of fulfilling or servicing as set forth in the term sheets.

[¶147] Further, in their Notice of Default, rather than seeking payments to bring the loan up to date, RRSB demanded that Defendants sell the properties for well under market value, clearly in bad faith and in complete violation of fair dealing.

[¶148] As a result of this breach, Defendants have suffered damages in an amount to be determined at trial.

COUNT III – ACTUAL FRAUD

[¶149] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶150] RRSB, by making these loans knowing they were violating their lending limits and allowing the Mulinda Notes to be executed to avoid lending limits on the cross-collateralized projects, committed fraud by (1) suggesting as a fact of that which is not true by one who does not believe it to be true; (2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true; (3) The suppression of that which is true by one having knowledge or belief of the fact; (4) a promise made without any intention of performing it.

[¶151] Said actual fraud was committed by RRSB and its agents to the contract, or with his connivance, with intent to deceive the Defendants thereto and to induce them to enter into the contracts and loan agreements, as well as the Forbearance Agreement.

[¶152] RRSB made a promise to make certain loans it knew it could not make or service and which violated its lending limits.

[¶153] In doing so, it forced the Craigs to take on personal notes and guarantees.

[¶154] Counterclaimant's have been damaged by RRSB's fraudulent acts in an amount to be determined at trial.

COUNT IV – CONSTRUCTIVE FRAUD

[¶155] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶156] RRSB and its agents, by the acts set forth above, committed constructive fraud by breach of their duties, including both contractual and through implied covenants of good faith and fair dealing which, without any actual fraudulent intent, gained an advantage by misleading Jesse Craig, Mulinda Craig and their related entities to their prejudice;

[¶157] As a result of RRSB's constructive fraud, Counterclaimant's have been damaged in an amount to be determined at trial.

COUNT V - DECEIT UNDER SDCL 20-10-1

[¶158] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶159] RRSB and its agents willfully deceived Defendants with the intent to induce Defendants to alter their position with respect to the various loans to position to their injury or risk.

[¶160] As a result of their deceit, RRSB is liable for any damage which Counterclaimants have thereby suffered.

PRAYER FOR RELIEF

[¶161] WHEREFORE, Defendants Generations on 1st, LLC, Mulinda Craig and Jesse Craig, demand judgment against Plaintiff as follows:

- a. Dismissing Plaintiff's Complaint in its entirety;
- b. For a judgment against Red River State Bank for breach of contract and breach in implied contract, in an amount to be determined at trial in favor of Defendants;
- c. For rescission of any contracts or notes with Red River State Bank and Counterclaims;
- d. For a judgment against RRSB for actual fraud, constructive fraud and/or deceit in an amount to be determined at trial;
- e. For an award of costs and attorney's fees incurred in defending this action; and
- f. For such other and further relief as the court deems just and equitable.

JURY DEMAND

[¶162] Pursuant to Rule 15-6-38 of the South Dakota Rules of Civil Procedure, Defendants demand a trial by jury of all issues so triable.

Dated: April 1, 2024

By: /s/ Mark A. Schwab
Mark A. Schwab (SD ID#5422)
SCHWAB THOMPSON & FRISK
820 34th Avenue E., Ste 200
West Fargo, ND 58078
(701) 365-8088
mark@stflawfirm.com
*Attorneys for Defendants Generations on
1st, LLC, Mulinda Craig, and Jesse
Craig*



Date: 11/23/2020

To: Craig Development, Generations on 1st LLC, Jesse Craig

From: Martin Peterson Loan Officer Red River State Bank

Subject: Term Sheet for Apartment Construction in Watertown SD

This memo is drafted today to outline the terms and conditions of the construction and permanent financing of a 72 unit apartment complex known as "Generations on 1st" in Watertown SD.

Construction Phase:

Loan Amount: \$8,340,000.00

Rate: Variable @ WSJ Prime + 1.10% (4.35%)

Draw Period: 12 Months

Interest Only Period: 18 Months

Security: 1st REM on Proposed Property, Blanket Business UCC filing against Generations on 1st LLC a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 80% of construction cost or appraisal less TIF whichever is lower.

Draws and Lien Waivers to be done through First Dakota Title Watertown SD.

Permanent Phase:

Loan Amount: \$8,340,000.00

Rate: 5 - 7 year fixed rate @ WSJ Prime + 1.10% at the time of funding.

Term: 5 - 7 year

Amortization: 25 year

Payment Frequency: Monthly P&I beginning one month from funding date.

Security: 1st REM on Proposed Property, Blanket Business UCC filing against Generations on 1st a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 80% of construction cost or appraisal less TIF whichever is lower.

As completed appraisal required to be completed.

Terms are subject to the completion of work and the OC (Occupancy Certificate) being issued with no unsatisfied construction liens, and all lien waivers being received by First Dakota Title.

Martin Peterson
Red River State Bank
Loan Officer

114 N Mill St • Fertile, MN 56540 • 218-945-6171
300 2nd Ave W • Halstad, MN 56548 • 218-456-2187
Toll Free: 800-472-1754
redriverbank.com





Phone: 701.237.6983
218 NP Avenue | PO Box 1389
Fargo, ND 58107-1389
cstanley@vogellaw.com

December 18, 2023

VIA US MAIL AND EMAIL

Mulinda Craig
1405 1st Ave N.
Fargo, ND 58102

mcraig@cpbusmgmt.com
jcraig@craigprop.com
jcraig701@gmail.com

Generations on 1st, LLC
ATTN: Jesse Craig
1405 1st Ave N.
Fargo, ND 58102

Parkside Place, LLC
ATTN: Jesse Craig
1405 1st Ave N.
Fargo, ND 58102

Craig Holdings, LLC
ATTN: Jesse Craig
1405 1st Ave N.
Fargo, ND 58102

Re: NOTICE OF DEFAULT – PARKSIDE AND GENERATIONS ON 1ST
Our File No.: 034534.22017 and 034534.23019

Dear Mr. and Ms. Craig:

Please be advised Generations on 1st, LLC ("Generations"), Parkside Place, LLC ("Parkside"), and Mulinda Craig (Generations and Mulinda Craig are collectively referred to as "Generations" and Parkside and Mulinda Craig are collectively referred to as "Parkside") are in default with respect to the loans they have with Red River State Bank ("Bank") as identified on the attached Exhibit 1. The Forbearance Agreement dated February 17, 2023 and the loans identified therein are default by the failure to pay the subject loans by the maturity date of May 31, 2023.



December 18, 2023

Page 2

The mortgage securing the Parkside loans¹ and the mortgages securing the Generations loans² permit the Bank to accelerate the entire indebtedness due on the subject notes, appoint a receiver, collect the rents, and foreclose against the properties located at 8 2nd Street NE, Watertown, SD 57201 ("Parkside Property") and 26 1st Ave SW, Watertown, SD 57201 ("Generations Property"). The Bank may also pursue a deficiency judgment against Generations, Mulinda Craig, and guarantors (*i.e.*, Jesse Craig). **Please be advised the Bank intends to move forward with foreclosure of the Mortgages, collecting the rents, and may decide to seek appointment of a receiver on or before January 5, 2024 unless the borrowers fully and completely disclose the information detailed below and takes certain steps towards resolving the existing defaults.**

The Bank hereby demands the following actions be taken:

A. Parkside

1. On or before **Wednesday, December 20, 2023**, provide copies of the debt instruments for the loan with Border State Bank (*i.e.*, note, security agreement, mortgage, business loan agreement, etc.) that encumbers the Parkside Property.
2. On or before **Wednesday, December 20, 2023**, the payment due on Note #51438 for 12/1/23 (\$22,525.00) must be remitted to the Bank. Payments for Note #51438 need to be made current and all subsequent payments timely made.
3. On or before **Friday, December 29, 2023**, deliver to the Bank a written commitment or executed loan modification from Border State Bank to release the Border State Bank mortgage on the Parkside Property.
4. On or before **December 31, 2023**, execute and deliver a signed purchase agreement for the sale of the Parkside Property acceptable to the Bank. The closing must occur on or before March 31, 2024. In that it does not appear a sale to a third party is viable at this point, Charles Aarestad and/or his assignors will provide a draft purchase agreement for the sum of \$5,440,771.81. It is anticipated this draft purchase agreement will be provided to Mr. Grossman on Wednesday, December 20, 2023.

¹ Mortgage granted from Parkside Place, LLC dated 12.13.2021 and recorded 12.15.2021 as Doc. No. 202107192 (the "First Parkside Mortgage"). Construction Mortgage granted from Craig Holdings, LLC dated 10.14.2021 and recorded as Doc. No. 202106256 (the "Second Parkside Mortgage").

² Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded on 08.03.2021 as Doc. No. 202104517 ("Generations Mortgage").

December 18, 2023

Page 3

5. No further liens may encumber the Parkside Property.
6. All other loan covenants must be adhered to.

B. Generations

1. On or before **Wednesday, December 20, 2023**, the payment due on Note #51676 owing for 12/15/23 (\$55,830.18) must be remitted to the Bank. Payments on Note #51676 need to be made current and all subsequent payments timely made.
2. On or before **December 31, 2023**, execute and deliver a signed purchase agreement for the sale of the Generations Property acceptable to the Bank. The closing must occur on or before March 31, 2024. In that it does not appear a sale to a third party is viable at this point, Charles Aarestad and /or his assignors will provide a draft purchase agreement for the sum of \$10,645,702.97. It is anticipated this draft purchase agreement will be provided to Mr. Grossman on Wednesday, December 20, 2023.
3. No further liens may encumber the Generations Property.
4. All other loan covenants must be adhered to.

The Bank has previously attempted to work with the borrowers to rectify the existing defaults by entering into the Forbearance Agreement. The Bank is not willing to continue with the present status quo. Please be advised that the Bank fully intends to move forward with enforcing the assignment of rents, commencing foreclosure on the Parkside Property and Generations Property, and/or seeking appointment of a receiver if an acceptable resolution cannot be reached.

The above does not constitute a firm offer subject to acceptance. No binding agreement will exist absent the execution of formal written documentation by the involved parties.

Regards,



Caren W. Stanley

Enclosure:

cc: Lee Grossman (lee.grossman@swlatorneys.com)
Client

5298743.3

EXHIBIT 1

Loans in Default

Loan No.	Date of Loan	Original Amount	Reverend	Guarantor	Current Principal	Monthly Date	Primary Loan Documents	Collateral	Current Status	Payoff as of 11/16/2023	Current Interest Rate	Per Diem
41240	2021 03 15	\$ 1,521,100.00	Melinda Sue Craig	NONE	\$1,421,100.00	Original 2022 12 15 Current 2023 05 31	1. Note dated 05/17/2021 2. Commercial Security Agreement executed by Parkside Place, LLC and Generations on 1st, LLC dated 05 17 2021 3. Business Loan Agreement dated 05 17 2021 4. Contemporaneous Agreement dated 07 19 2021 5. Mortgage granted from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107197 6. Assignment of Rents from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107195 7. Construction Mortgage granted from Craig Holdings, LLC dated 10 14 2021 and recorded as Doc. No. 202106256 8. Modification dated 12 13 2021 9. UCC-1 for Parkside Place, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) and Generations on 1st, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) 10. 3 22 21 (NID)	Lot 1 of Parkside Place Addition to the City of Watertown, Codington County, SD 26 1st Ave SW, Watertown, SD 57201	Matured Matures 05 31 2023	\$ 1,515,857.50	6.50%	\$ 245.26
41206	2021 04 26	\$ 1,475,500.00	Melinda Sue Craig	NONE	\$985,677.45	Original 2022 12 15 Current 2023 05 31	1. Note dated 05/17/2021 2. Commercial Security Agreement executed by Parkside Place, LLC and Generations on 1st, LLC dated 05/17/2021 3. Contemporaneous Agreement dated 07 19 2021 4. Mortgage granted from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107197 5. Assignment of Rents from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107195 6. Construction Mortgage granted from Craig Holdings, LLC dated 10 14 2021 and recorded as Doc. No. 202106256 7. Modification dated 12 13 2021 8. UCC-1 for Parkside Place, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) and Generations on 1st, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) 9. 3 22 21 (NID)	Lot 1 of Parkside Place Addition to the City of Watertown, Codington County, SD 26 1st Ave SW, Watertown, SD 57201	Matured Matures 05 31 2023	\$ 1,458,482.39	6.50%	\$ 159.14
41131	2021 01 15	\$ 1,505,200.00	Generations on 1st, LLC	Jesse Robert Craig	\$1,365,200.00	Original 2023 01 15 Current 2023 05 31	1. Note dated 11 15 2021 2. Commercial Security Agreement executed by Generations on 1st, LLC dated 02 15 2021 3. Business Loan Agreement dated 1 15 2021 4. Contemporaneous Agreement dated 07 19 2021 5. Commercial Guaranty executed by Jesse Robert Craig dated 1 15 2021 6. Construction Mortgage granted from Generations on 1st, LLC dated 01 15 2021 and recorded as Doc. No. 202104517 7. Modification dated 09 30 2021 8. Modification dated 03 12 2022 9. UCC-1 for Generations on 1st, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID)	26 1st Ave SW, Watertown, SD 57201	Refinanced N51576 N651676	\$ 145,278.41	6.50%	\$
41238	2021 06 22	\$ 1,652,500.00	Melinda Sue Craig	NONE	\$1,657,500.00	Original 2024 12 15 Current 2023 05 31	1. Note dated 05/17/2021 2. Commercial Security Agreement for Parkside Place, LLC and Generations on 1st, LLC dated 06 22 2021 3. Business Loan Agreement dated 06 22 2021 4. Contemporaneous Agreement dated 07 19 2021 5. Mortgage granted from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107197 6. Assignment of Rents from Parkside Place, LLC dated 12 13 2021 and recorded 12 15 2021 as Doc. No. 202107195 7. Construction Mortgage granted from Craig Holdings, LLC dated 10 14 2021 and recorded as Doc. No. 202106256 8. Modification dated 12 13 2021 9. UCC-1 for Parkside Place, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) and Generations on 1st, LLC filed 04 27 2021 (NID) and 10 30 2021 (ID) 10. 3 22 21 (NID)	Lot 1 of Parkside Place Addition to the City of Watertown, Codington County, SD 26 1st Ave SW, Watertown, SD 57201	Matured Matures 05 31 2023	\$ 1,886,482.93	6.50%	\$ 234.28
33609	2021 09 14	\$ 2,375,479.92	Generations on 1st, LLC	Jesse Robert Craig	\$2,946,930.98	Original 2022 03 31 Current 2023 05 31	1. Note dated 09/14/2021 2. Construction Loan Agreement dated 09 14 2021 3. Commercial Guaranty executed by Jesse Robert Craig dated 9 14 2021 4. Mortgage granted from Generations on 1st, LLC dated 09 15 2021 and recorded as Doc. No. 202105117 5. Construction Mortgage from Craig Holdings, LLC dated 10 14 2021 and recorded as Doc. No. 202106256 6. Modification dated 09 17 2021	26 1st Ave SW, Watertown, SD 57201	Refinanced N51676 N651676	\$ 211,851.03	6.50%	\$

Loan No.	Date of Loan	Original Amount	Borrower	Guarantor	Current Principal	Maturity Date	Primary Loan Documents	Collateral	Current Status	Pay off as of 12/18/2023	Current Interest Rate	Per Diem
51425	2021.10.14	\$ 1,094,025.15	Generations on 1st, LLC	Jesse Robert Craig	\$1,094,025.15	Original 2022.03.31 Current 2023.06.31	1. Note dated 10/14/2021 2. Construction Loan Agreement dated 10.14.2021 3. Commercial Guaranty from Jesse Robert Craig dated 10.14.2021 4. Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded 08.03.2021 as Doc. No. 202104517 5. Construction Mortgage granted from Craig Holdings LLC dated 10.14.2021 and recorded 10.15.2021 as Doc. No. 202106256 6. Modification Dated 03.17.2022	26 1st Ave SW, Watertown, MO 64791	Matured Matures 05.31.2023	\$ 75,773.26	6.50%	\$
51427	2021.11.09	\$ 424,252.84	Generations on 1st, LLC	Jesse Robert Craig	\$424,252.84	Original 2022.03.31 Current 2023.05.31	1. Note dated 11/09/2021 2. Construction Loan Agreement dated 11.09.2021 3. Commercial Guaranty from Jesse Robert Craig dated 11.9.2021 4. Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded 08.03.2021 as Doc. No. 202104517 5. Construction Mortgage granted from Craig Holdings LLC dated 10.14.2021 and recorded 10.15.2021 as Doc. No. 202106256 6. Modification Dated 03.17.2022	26 1st Ave SW, Watertown, MO 64791	Matured Matures 05.31.2023	\$ 37,751.64	6.50%	\$
51449	2021.12.08	\$ 843,168.59	Generations on 1st, LLC	Jesse Robert Craig	\$843,168.59	Original 2022.08.31 Current 2023.05.31	1. Note dated 12/08/2021 2. Construction Loan Agreement dated 12.08.2021 3. Commercial Guaranty from Jesse Robert Craig dated 12.8.2021 4. Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded 08.03.2021 as Doc. No. 202104517 5. Construction Mortgage granted from Craig Holdings LLC dated 10.14.2021 and recorded 10.15.2021 as Doc. No. 202106256 6. Modification Dated 03.17.2022	26 1st Ave SW, Watertown, MO 64791	Refinanced #51676 #451676	\$ 51,323.99	6.50%	\$
51471	2022.01.05	\$ 653,729.65	Generations on 1st, LLC	Jesse Robert Craig	\$653,729.65	Original 2022.12.31 Current 2023.09.31	1. Note dated 01/05/2022 2. Construction Loan Agreement dated 1.5.2022 3. Commercial Guaranty from Jesse Robert Craig dated 1.5.2022 4. Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded 08.03.2021 as Doc. No. 202104517 5. Construction Mortgage granted from Craig Holdings LLC dated 10.14.2021 and recorded 10.15.2021 as Doc. No. 202106256	26 1st Ave SW, Watertown, MO 64791	Refinanced #51676 #451676	\$ 37,616.30	6.50%	\$
51488	2022.02.03	\$ 275,043.80	Generations on 1st, LLC	Jesse Robert Craig	\$274,043.80	Original 2022.12.31 Current 2023.06.31	1. Note dated 02/03/2022 2. Construction Loan Agreement dated 02.03.2022 3. Commercial Guaranty from Jesse Robert Craig dated 2.3.2022 4. Construction Mortgage granted from Generations on 1st, LLC dated 03.15.2021 and recorded 08.03.2021 as Doc. No. 202104517 5. Construction Mortgage granted from Craig Holdings LLC dated 10.14.2021 and recorded 10.15.2021 as Doc. No. 202106256	26 1st Ave SW, Watertown, MO 64791	Refinanced #51676 #451676	\$ 14,821.63	6.50%	\$

Loan No.	Date of Loan	Original Amount	Borrower	Guarantor	Current Principal	Maturity Date	Primary Loan Documents	Collateral	Current Status	Payoff as of 04.10.2023	Current Interest Rate	Per Annum
51438	17.11.2021	\$ 4,200,000.00	Parkside Place LLC	Jesse Robert Craig	\$4,038,066.70	12.01.2026	1. Note dated 12.11.2021 2. Commercial Security Agreement executed by Parkside Place, LLC and Generations on 1st, LLC dated 12.11.2021 3. Business Loan Agreement dated 12.11.2021 4. Mortgage granted from Parkside Place, LLC dated 12.11.2021 and recorded 12.15.2021 as Doc. No. 202107192 5. Assignment of Rents from Parkside Place, LLC dated 12.11.2021 and recorded 12.15.2021 as Doc. No. 202107195 6. UCC-1 for Parkside Place, LLC filed 04.27.2021 (MFL and 10.14.20152)	Lot 1 of Parkside Place Addition to the City of Watertown, Coddington County, SD	Past Due Next Payment Due 12.01.2023	\$ 4,058,704.19	4.15%	\$ 459.12

STATE OF SOUTH DAKOTA
COUNTY OF CODINGTON

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

Plaintiff,

vs.

GENERATIONS ON 1ST, LLC,
WATERTOWN DEVELOPMENT
COMPANY, BORDER BANK, MULINDA
CRAIG, JESSE CRAIG, AND CODINGTON
COUNTY, SOUTH DAKOTA,

Defendants.

CIV. 14CIV24-000064

**BRIEF IN SUPPORT OF MOTION
TO CONSOLIDATE**

RED RIVER STATE BANK,

Plaintiff,

vs.

PARKSIDE PLACE, LLC, WATERTOWN
DEVELOPMENT COMPANY, BORDER
BANK, MULINDA CRAIG, JESSE CRAIG,
AND CODINGTON COUNTY, SOUTH
DAKOTA,

Defendants.

CIV. 14CIV24-000065

RED RIVER STATE BANK, Plaintiff, vs. THE RUINS, LLC; WATERTOWN DEVELOPMENT COMPANY; WATERTIGHT, INC.; HAMLIN BUILDING CENTER, INC.; XTREME FIRE PROTECTION, LLC; PERFORMANCE SPRAY FOAM, LLC; B&W CONSTRUCTION, LLC; DIAMOND WALL SYSTEMS INC.; D & M INDUSTRIES, INC.; TOP FINISH CARPENTRY, LLC; CRAIG DEVELOPMENT, LLC; CRAIG HOLDINGS, LLC; CRAIG PROPERTIES, LLC; JESSE CRAIG; AND CODINGTON COUNTY, SOUTH DAKOTA, Defendants.	CIV. 14CIV24-000068
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[¶1] Defendants, Generations on 1st LLC; Jesse Craig; Parkside Place, LLC; The Ruins, LLC; Craig Development, LLC; Craig Holdings, LLC and Craig Properties, LLC (hereinafter “Defendants”), pursuant to provisions of SDCL 15-6-42(a), hereby move the Court for an order consolidating the above-captioned matters into one action.

[¶2] The grounds for the Motion are that all actions involve common questions of law and fact, consolidation will avoid unnecessary cost and delay, consolidation will promote judicial economy and consolidation will eliminate the risk of inconsistent results from three different juries.

I. INTRODUCTION

[¶3] All of the above-captioned actions arise from a series of intertwined Notes and Mortgages issued by the same Plaintiff, Red River State Bank (“RRSB”), that are cross-collateralized from three different properties, Generation on 1st, Parkside Place and The Ruins, which are multi-dwelling apartments all located within the same area of Watertown. Plaintiff’s Complaints and Defendants’ Counterclaims are identical, and all involve the same loans and seek identical, and sometimes duplicate relief, thus Defendants ask the Court to consolidate the actions.

II. FACTUAL BACKGROUND

[¶4] In this foreclosure action, the allegations, factual background and relief in all three Complaints in the above-captioned actions are nearly identical. RRSB vaguely asserts that the Defendants have “defaulted” on several loans and mortgages tied to these properties. The Defendants have asserted several counterclaims including breach of contract, breach of good faith and fair dealing, actual fraud, constructive fraud and deceit, in each action. *See Exhibit “A” – Parkside Answer and Counterclaim, paras. 65-160. See Exhibit “B” – The Ruins Answer and Counterclaim, paras. 64-159. See Exhibit “C” – Generations Answer and Counterclaim, paras. 66-160.*

[¶5] As stated in all three actions, RRSB seeks to foreclose on certain properties in Watertown, South Dakota. *See Exhibit “D” – Parkside Complaint. See Exhibit “E” – The Ruins Complaint. See Exhibit “F” – Generations Complaint.* Defendants are almost identical in each of the respective actions, including Jesse Craig, Mulinda Craig, and the related entities that are named for each building. In the Generations action, Plaintiff states that “RRSB has filed a concurrent foreclosure lawsuit *Red River State Bank v. Parkside Place, LLC et. al.*, in the Codington County Circuit Court that is requesting judgment against Defendant Mulinda Craig with respect to the Mulinda Notes.

RRSB is not requesting a money judgment in this present lawsuit against Defendant Mulinda Craig as it cannot have two judgments for the Mulinda Notes.” *See Exhibit “F” at para. 15.*

[¶6] Further, the Notes and Mortgages are identical, and the commercial and personal guarantees are cross-collateralized and relate to all three actions. The counterclaims asserted by Defendants are contained within all three actions and are also identical. *See Exhibits “A”, “B” and “C”.*

III. ARGUMENT AND ANALYSIS

[¶7] “The consolidation of cases is authorized by SDCL 15-6-42(a)”. *Wulf v. Senst*, 2023 S.D. 105, r 33, 669 N.W.2d 135, 147; *see also Estate of Ducheneaux*, 2018 S.D. 26, r 28, 909 N.W.2d 730, 740 (“SDCL 15-6-42(a) permits consolidation ‘[w]hen actions involving a common question of law or fact are pending before the Court. . . to avoid unnecessary costs or delay.’”). That statute provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

SDCL 15-6-42(a). “The reason usually given as justification for consolidation of these actions are judicial economy, the risk of inconsistent results from two juries when the transactions and operative facts are closely intertwined, and the undue delay and expense caused by separate trials.” *Wulf*, 2003 S.D. 105 at r 38) quoting *Prause ex rel. Praus v. Mack*, 2001 ND 80, 626 N.W.2d 239, 246). A court “must weigh the allegations of prejudice against judicial expedition and economy.” *Id.*

[¶8] Consolidation of the above-captioned actions fits squarely within the provisions of SDCL 15-6-42(a) and the rationale for the rule.

A. Common Questions of Law and Fact

[¶9] As readily demonstrated by the allegations of the three Complaints, which are all identical save the contractor liens in the *Ruins* action, all actions involve common questions of law and fact, and all seek identical relief for identical reasons. All three actions involve the same parties and/or related entities, same facts, identical counterclaims that relate to all three properties and the same affirmative defenses. All three actions involve factual questions and contentions about the legitimacy of the loans, cross-collateralization and RRSB's Complaints even state that since some relief is requested in one of the three Complaints, it is not requested in others. Further, the Counterclaims and the facts set forth therein demonstrate precisely how intertwined the three projects were. *See Exhibit "A" – Parkside Answer and Counterclaim, paras. 65-160. See Exhibit "B" – The Ruins Answer and Counterclaim, paras. 64-159. See Exhibit "C" – Generations Answer and Counterclaim, paras. 66-160.*

B. Judicial Economy

[¶10] Consolidation of actions will promote judicial economy as the Court would otherwise not have to issue three different scheduling orders, three different cases with discovery, three separate but identical motions and three different jury trials if the three actions are combined. Each separate lawsuit, by RRSB's own Complaints, detail how they are interrelated.

C. Unnecessary Costs

[¶11] If the actions are not consolidated, it will result in unnecessary costs to Defendants. The costs and attorneys' fees associated with discovery, motions and preparing the matter to trial will be incurred three times. Likewise, separate proceedings and hearings will result in costs and fees being incurred three times for the same issues.

D. Risk of Inconsistent Results

[¶12] If the actions are not consolidated, there is risk of inconsistent results even though all actions involve the same issues. There is a risk that one jury may find differing results on the Counterclaims, that there was no default and that a second jury may find a different result. Such a risk was another factor cited by the South Dakota Supreme Court in *Wulf* in holding that refusal to consolidate was an abuse of discretion. *Id.* at para. 38.

E. Allegations of Prejudice

[¶13] Defendants assume that Plaintiff will not oppose consolidation on the basis of prejudice. However, it is noted that the South Dakota Supreme Court has instructed that “[t]he mere possibility of some prejudice does not justify separate trials where such prejudice is not substantial and there are strong countervailing considerations of economy.” *Id.* (quoting *Landstrom v. Shaver*, 1997 S.D. 25, r 28, 561 N.W.2d 1, 6). As demonstrated above, there are strong considerations of economy and risk of inconsistent results should the actions not be consolidated.

IV. CONCLUSION

[¶14] The above-captioned actions involve common questions of law and fact. Consolidation of the actions would promote judicial economy and avoid the risk of inconsistent results. Therefore, Defendants respectfully request that the Court grant Defendants’ Motion to Consolidate Actions.

Dated: April ____, 2024

By: /s/ Mark A. Schwab
Mark A. Schwab (SD ID#5422)
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*Attorneys for Defendants Generations on 1st
LLC; Jesse Craig; Parkside Place, LLC;
The Ruins, LLC; Craig Development, LLC;
Craig Holdings, LLC and Craig Properties,
LLC*

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

Plaintiff,

vs.

GENERATIONS ON 1ST, LLC,
WATERTOWN DEVELOPMENT
COMPANY, BORDER BANK,
MULINDA CRAIG, JESSE CRAIG, AND
CODINGTON COUNTY, SOUTH
DAKOTA,

Defendants.

CIV. 14CIV24-000064

**REPLY OF DEFENDANTS,
GENERATIONS ON 1ST, LLC,
AND JESSE CRAIG, IN
RESPONSE TO PLAINTIFF'S
MOTION FOR APPOINTMENT
OF RECEIVER**

[¶1] Defendants, Generations on 1st, LLC and Jesse Craig ("Defendants"), by and through the undersigned attorney, submit the following in response to Plaintiff, Red River State Bank's ("RRSB"), Motion for Appointment of Receiver.

[¶2] Defendants, Generations on 1st, LLC and Jesse Craig, through their attorneys, oppose Red River State Bank's (RRSB) Motion for Appointment of a Receiver. Defendants argue that RRSB's motion improperly combines financial oversight with property management responsibilities, a conflation that potentially misaligns with the primary goal of ensuring financial stability and potentially overlooks the need for separate, specialized roles.

[¶3] Both parties agree that the appointment of a receiver for the property is necessary, revealing a common interest in ensuring financial oversight. However, a critical point of divergence arises in the day-to-day operational management of the property.¹

[¶4] RRSB's motion, while aligned with Defendants' request for a receiver, improperly merges the distinct functions of financial oversight with property management. Such conflation overlooks the essential need for a financial receiver, dedicated to the accounting of rents and the payment of expenses, distinct from the day-to-day operational management of the property, which is the role of the property manager.

[¶5] This conflation underscores RRSB's current position, who unjustly benefits from the collection of gross rental income, all while evading the associated financial burdens - a situation that has precipitated a deadlock, hindering the payment of essential expenses, such as property insurance, utilities, and maintenance. These circumstances have not only deteriorated the value of the property but have also compromised the efficiency of rent collection and expense management under the current legal stalemate, which is evidenced by the *Harless Affidavit* and the confusion surrounding the dual management of the property

[¶6] RRSB's transparent attempt to coerce Defendants into relinquishing the property solely for the outstanding debt, ignores the substantial equity rightfully belonging to Defendants. Their tactics not only seek to strip Defendants of their financial interest and

¹ SDCL § 21-21-2 provides that a Receiver may be appointed by the Court in which an action is pending by a mortgagee for the foreclosure of the mortgage and sale of mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed, and the property is probably insufficient to discharge the mortgage debt. See SDCL § 21-22-2.

equity, but also highlights a theme of Defendants counterclaims, which is RRSB's improper motive in the selection of the property manager. By pushing for a property management structure that aligns with its interests, RRSB seeks to undervalue the property, thereby erasing Defendants' equity and compromising their financial stability.

[¶7] Such actions by RRSB reveal a deeper strategy to control the property's management under the guise of financial oversight, thereby ensuring that any appointed manager serves its interests at the expense of a fair and equitable resolution for all parties involved. This approach is flawed and contradicts the principle of impartiality expected of a receiver, who would determine who is the property manager. The Defendants vehemently oppose this tactic and seek a management structure that is transparent, equitable, and devoid of RRSB's undue influence, ensuring the property's financial and operational activities are conducted in the best interests of all parties involved, not just the Plaintiffs.

[¶8] The Defendants note that there exists a significant conflict arising from the bifurcation of responsibilities, where RRSB assumed control over the collection of rents, while Defendants are burdened with the payment of expenses. This division created an unsustainable financial burden, exacerbating the difficulties in managing the property effectively. The Defendants are compelled to manage the operational expenses without direct access to the rental income, a situation that unduly favors RRSB and naturally disrupts the management of the property.

[¶9] Defendants concur with the need for the Receiver to have the authority to financially account for rents, approve bills, and provide a detailed accounting to the court. This financial oversight is critical to maintaining the integrity and value of the Generations'

Property. However, Defendants assert that the Receiver should also be empowered to select a management company that is not only competent but also aligned with the objectives of maximizing rental income and effectively managing expenses. Defendants suggest considering their management company, CP Business Management, Inc., for this role given its existing operational infrastructure and intimate knowledge of the Generations' Property and its tenants.

[¶10] The confusion and operational inefficiencies have arisen for the most part, because RRSB executed the Assignment of Rents without an agreement to pay the offsetting operational expenses. The Assignment has led to a disconnection between the collection of rents and the payment of necessary operational expenses, directly contributing to the current financial and administrative challenges facing the Generations' Property.

[¶11] RRSB's motion neglects to address the critical need for the Receiver to operate with an aim toward preserving and enhancing the value of the property for the benefit of all stakeholders, not solely the Plaintiff. The unilateral appointment of HME Companies, LLC as proposed by RRSB fails to consider the operational expertise and vested interest of Defendants, who are motivated by both financial and personal commitments to ensure the success of the Generations' Property.

[¶12] The Receiver must consider retaining CP Business Management, Inc., for the operational management of the Generations' Property, leveraging its existing relationships with tenants and operational efficiencies to maximize rental income and manage expenses effectively.

[¶13] The Defendants challenge the Plaintiff's proposed receiver fees as excessively high and unsustainable. The proposed receiver fees, which are nearly four times the historical costs associated with managing the property, are detrimental to the financial viability of this entity.² See also Exhibit A to RRSB's proposed Management Agreement, which provides further details.

[¶14] The rents generated from the building do not cover the proposed management expenses of HME Companies, LLC, as put forward by the Plaintiff. This proposed expense is not sustainable and may cause further financial instability to the property, rather than resolving the current management dispute.

[¶15] It is the Defendants' position that the appointment of a receiver at such inflated rates is not only unreasonable but also impractical, given the current income generated by the property.

[¶16] The Defendants assert that appointing a receiver's fees should be similar to the historical costs of management and appoint someone who operates independently of RRSB's influence. Such an approach would ensure the property's financial and operational affairs are managed fairly and transparently, preserving the value of the property for the benefit of the Defendants and other stakeholders.

[¶17] In light of the foregoing, Defendants underscore the importance of appointing a financial receiver to ensure transparency and accountability in the management of rents

² The cost proposed by RRSB is \$15,400 a month, with a \$5,400 onboarding fee, at a cost of not less than \$192,000 per year.

and expenses and contest RRSB's suggestion to merge the role of this financial oversight with the day-to-day operational management of the property.

[¶18] Such a merger, as advocated by the Plaintiff, introduces disproportionate cost implications that are unsustainable given the property's income, and it misaligns with the equitable management of the property's financial and operational affairs.

[¶19] The management structure should separate financial oversight from operational management, ensuring that the appointed financial receiver focuses on the financial stewardship of the property, without the encumbrance of operational duties that should fall to a separate property management entity.

[¶20] This approach not only upholds the integrity of the property's financial management but also ensures that operational decisions are made with the best interests of all stakeholders in mind, free from the undue influence of the Plaintiff. It is the Defendants' position that such a delineation between financial oversight and operational management is essential for the fair, efficient, and transparent handling of the property's affairs, thereby safeguarding the property's value and the equitable interests of all parties involved.

Dated: July 19, 2024

By: /s/ Mark A. Schwab
Mark A. Schwab (SD ID#5422)
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1st, LLC and Jesse Craig*

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

Plaintiff,

vs.

PARKSIDE PLACE, LLC, WATERTOWN
DEVELOPMENT COMPANY, BORDER
BANK, MULINDA CRAIG, JESSE
CRAIG, AND CODINGTON COUNTY,
SOUTH DAKOTA,

Defendants.

CIV. 14CIV24-000065

**ANSWER OF DEFENDANTS
PARKSIDE PLACE, LLC AND
JESSE CRAIG TO
CROSSCLAIM OF
WATERTOWN
DEVELOPMENT COMPANY
AND CROSSCLAIM AGAINST
WATERTOWN
DEVELOPMENT COMPANY**

[¶1] Defendants, Parkside Place, LLC, and Jesse Craig (hereinafter “Defendants”), for their Answer to Defendant, Watertown Development Company’s, Crossclaim, state:

[¶2] Except as otherwise answered or specifically admitted, qualified, or explained, each and every allegation and statement of WDC’s Crossclaim is denied.

[¶3] Paragraph 10 of WDC’s Crossclaim is an incorporation paragraph for which no response is required.

[¶4] Defendants admit that certain promissory notes and mortgages were executed with respect to paragraphs 11, 12, 13, 14, 15, 16, 17 and 18 and affirmatively assert several agreements were executed regarding the TIF agreements with the City of Watertown, which were assigned to WDC. Defendants deny that the documents were in full force and effect as

several other documents were also executed not included in WDC's cross-claims, and, therefore, deny these paragraphs.

[¶5] Paragraphs 19, 20, 21, 22, 23 and 24 are denied and Defendants place Cross-claimant to its strictest proof of the allegations contained therein.

[¶6] WDC's response contains a "Prayer for Relief" with subparts (a.)-(g.), for which no response is required. To the extent a response is required, such are denied.

AFFIRMATIVE DEFENSES

[¶7] Cross-claimant's Cross-claim fails to state a claim upon which relief may be granted.

[¶8] Cross-claimant's Crossclaims fails to join a necessary party.

[¶9] Cross-claimant's Cross-claim is barred by contributory negligence.

[¶10] Cross-claimant's Cross-claim is barred by the statute of frauds.

[¶11] Cross-claimant's Cross-claim is barred by duress.

[¶12] Cross-claimant's Cross-claim is barred by estoppel.

[¶13] Cross-claimant's Cross-claim is barred by fraud.

[¶14] Cross-claimant's Cross-claim is barred by laches.

[¶15] Cross-claimant's Cross-claim is barred by license.

[¶16] Cross-claimant's Cross-claim is barred by waiver.

[¶17] Cross-claimant's Cross-claim is barred by agreement.

[¶18] Cross-claimant's Cross-claim is barred by reliance.

[¶19] Cross-claimant's Cross-claim is barred by modification.

[¶20] Cross-claimant's Cross-claim is barred by accord and satisfaction.

[¶21] Cross-claimant's Cross-claim is barred by acceptance.

- [¶22] Cross-claimant's Cross-claim is barred by release.
- [¶23] Cross-claimant's Cross-claim is barred by setoff.
- [¶24] Cross-claimant's Cross-claim is barred by assumption of risk.
- [¶25] Cross-claimant's Cross-claim is barred by unclean hands.
- [¶26] Cross-claimant's Cross-claim is barred by payment.
- [¶27] Cross-claimant's Cross-claim is barred by its failure to mitigate damages.
- [¶28] Cross-claimant's Cross-claim is barred by election of remedies.
- [¶29] Cross-claimant's Cross-claim is barred by failure of consideration.
- [¶30] Cross-claimant's Cross-claim is barred by the applicable statute of limitations.
- [¶31] Defendants affirmatively assert that WDC lacks standing in this matter.
- [¶32] Defendants affirmatively assert breach of an implied contract.
- [¶33] Defendants affirmatively assert that any liability for WDC's damages, if any, is limited by law.
- [¶34] Cross-claimant's claim for attorney's fees is frivolous and not supported by any law or contract.
- [¶35] Pending completion of discovery, Defendants reserve their right to amend and allege all affirmative defenses and/or Counterclaims available pursuant to the South Dakota Rules of Civil Procedure, including, but not limited to, those set forth in SDCL 15-6-8(c).

CROSS-CLAIMS AGAINST WDC

- [¶36] Defendants, as and or their Crossclaims against, WDC, state and allege as follows:

FACTUAL BACKGROUND

[¶37] On or about January 8, 2021¹, the City of Watertown and Parkside Place entered into a “Development Agreement” for Parkside Place (herein referenced as “TIF #12”). See Ex. “A”. This agreement is referenced by WDC in their Cross-claims, but they omit to include it in their cross-claims.

[¶38] In the Development Agreement, it states:

Section 2 -

2.01 Remittance of Tax Increment Revenues. City agrees to pay to Developer through a grant, but solely from Tax Increment Revenues, a sum not to exceed \$1,466,470.

Under the same section, it also states:

“2.06 Payment of Tax Increment Revenues. Upon Developer's real estate tax payments to Codington County each April and October, Developer will provide City with documentation confirming such payments. City will refund to Developer the Tax Increment Revenue portion of 3 each payment within a reasonable time, but not later than each June 15 and December 15, respectively.”

[¶39] Further, assignment was made to Cross-claimant WDC wherein the contract states:

2.09 Assignment of Payments. For the purpose of financing its obligations related to this Agreement, Developer hereby pledges, transfers, and assigns its right to payments hereunder (except reimbursements pursuant to Section 2.10) to Watertown Development Company (WDC), a South Dakota Non-Profit Corporation, 1 E Kemp Ave, Watertown, SD 57201 and directs the City to pay and remit directly to WDC each and every payment and reimbursement to be made pursuant to this Agreement. The City consents to the assignment and agrees to remit payments made under this Agreement to WDC and to provide WDC concurrent copies of any written notice delivered to Developer. Upon written notice to the City, and with the express written consent of WDC, Developer may re-assign to itself or another third party its right to payments

¹ The document was recorded August 27, 2021, in the Codington County Register of Deeds as document Number 202105099.

hereunder. Irrespective of the assignee, Developer's right to such payments is subject to the other limitations of this Agreement.

[¶40] Under the various promissory notes and related agreements subsequently executed, several different terms of repayment and methods to do so were set forth during the term of construction. *See Promissory Notes and or Mortgages attached to WDC's Cross-claim.*

[¶41] Further, certain accountings and receipts of payments and/or tax receipts were to be provided from WDC to Craig and Parkside.

[¶42] WDC has, at various times, accepted/or changed the terms of payments and has never provided to Craig or his properties any accounting or other proof of what WDC has received from the TIF or the City of Watertown with respect to the Parkside loans.

[¶43] Further, under the Development Agreement, Craig is not in default, but rather has timely paid his semi-annual payments. WDC's own "invoice", sent directly to Mr. Craig some six days prior to WDC asserting cross-claims and annexed hereto as Ex. "B" demonstrates two payments made pursuant to the Developer Agreement, which are reflected in the December and July 2023 payments of \$19,692.09.

[¶44] Up until this "invoice" was sent, Parkside and Craig made timely payments during the construction phase in monthly installments. See Ex. "B".

COUNT I – BREACH OF CONTRACT

[¶45] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶46] WDC and the answering Cross-claimants have multiple agreements, one of which is not included in WDC's Cross-claims.

[¶47] Under the Development Agreements and Promissory Notes, WDC has either failed to perform its obligations and/or sought repayment on various terms, none of which comport with the terms of the contract, as evidenced in their Cross-claims.

[¶48] WDC failed to perform and/or breached their obligations under the loan agreements and contracts by:

- a. Failing to credit payments made by the City of Watertown;
- b. Failing to credit payments to Parkside and Craig;
- c. Failing to abide by the terms of their own contracts, including providing receipts of TIF funds and/or other payments made; and
- d. By seeking to declare payment in full when Parkside and Craig are not in default.

[¶49] By failing to perform under the contracts, WDC has caused damages to Defendants, including any that may be awarded to RRSB, in an amount to be determined at trial.

COUNT II - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

[¶50] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶51] Every contract contains an implied covenant of good faith and fair dealing which prohibits either contracting party from preventing or injuring the other party's right to receive the agreed benefits of the contract. Good faith is derived from the transaction and conduct of the parties. Its meaning varies with the context and emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

[¶52] WDC breached the implied covenant of good faith and fair dealing in several ways.

[¶53] WDC has not complied with any of their various agreements and has, on various occasions, agreed to different terms yet has reneged on those terms.

[¶54] As a result of this breach, Defendants have suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

[¶55] WHEREFORE, Defendants Parkside Place, LLC and Jesse Craig, demand judgment against WDC as follows:

- a. Dismissing Cross-claimant's Cross-claim in its entirety;
- b. For a judgment against WDC for breach of contract and breach in implied contract, in an amount to be determined at trial in favor of Defendants;
- c. That any damages or relief awarded to RRSB in this action are to be paid by WDC;
- d. For an award of costs and attorney's fees incurred in defending this action; and
- e. For such other and further relief as the court deems just and equitable.

JURY DEMAND

[¶56] Pursuant to Rule 15-6-38 of the South Dakota Rules of Civil Procedure, Defendants demand a trial by jury of all issues so triable.

Dated: April 23, 2024

By: /s/ Mark A. Schwab
Mark A. Schwab (SD ID#5422)
SCHWAB THOMPSON & FRISK
820 34th Avenue E., Ste 200
West Fargo, ND 58078
(701) 365-8088
mark@stflawfirm.com
*Attorneys for Defendants Parkside
Place, LLC, and Jesse Craig*

Document Prepared By:
Matthew T. Roby
City Attorney
23 2nd St NE | PO Box 910
Watertown, SD 57201-0910
605-882-6200



INSTRUMENT NO. 202105099 Pages: 49
BOOK: 4T DEVELOPMENT AGREEMENT
PAGE: 8922

8/27/2021 3:47:00 PM

Ann Rasmussen

ANN RASMUSSEN, REGISTER OF DEEDS
CODINGTON COUNTY, SOUTH DAKOTA

Recording Fee: 30.00
Return To: CITY OF WATERTOWN

DEVELOPMENT AGREEMENT

8th **THIS DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into as of this day of ~~December~~ *January 2021* (*the Effective Date*) by and between the **CITY OF WATERTOWN** a South Dakota Municipality ("**City**"), and **PARKSIDE PLACE, LLC**, a South Dakota Limited Liability Company ("**Developer**").

RECITALS:

WHEREAS, City has an interest in promoting economic development and is authorized pursuant to SDCL Chapter 11-9 (the "**Act**"), and any amendment thereto, to create tax increment districts for such purposes; and

WHEREAS, Developer intends to construct a mixed-use facility consisting of 3,803 square feet of retail/commercial space on the first floor, 36 one-bedroom apartments on floors two through four, and 36 first floor tenant parking spaces in Downtown Watertown based in part on the City's creation of a tax increment district that will provide a grant to Developer; and

WHEREAS, in order to accelerate the development of certain property that would not otherwise occur solely through private investment in the reasonably foreseeable future, the City Council of the City of Watertown (the "**Council**") on October 5, 2020 adopted Resolution No. 20-44, a true and correct copy of which is attached hereto as *Exhibit A*, to create Tax Increment District Number 12 (the "**TID**" or "**District**" or "**TIF #12**"), encompassing the following described real property (the "**TID Property**"):

Lots 15 & 16 together with the west half and east half of the 20' wide vacated alley lying adjacent thereto, in Block 2 of the Original Plat of the City of Watertown, Codington County, South Dakota

and which, upon platting, shall be known as:

~~BA~~
Lot 1 of Parkside Place Addition to the City of Watertown, Codington County, South Dakota.

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment district for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the City establishing the TID, for grants, costs of public works or public improvements in the TID, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the TID, which expenditures and monetary obligations constitute project costs, as defined in Section 11-9-14 of the Act; and

WHEREAS, on October 5, 2020, the Council adopted Resolution No. 20-44 to approve the Tax Increment Project Plan, a true and correct copy of which is attached hereto as *Exhibit B* and incorporated by reference, providing for development of the TID Property (the "**Project Plan**"), which included the payment of a grant to Developer in an amount not to exceed \$1,466,470 toward certain costs of development as described in the Project Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, apportionment and benefits contained in this Agreement, City and Developer hereby agree as follows:

Section 1. Definitions

Unless the context otherwise requires, the terms used in this Agreement will have the meanings set forth in this Section. If not defined in this Agreement, capitalized terms will have the meaning given to them in the Project Plan.

"**Base Revenues**" means the taxes collected on the Base Value.

"**Base Value**" means the value of the TID Property at the time of the creation of the district as certified by the South Dakota Department of Revenue.

"**Construction Schedule**" means the timetable for constructing the improvements specified in Section 3.01(b).

"**Grant**" means an amount not to exceed \$1,466,470 through the use of Tax Increment Revenues.

"**Project**" means the construction of a mixed-use facility consisting of 3,803 square feet of retail/commercial space on the first floor, 36 one-bedroom apartments on floors two through four, and 36 first floor tenant parking spaces use in Downtown Watertown.

"**Project Costs**" means \$1,466,470 of construction costs associated with the Project.

"**Public Improvements**" means all improvements referenced in the Project Plan that constitute public improvements to be dedicated to the City upon completion.

"**Tax Increment Revenue(s)**" means all tax revenues of the TID Property in excess of the Base Revenues.

Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified. Unless otherwise specified, the terms used in this Agreement found in the Act shall have the meaning set forth in the Act.

Section 2. Obligation and Representations

2.01 Remittance of Tax Increment Revenues. City agrees to pay to Developer through a grant, but solely from Tax Increment Revenues, a sum not to exceed \$1,466,470.

2.02 Grant. The parties acknowledge that Developer's right to receive the Tax Increment Revenues hereunder is a grant under the Act, and a personal property right vested with Developer on the date hereof.

2.03 No Certificated Tax Increment Revenue Bonds. City will have no obligations to the Developer except as set forth in this Agreement, and will not issue any certificated tax increment revenue bonds to evidence such obligations.

2.04 Developer's Representations.

- (a) Developer is a limited liability company organized in the State of South Dakota.
- (b) Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement.
- (c) Developer's performance under this Agreement will not violate any applicable judgment, order, law or regulation.
- (d) Developer's performance under this Agreement will not result in the creation of any claim against City for money or performance, any lien, charge, encumbrance or security interest upon any asset of City.
- (e) Developer will have sufficient capital to perform all of its obligations under this Agreement.
- (f) Developer owns the TID Property.
- (g) Developer waives its right to participate in the County's Property Tax Reduction Program for the Project.

2.05 Approvals. The City's obligations pursuant to this Agreement are specifically conditioned upon the resolution implementing TIF #12 becoming effective. The City will make good faith efforts to timely introduce and secure approval of such resolution.

2.06 Payment of Tax Increment Revenues. Upon Developer's real estate tax payments to Codington County each April and October, Developer will provide City with documentation confirming such payments. City will refund to Developer the Tax Increment Revenue portion of

each payment within a reasonable time, but not later than each June 15 and December 15, respectively.

2.07 Continued Cooperation. City and Developer represent each to the other that they will make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.

2.08 No General Obligation of the City. City's obligations hereunder are limited obligations payable solely out of the Tax Increment Revenues and are not payable from any other revenues of City, nor a charge against its general taxing power. Developer shall bear all risks that such Tax Increment Revenues may be insufficient to pay the maximum amounts specified in Section 2.01.

2.09 Assignment of Payments. For the purpose of financing its obligations related to this Agreement, Developer hereby pledges, transfers, and assigns its right to payments hereunder (except reimbursements pursuant to Section 2.10) to Watertown Development Company (WDC), a South Dakota Non-Profit Corporation, 1 E Kemp Ave, Watertown, SD 57201 and directs the City to pay and remit directly to WDC each and every payment and reimbursement to be made pursuant to this Agreement. The City consents to the assignment and agrees to remit payments made under this Agreement to WDC and to provide WDC concurrent copies of any written notice delivered to Developer. Upon written notice to the City, and with the express written consent of WDC, Developer may re-assign to itself or another third party its right to payments hereunder. Irrespective of the assignee, Developer's right to such payments is subject to the other limitations of this Agreement.

2.10 Utilities, Sidewalks, and Alley Reimbursements. City agrees to reimburse Developer for costs not to exceed \$18,500 related to site utilities improvements, and not to exceed \$45,500 for removal and replacement of sidewalks and alleys. Developer shall first make payments to its contractors for these expenses and submit receipts to City for reimbursement.

Section 3. The Project.

3.01 The Project. The Project will be comprised of real estate, and the design, construction, assembly, and installation of the improvements described in the Project Plan.

- (a) Description of the Project. The Project consists of \$1,466,470 of improvements to the property as described in the Project Plan.
- (b) Completion of the Project Improvements: Developer shall diligently work to complete the respective portions of the project by July 1, 2021.

The time periods set forth above in this Section 3.01(b) shall be extended by reason of delays caused by Force Majeure. As used herein, "Force Majeure" shall refer to delays caused by or occasioned by labor disputes, acts of God, moratoriums, war, riots, insurrections, civil commotion, a general inability to obtain labor or materials, fire, unusual delay in transportation, severe and adverse weather conditions preventing performance of work, unavoidable casualties, failures to act by any governmental entity or their respective agents or employees, governmental restrictions,

regulations or controls including the inability to obtain the necessary governmental approvals and/or permits necessary to complete any portion of the Project.

3.02 Construction of the Public Improvements. The City of Watertown will cause Public Improvements to be constructed by the Developer through private contract. The City will not bid nor contract any improvement described in the Project Plan or this Agreement.

3.03 Financing of the Project and Improvements. Payment of all Project Costs will be made from Developer's own capital and from other sources obtained solely by Developer. Developer may use any or part of the TID Property as collateral for such loans as required to pay Project Costs.

Section 4. Developer Covenants

4.01 Duties and Obligations of Developer. Developer hereby agrees to: (a) complete, or cause to be completed, all improvements described in the Project Plan and this Agreement, (b) provide, or cause to be provided, all materials, labor, and services for completing the Project, (c) obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the TID Property, (d) provide the City all necessary information, including documentation of actual expenses incurred for Reimbursable Project Costs, and (e) submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the TID was created detailing the amount of Tax Increment Revenues received and the amounts thereof applied to pay Developer's Project Costs.

4.02 Insurance. Developer will maintain a policy of liability insurance, acceptable to City, with liability limits of at least One Million Dollars (\$1,000,000) that names City as an additional insured. Such a policy must remain in effect until City accepts the improvements. City will provide no insurance for the Project.

4.03 Indemnification. Except to the extent of the negligence or willful misconduct of Indemnitees, Developer will without a determination of liability or payment being made FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, City (and the elected officials, employees, officers, directors, and representatives of City) (collectively, "Indemnitees") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Developer's negligence, willful misconduct or criminal conduct in Developer's activities under this Agreement, including any such acts or omissions of Developer, its Members, Managers, any agent, officer, director, representative, employee, consultant or subconsultants of Developer, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to City under South Dakota law and without waiving any defenses of the parties under South Dakota law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer will promptly advise City in writing of any claim or demand against City related to or arising out of Developer's

activities under this Agreement and will see to the investigation and defense of such claim or demand at Developer's cost to the extent required in this paragraph. City will have the right, at its option and expense, to participate in such defense with attorneys of its choice, without relieving Developer of any of its obligations under this paragraph. Neither party shall be liable for incidental, indirect, special or consequential damages hereunder, even if advised of the possibility thereof.

4.04 Liability. Developer will be solely responsible for compensation and taxes payable to any employee or contractor of Developer, and none of Developer's employees or contractors will be deemed to be employees or contractors of City. No elected official, director, officer, employee, representative or agent of City shall be personally responsible for any liability arising out of or resulting from this Agreement.

4.05 Taxes & Licenses. Developer will pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees that are now or may hereafter be levied upon the TID Property or upon Developer or upon the business conducted on the TID Property, or upon any of Developer's property used in connection therewith, including employment taxes; and Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Developer.

4.06 Examination of Records. Developer will allow City to conduct examinations and makes copies, during regular business hours and following notice to Developer by City, of the books and records related to this Agreement no matter where books and records are located.

Section 5. Term and Termination

5.01 Term. The term of this Agreement shall commence on the date the resolution approving this Agreement becomes effective and end on the date which is the *earliest* to occur of the following, at which time City's obligations hereunder will be deemed fully discharged:

- (i) the date on which the amount payable under Section 2.01 has been paid in full to Developer, or to Developer's assign(s) pursuant to Section 2.09;
- (ii) the date this Agreement is terminated as provided in Section 5.02; or
- (iii) the 20th anniversary of the creation of the TID.

5.02 Default and Termination. If Developer fails to commence and complete construction substantially in accordance with the construction schedule detailed in Section 3.01(b) above, City may terminate this Agreement if Developer does not fully cure its failure within sixty (60) calendar days after receiving written notice from City requesting the failure be cured. If the Agreement is terminated as set forth in this Section, City's obligations under this Agreement will be deemed fully discharged.

Section 6. Miscellaneous

6.01 Non-Waiver. Provisions of this Agreement may be waived only in writing. No course of dealing on the part of City, or Developer nor any failure or delay by City or Developer in

exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

6.02 Entire Agreement. This Agreement embodies the final and entire agreement between the parties hereto concerning the subject matter herein. The Exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between any such Exhibit and a provision of this Agreement, the provision of this Agreement will control.

6.03 Amendments. All amendments to this Agreement and the Project Plan may only be made in a writing executed by City and Developer, after obtaining all necessary approvals.

6.04 Severability. If any clause or provision of this Agreement is held invalid or unenforceable, such holding will not invalidate or render unenforceable any other provision hereof.

6.05 Venue and Governing Law. This Agreement shall be construed under and in accordance with the laws of the state of South Dakota. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Codington County, South Dakota.

6.06 Notice. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

<u>City:</u>	<u>Developer:</u>	<u>Assignee:</u>
City of Watertown 23 2 nd St. NE PO Box 910 Watertown, SD 57201	Parkside Place, LLC 1405 1 st Ave N Fargo, ND 58102	WDC 1 E Kemp Ave Watertown, SD 57201

Any of the above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications may be sent.

6.07 Assignment. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Developer.

6.08 Captions. Captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

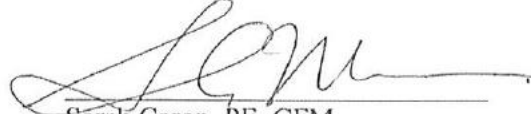
IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

Signature and Notary Page Follows

PARKSIDE PLACE, LLC


Jesse Craig
Managing Member

CITY OF WATERTOWN


Sarah Caron, PE, CFM,
Mayor

ATTEST:


Kristen Bobzien
Finance Officer

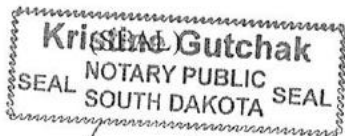
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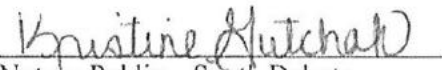


STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF CODINGTON)

On this the 8 day of ~~December~~ ^{January, 2021}, 2020, before me, the undersigned officer, personally appeared Sarah Caron and Kristen Bobzien, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Watertown, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Watertown by themselves as Mayor and Finance Officer.

IN WITNESS THEREOF I hereunto set my hand and official seal.

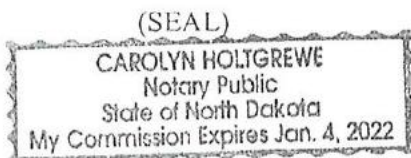



Notary Public – South Dakota
My Commission Expires: 12/2/2026

STATE OF North Dakota)
: SS.
COUNTY OF Cass)

On this the 22 day of December, 2020, before me, the undersigned officer, personally appeared Jesse Craig, who acknowledged himself to be the Managing Member of Parkside Place, LLC, and that he as such Managing Member, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of Parkside Place, LLC, by himself as Managing Member.

IN WITNESS THEREOF I hereunto set my hand and official seal.



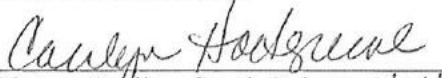

Notary Public – South Dakota North Dakota
My Commission Expires: Jan 4th, 2022

EXHIBIT A

RESOLUTION NO. 20-44

A RESOLUTION TO PROVIDE FOR THE CREATION OF TAX INCREMENT DISTRICT NUMBER TWELVE

WHEREAS, the Planning Commission of the City of Watertown has held a public hearing on September 24, 2020 and adopted and recommended the district boundaries and tax increment plan for Tax Increment District Number Twelve, City of Watertown, South Dakota and;

WHEREAS, the City Council of the City of Watertown, South Dakota (the "City"), has the powers, pursuant to SDCL 11-9-2, to create Tax Increment District Number Twelve, City of Watertown, South Dakota, and to define its boundaries.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
WATERTOWN, SOUTH DAKOTA:**

That pursuant to SDCL Chapter 11-9, the City Council hereby declares the following:

1. Authority and Declaration of Necessity. The City of Watertown, South Dakota, declares the necessity for the creation of Tax Increment District Number T, City of Watertown, (hereinafter sometimes referred to as the "District"), pursuant to SDCL Chapter 11-9. Further, the City finds that the improvements of the area within the District are likely to enhance significantly the value of substantially all of the other real property in the District and is necessary for economic development within the City for the construction and expansion of an existing manufacturer's building.
2. Findings. The City Council makes the following findings with regard to economic development:
 - a. More than 50% of the property in the District by area will stimulate and develop the general economic welfare and prosperity of the City;
 - b. Improvements to the District will significantly and substantially enhance the value of all property within the District;
 - c. Development of the District will enhance sales tax revenue and create employment in the District;
 - d. Development of the District will create an opportunity for a future development and employment once the improvements have been made.
3. Findings of Maximum Percentage of Tax Increment Districts. The aggregate assessed value of the taxable property in the District, plus all other tax increment districts, does not exceed ten percent (10%) of the total assessed valuation of the City.
4. Creation of District. There is hereby created, pursuant to SDCL Chapter 11-9, Tax Increment District Number Twelve, City of Watertown, South Dakota. The District is hereby created on the day this resolution becomes effective which shall be twenty (20) days after publication of this resolution.
5. Designation of District Boundaries. The District shall be located within the northern, southern, western and eastern boundaries of the following described real property:

Lots 15 & 16 together with the west half and east half of the 20' wide vacated alley lying adjacent thereto, in Block 2 of the Original Plat of the City of Watertown, Codington County, South Dakota

§H

Which upon replatting shall be known as: ~~LOT 1 OF~~ PARKSIDE PLACE ADDITION TO THE CITY OF WATERTOWN, CODINGTON COUNTY, SOUTH DAKOTA

6. Creation of Tax Increment Fund. There is hereby created, pursuant to SDCL 11-9-31, a Tax Increment District Number Twelve Fund, which shall be a segregated asset account. All tax increments collected pursuant to Tax Increment District Number Twelve shall be deposited into the Tax Increment District Number Twelve Fund. All funds in the Tax Increment District Number Twelve Fund shall be used solely for those purposes expressly stated and reasonably inferred in SDCL Chapter 11-9 and per the Developer's Agreement between the Developer and City of Watertown.
7. Adoption of Tax Increment Plan. The City Council of the City of Watertown does hereby adopt the Tax Increment Plan Number Twelve as presented.

Dated this 5th day of October, 2020

The above and foregoing Resolution was moved for adoption by Alderperson Lalim, seconded by Alderperson Holien, and upon voice vote motion carried, whereupon the Mayor declared the Resolution to be duly passed and adopted.

I hereby certify that Resolution No. 20-44 was published in the Watertown Public Opinion, the official newspaper of said City, on the 10th day of October, 2020.

Kristen Bobzien, Finance Officer

ATTEST:

CITY OF WATERTOWN


Kristen Bobzien
Finance Officer

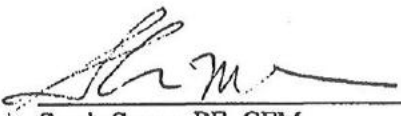

Sarah Caron, PE, CFM
Mayor

EXHIBIT B

City of Watertown, S.D.
Tax Increment Financing District
Plan No. 12

Parkside Place, LLC

Prepared by:
Traci Stein, CEDFP
Watertown Development Company
February 4, 2020

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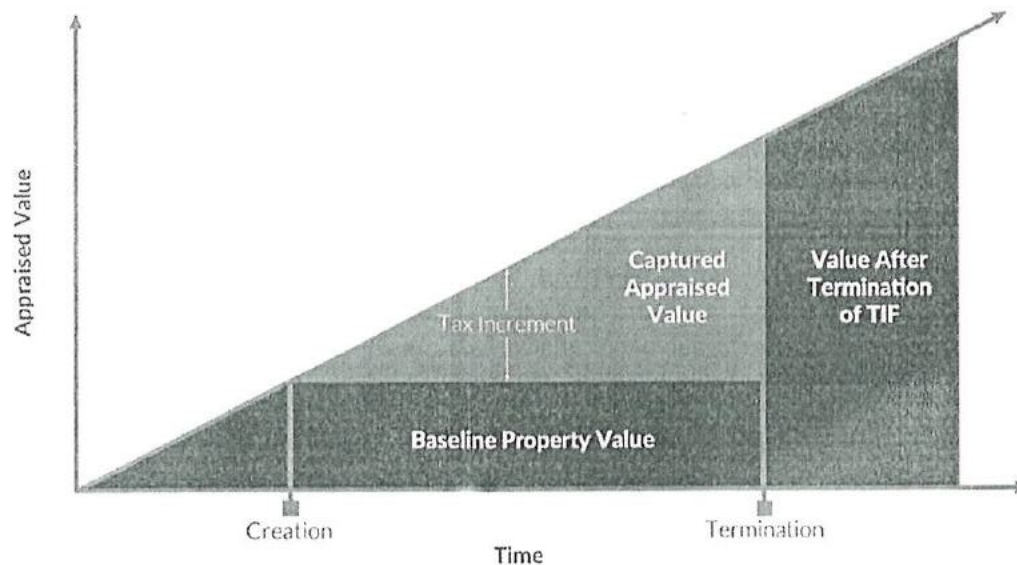
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Introduction, Summary, and Purpose

Tax increment financing (TIF) is an incentive utilized by local governments to attract private development and investment. New investment creates new jobs, more customers, and in turn, more investment opportunity. TIF can also retain existing businesses that might otherwise find more attractive options elsewhere. The jobs and additional investment, both private and public, mean more revenue for the community. TIF helps to overcome the extraordinary costs that often prevent redevelopment and private investment from occurring in difficult to develop areas of the community. As a result, the TIF District itself improves and property values increase.

In Watertown, TIF funding has been used for the following purposes: to encourage the redevelopment of deteriorated, or otherwise blighted real property; to stimulate economic development in the community by assisting projects that promote the long term economic vitality of Watertown; and, to stimulate increased private investment in areas that would have otherwise remained undeveloped or under-developed and which will, in the long term, provide a significant source of additional tax revenues to all taxing entities.



As set forth in South Dakota Codified Law, Chapter 11-9, a local government can designate a specific area within its boundaries as a redevelopment area appropriate for TIF district and prepare a plan for development. TIF projects must be approved by the City Planning Commission and the City Council.

The City of Watertown has been requested to assist in a major development project by creating a Tax Increment Financing District to fund a portion of eligible site improvements at property located at 8 2nd Street NE in downtown Watertown. The Watertown Development Company, later referred to throughout this document as "WDC", made the request on behalf of the owner, Parkside Place LLC., who plans to be the primary owner of the development property.

This Plan was prepared for adoption by the Watertown City Council in recognition that the renewal area requires a coordinated, cooperative strategy, with financing possibilities, to eliminate blight, prevent the spread of blight, and accomplish the City's development objectives for improving the continued viability of downtown Watertown.

The purpose of this Plan, to be implemented by the City of Watertown, is to satisfy the requirements for Tax Increment Financing District No. 12, as specified in SDCL Chapter 11-9. There are 11 mandated requirements, each to be addressed in this Plan.

By utilizing Tax Increment Financing, proceeds from anticipated increases in property taxes can be used to fund necessary and eligible improvements at the Project Site. The District is being created by the City of Watertown under the authority provided by SDCL 11-9 and will be designated as an "Economic Development District" based on SDCL 13-13-10.10 which defines Economic Development classification as "...any area where there is or will be one or more businesses engaged in any activity defined as commercial or industrial by the governing body that has zoning authority over the land contained within the tax increment financing district."

Tax Increment Financing District No. 12 is a proposed mixed-use of commercial and housing that will be created to pay the costs of public infrastructure, property acquisition, and other expenses needed to facilitate the construction of 3,803 square feet of retail/commercial space and 36 car tenant parking garage on the first floor, and 36 one-bedroom apartments total on the 2nd, 3rd, and 4th floors.

The Developer, Jesse Craig of Craig Development, LLC in Fargo, N.D. will construct the facility which is expected to result in over \$5.1 million dollars in investment over a one-year timeframe and result in the creation and/or retention of up to 20 jobs. The development is estimated to produce an incremental valuation over \$1.4 million dollars over the 20-year life of the TIF District. The owner of the project will be Parkside Place, LLC.

The Project Costs included in this Plan relate directly to promoting economic development in the District that are consistent with the purpose for which the District was created.

The driving interest in the establishment of this Plan is to offer Tax Increment Financing as a tool to stimulate and leverage private sector development. The development of commercial or industrial property which allows for the expansion of existing businesses, the expansion of the city workforce, the generation of additional sales tax to the state and city, are all essential governmental purposes and stimulate further economic development.

The primary objective of TIF District No. 12 is to provide improvements to an area in downtown Watertown to support new and existing commercial retail development and housing for professionals locating to northeast South Dakota. The development is expected to create jobs, fill professional positions for area employers, create and rehabilitate new infrastructure and site improvements which in turn are expected to enhance Watertown's ability to encourage future growth.

A combination of private investment and tax increment financing will assist in the progress toward the following objectives for the City of Watertown:

- To address and remedy conditions in the area that impair or arrest the sound growth of the City;
- To redevelop and rehabilitate the area in a manner which is compatible with and complementary to unique circumstances in the area;

- To effectively utilize undeveloped and underdeveloped land;
- To encourage the voluntary rehabilitation of buildings, improvements, and conditions;
- To improve areas that are likely to significantly enhance the value of substantially all property in the district, and
- To ultimately contribute to increased revenues for all taxing entities.

The development of commercial residential property which allows for the expansion of market rate housing, the generation of property tax in downtown Watertown, and the growth of the city's workforce is an essential governmental purpose and stimulates further economic development.

Project Plan Requirements – Contents as per SDCL § 11-9-13

SDCL states that the planning commission shall adopt a project plan for each district and submit the plan to the governing body.

The purpose of this Plan, to be implemented by the City of Watertown, is to satisfy the requirements for Tax Increment Financing District No. 12, as specified in SDCL Chapter 11-9. There are 11 mandated requirements, each to be addressed in this Plan:

The Kind, Number, and Location of All Proposed Public Works or Improvements Within the District; Included as Schedule 1 is the kind, number, and location of all proposed public works or improvements within the district SDCL § 11-9-13(1).

Economic Feasibility Study included as Schedule 2 is an Economic Feasibility Study per SDCL § 11-9-13(2)

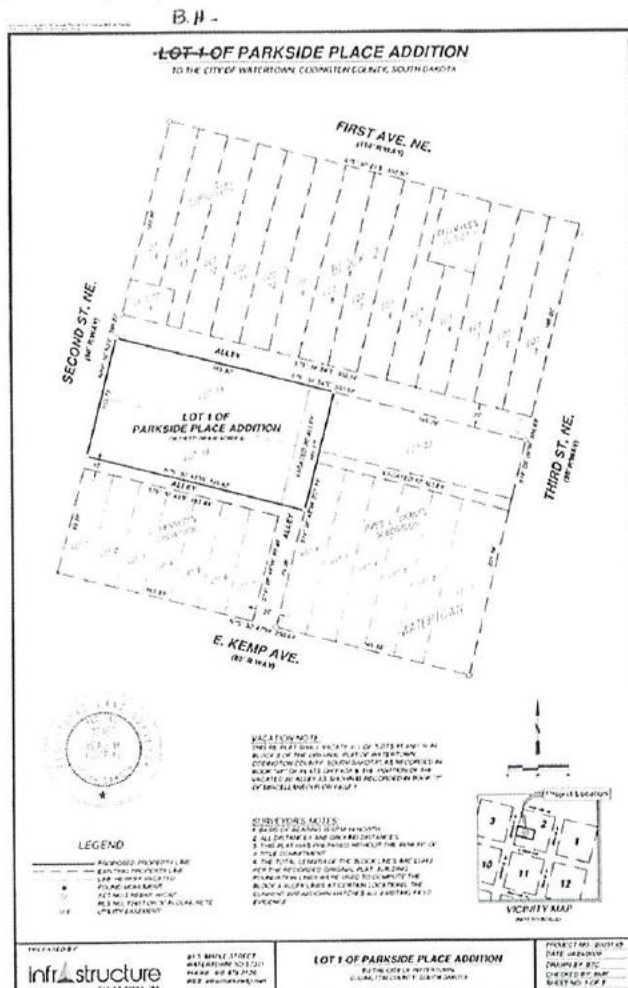
Detailed List of Estimated Project Costs Included as Schedule 3 is a detailed list of estimated Project Costs for the project as per SDCL § 11-9-13(3).

Fiscal Impact Statement Included as Schedule 4 is a Fiscal Impact Statement showing the impact of the Tax Increment Financing District upon all entities levying property taxes in the district. Required as per SDCL § 11-9-13(4).

Description of Methods of Financing SDCL § 11-9-13(5). Included as Schedule 5 is a description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred.

Additional contents of project plan. The project plan for each District shall also include SDCL § 11-9-16:

- (1) A map showing the existing uses and conditions of real property in the district;
- (2) A map showing the proposed improvements and uses;
- (3) A map showing the proposed changes of zoning ordinances;
- (4) A statement listing changes needed in the master plan, map, building codes, and municipal ordinances;
- (5) A list of estimated non-project costs; and
- (6) A statement of a proposed method for the relocation of persons to be displaced.



Schedule 1: Statement of the Kind, Number and Location of All Proposed Public Works or Improvements Within the District SDCL 11-19-13(1)

Project costs are any expenditure made, estimated to be made, or monetary obligations incurred or estimated to be incurred as outlined in this Plan. Project Costs will be diminished by any income, special assessments or other revenues, including user fees or charges.

With all Project Costs, the costs of engineering, design, survey, inspection, materials, construction, restoring property to its original condition, apparatus necessary for public works, legal and other consultant fees, testing, environmental studies, permits, updating ordinances and plans, judgements or claims for damages and other expenses are included as Project Costs.

The following is a list of public works and other tax increment financing eligible costs that the Developer expects to make, or may need to make, in conjunction with the implementation of the District's Plan. The maps found in this document along with a Detailed List of Project Costs included as Schedule 3 of this Plan provide additional information as to the kind, number and location of potential Project Costs.

Capital Costs / Real Property Assembly Costs 11-9-15(1)

Include the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the clearing and grading of land; and the amount of interest payable on tax increment bonds issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax increment bonds when due;

Property, Right of Way and Easement Acquisition

To facilitate development of the Project, the Developer will acquire property within the District. The cost of property acquired, and any costs associated with the transaction, are eligible Project Costs. Following acquisition, other Project Costs within the categories detailed in this Section may be incurred to make the property suitable for development. Any revenue received by the Developer from the sale of property acquired pursuant to the execution of this Plan will be used to reduce total Project Costs of the District. If Total Project Costs incurred by the Developer to acquire the property and make it suitable for development exceeded the revenues or other consideration received from the sale or lease of that property, the net amount shall be considered "real property assembly costs" as defined in SD 11-9-15(3)

Acquisition of Easements

The Developer may need to acquire temporary or permanent easements to allow for installation and maintenance of streets, driveways, alleyways, utilities, stormwater management practices and other public infrastructure. Costs incurred by the Developer to identify, negotiate and acquire easement rights are eligible Project Costs.

Demolition

To make the site suitable for development, the Developer will incur costs relation to demolition and removal of structures or other land improvements, to include abandonment of existing utility services.

Site Grading

Land within the District may require grading to make it suitable for development, to provide access, and to control stormwater runoff. The Developer may need to remove and dispose of excess material or bring in fill material to provide for proper site elevations. Expenses incurred by the Developer for site grading are eligible Project Costs.

Sanitary Sewer System Improvements

There may be inadequate sanitary sewer facilities serving the District. To allow development to occur, the Developer will need to construct, alter, rebuild or expand sanitary sewer infrastructure within and outside of District. Eligible Project Costs include, but are not limited to, construction, alteration, rebuilding or expansion of collection mains; manholes and cleanouts; service laterals; force mains; interceptor sewers; pumping stations; lift stations; and all related appurtenances.

Water System Improvements

There may be inadequate water distribution facilities servicing the District. To allow development to occur, the Developer will need to construct, alter, rebuild or expand water system infrastructure within the District. Eligible Project Cost include, but are not limited to, construction, alterations, rebuilding or expansion of distribution mains, manholes and valves, hydrants, service laterals, pumping stations, and all related appurtenances.

Stormwater Management System Improvements

To manage stormwater runoff, the Developer will need to construct, alter, rebuild or expand stormwater management infrastructure within the District. Eligible Project Costs include, but are not limited to, construction, alteration, rebuilding or expansion of stormwater collection mains, inlets, manholes and valves, service laterals.

Electric Service

To create a site suitable for development the Developer may incur costs to provide, relocate, or upgrade electric services. Relocation may require abandonment and removal of existing poles or towers, installation of new poles or towers, or burying of overhead electric lines. Costs incurred by the Developer to undertake this work are eligible Project Costs.

Gas Service

To create sites suitable for development the Developer may incur costs to provide, relocate or upgrade gas mains and services. Costs incurred by the Developer to undertake this work are eligible Project Costs.

Communication Infrastructure

To create sites suitable for development the Developer may incur costs to provide, relocate or upgrade infrastructure required for voice and data communications, including, but not limited to: telephone lines, cable lines, and fiber optic cable. Costs incurred by the Developer to undertake this work are eligible Project Costs.

Street Improvements

There are inadequate street improvements serving areas of the District. To allow development to occur, the Developer may need to construct or reconstruct streets, access drives and parking areas. Eligible Project Costs include, but are not limited to: excavation; removal or placement of fill; construction of road base; asphalt or concrete paving or repaving; installation of curb and gutter; installation of sidewalks and bicycle lanes; utility relocation, to include burying overhead utility lines; street lighting; installation of traffic control signage and traffic signals; pavement marking; right-of-way restoration; installation of retaining walls; and installation of fences, berms, and landscaping.

Streetscaping and Landscaping

To attract development consistent with the objectives of this Plan, the Developer may install amenities to enhance the development site, right-of-way, and other public space. These amenities include but are not limited to: Landscaping; lighting of streets, sidewalks, parking areas and public areas; installation of planters, benches, clocks, tree rings, trash receptacles, and similar items; and installation of brick or other decorative walks, terraces and street crossings. These and any other similar amenities installed by the Developer are eligible Project Costs.

Financing Costs SDCL 11-9-15(2)

Interest expense, debt issuance expenses, redemption premiums, and any other fees and costs incurred in conjunction with obtaining financing for projects undertaken in this Plan are eligible Project Costs.

Professional Service Costs SDCL 11-9-15(4)

The costs of professional services rendered, and other costs incurred, in relation to the creation, administration and termination of the District, and the undertaking of the projects contained within this Plan, are eligible Project Costs. Professional services include but are not limited to architectural; environmental; planning; engineering; legal; audit; financial.

Imputed Administrative Costs SDCL 11-9-15(5)

The Developer may charge to the District as eligible Project Costs reasonable allocations of administrative costs, including, but not limited to, a City Administrative Fee.

Organizational Costs SDCL 11-9-15(7)

The Developer may charge to the District as eligible Project Costs the costs of informing the public with respect to the creation of the District and the implementation of the Plan.

Environmental Audits and Remediation

If it becomes necessary to evaluate any land or improvement within the District, any cost incurred by the Developer related to site surveys, environmental audits, soil boring testing and remediation are eligible Project Costs.

Watertown Development Company

PO Box 332
Watertown, SD 57201

Invoice

Date	Invoice #
4/3/2024	4294

Bill To
Parkside Place, LLC 1405 1st Ave N PO Box 426 Fargo, ND 58102

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			4/3/2024			

Quantity	Item Code	Description	Price Each	Amount
	Interest	Interest accrued through 3-31-2024	190,361.98	190,361.98
	Interest	Less payment received November 2020	-4,529.08	-4,529.08
	Interest	Less payment received December 2020	-4,529.08	-4,529.08
	Interest	Less payment received March 2021	-13,587.24	-13,587.24
	Interest	Less payment received May 2021	-9,058.16	-9,058.16
	Interest	Less payment received June 2021	-9,058.16	-9,058.16
	Interest	Less payment received December 2021	-13,587.54	-13,587.54
	Interest	Less payment received July 2023	-19,069.92	-19,069.92
	Interest	Less payment received December 2023	-19,069.91	-19,069.91
Note: This invoice is only for accrued interest on the Note Receivable. Principal balance of \$1,483,724.00 is past due.				
Thank you for your business!			Total	\$97,872.89

Watertown Development Company

PO Box 332

Watertown, SD 57201

Invoice

Date	Invoice #
4/2/2024	4207

Bill To
The Ruins, LLC Attn: Jesse Craig PO Box 426 Fargo, ND 58107

Quantity	Item Code	Description	Amount
	Interest	Interest invoiced through October 31, 2022 #3220 - #3229 & #3446 - #3452	136,405.43
	Interest	Less paid February 2022 - Invoices #3220 - 3226	-64,738.84
	Interest	Less paid May 2022 - Invoices #3227- #3229 & #3446 - #3452	-71,666.60
	Interest	Monthly Interest - November 2022 - December 2022	15,208.22
	Interest	Monthly Interest - January 2023 - December 2023	91,000.00
	Interest	Monthly Interest - January 2024	7,728.77
	Interest	Monthly Interest - February 2024	7,230.14
	Interest	Monthly Interest - March 2024	7,728.77
		Note: This invoice is onlty for accrued interest on the Note Receivable. Principal balance of \$2,275,000.00 is past due.	
Total			\$128,895.89

Watertown Development Company

PO Box 332

Watertown, SD 57201

Invoice

Date	Invoice #
4/2/2024	4206

Bill To
Generations on 1st Attn: Jesse Craig PO Box 426 Fargo, ND 58107

Quantity	Item Code	Description	Amount
	Interest	Interest invoiced through June 13, 2022. #3207 - #3219, #3445, #3673 - #3677	121,063.24
	Interest	Less Payment January 2022	-6,156.61
	Interest	Less Payment February 2022	-33,761.10
	Interest	Less Payment March 2022	-44,205.87
	Interest	Less Payment August 2022	-24,626.44
	Interest	Less Payment July 2023	-22,826.51
	Interest	Less Payment December 2023	-22,826.51
	Interest	Monthly Interest - July 2022 through December 2022	36,939.68
	Interest	Monthly Interest - January 2023 through December 2023	73,879.36
	Interest	Monthly Interest - January 2024	6,274.69
	Interest	Monthly Interest - February 2024	5,869.87
	Interest	Monthly Interest - March 2024	6,274.69
		Note: This invoice is only for accrued interest on the Note Receivable. Principal balance of \$2,055,028.12 is past due.	
Thank you for your business!			Total \$95,898.49

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

Plaintiff,

vs.

PARKSIDE PLACE, LLC, WATERTOWN
DEVELOPMENT COMPANY, BORDER
BANK, MULINDA CRAIG, JESSE
CRAIG, AND CODINGTON COUNTY,
SOUTH DAKOTA,

Defendants.

CIV. 14CIV24-000065

**REPLY OF DEFENDANTS,
PARKSIDE PLACE, LLC AND
JESSE CRAIG, IN RESPONSE
TO PLAINTIFF'S MOTION
FOR APPOINTMENT OF
RECEIVER**

[¶1] Defendants, Parkside Place, LLC and Jesse Craig ("Defendants"), by and through the undersigned attorney, submit the following in response to Plaintiff, Red River State Bank's ("RRSB"), Motion for Appointment of Receiver.

[¶2] Defendants, Parkside Place, LLC and Jesse Craig, through their attorneys, oppose Red River State Bank's (RRSB) Motion for Appointment of a Receiver. Defendants argue that RRSB's motion improperly combines financial oversight with property management responsibilities, a conflation that potentially misaligns with the primary goal of ensuring financial stability and potentially overlooks the need for separate, specialized roles.

[¶3] Both parties agree that the appointment of a receiver for the property is necessary, revealing a common interest in ensuring financial oversight. However, a critical point of divergence arises in the day-to-day operational management of the property.¹

[¶4] RRSB's motion, while aligned with Defendants' request for a receiver, improperly merges the distinct functions of financial oversight with property management. Such conflation overlooks the essential need for a financial receiver, dedicated to the accounting of rents and the payment of expenses, distinct from the day-to-day operational management of the property, which is the role of the property manager.

[¶5] This conflation underscores RRSB's current position, who unjustly benefits from the collection of gross rental income, all while evading the associated financial burdens - a situation that has precipitated a deadlock, hindering the payment of essential expenses, such as property insurance, utilities, and maintenance. These circumstances have not only deteriorated the value of the property but have also compromised the efficiency of rent collection and expense management under the current legal stalemate, which is evidenced by the *Harless Affidavit* and the confusion surrounding the dual management of the property

[¶6] RRSB's transparent attempt to coerce Defendants into relinquishing the property solely for the outstanding debt, ignores the substantial equity rightfully belonging to Defendants. Their tactics not only seeks to strip Defendants of their financial interest and

¹ SDCL § 21-21-2 provides that a Receiver may be appointed by the Court in which an action is pending by a mortgagee for the foreclosure of the mortgage and sale of mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the conditions of the mortgage have not been performed, and the property is probably insufficient to discharge the mortgage debt. See SDCL § 21-22-2.

equity, but also highlights a theme of Defendants counterclaims, which is RRSB's improper motive in the selection of the property manager. By pushing for a property management structure that aligns with its interests, RRSB seeks to undervalue the property, thereby erasing Defendants' equity and compromising their financial stability.

[¶7] Such actions by RRSB reveal a deeper strategy to control the property's management under the guise of financial oversight, thereby ensuring that any appointed manager serves its interests at the expense of a fair and equitable resolution for all parties involved. This approach is flawed and contradicts the principle of impartiality expected of a receiver, who would determine who is the property manager. The Defendants vehemently oppose this tactic and seek a management structure that is transparent, equitable, and devoid of RRSB's undue influence, ensuring the property's financial and operational activities are conducted in the best interests of all parties involved, not just the Plaintiff's.

[¶8] The Defendants note that there exists a significant conflict arising from the bifurcation of responsibilities, where RRSB assumed control over the collection of rents, while Defendants are burdened with the payment of expenses. This division created an unsustainable financial burden, exacerbating the difficulties in managing the property effectively. The Defendants are compelled to manage the operational expenses without direct access to the rental income, a situation that unduly favors RRSB and naturally disrupts the management of the property.

[¶9] Defendants concur with the need for the Receiver to have the authority to financially account for rents, approve bills, and provide a detailed accounting to the court. This financial oversight is critical to maintaining the integrity and value of the Parkside

Property. However, Defendants assert that the Receiver should also be empowered to select a management company that is not only competent but also aligned with the objectives of maximizing rental income and effectively managing expenses. Defendants suggest considering their management company, CP Business Management, Inc., for this role given its existing operational infrastructure and intimate knowledge of the Parkside Property and its tenants.

[¶10] The confusion and operational inefficiencies have arisen for the most part, because RRSB executed the Assignment of Rents without an agreement to pay the offsetting operational expenses. The Assignment has led to a disconnection between the collection of rents and the payment of necessary operational expenses, directly contributing to the current financial and administrative challenges facing the Parkside Property.

[¶11] RRSB's motion neglects to address the critical need for the Receiver to operate with an aim toward preserving and enhancing the value of the property for the benefit of all stakeholders, not solely the Plaintiff. The unilateral appointment of HME Companies, LLC as proposed by RRSB fails to consider the operational expertise and vested interest of Defendants, who are motivated by both financial and personal commitments to ensure the success of the Parkside Property.

[¶12] The Receiver must consider retaining CP Business Management, Inc., for the operational management of the Parkside Property, leveraging its existing relationships with tenants and operational efficiencies to maximize rental income and manage expenses effectively.

[¶13] The Defendants challenge the Plaintiff's proposed receiver fees as excessively high and unsustainable. The proposed receiver fees, which are nearly four times the historical costs associated with managing the property, are detrimental to the financial viability of this entity.² See also Exhibit A to RRSB's proposed Management Agreement, which provides further details.

[¶14] The rents generated from the building do not cover the proposed management expenses of HME Companies, LLC, as put forward by the Plaintiff. This proposed expense is not sustainable and may cause further financial instability to the property, rather than resolving the current management dispute.

[¶15] It is the Defendants' position that the appointment of a receiver at such inflated rates is not only unreasonable but also impractical, given the current income generated by the property.

[¶16] The Defendants assert that appointing a receiver's fees should be similar to the historical costs of management and appoint someone who operates independently of RRSB's influence. Such an approach would ensure the property's financial and operational affairs are managed fairly and transparently, preserving the value of the property for the benefit of the Defendants and other stakeholders.

[¶17] In light of the foregoing, Defendants underscore the importance of appointing a financial receiver to ensure transparency and accountability in the management of rents

² The cost proposed by RRSB is \$15,400 a month, with a \$5,400 onboarding fee, at a cost of not less than \$192,000 per year.

and expenses and contest RRSB's suggestion to merge the role of this financial oversight with the day-to-day operational management of the property.

[¶18] Such a merger, as advocated by the Plaintiff, introduces disproportionate cost implications that are unsustainable given the property's income, and it misaligns with the equitable management of the property's financial and operational affairs.

[¶19] The management structure should separate financial oversight from operational management, ensuring that the appointed financial receiver focuses on the financial stewardship of the property, without the encumbrance of operational duties that should fall to a separate property management entity.

[¶20] This approach not only upholds the integrity of the property's financial management but also ensures that operational decisions are made with the best interests of all stakeholders in mind, free from the undue influence of the Plaintiff. It is the Defendants' position that such a delineation between financial oversight and operational management is essential for the fair, efficient, and transparent handling of the property's affairs, thereby safeguarding the property's value and the equitable interests of all parties involved.

Dated: July 19, 2024

By: /s/ Mark A. Schwab
Mark A. Schwab (SD ID#5422)
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*Attorneys for Defendants Parkside
Place, LLC, and Jesse Craig*

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF CODINGTON

THIRD JUDICIAL CIRCUIT

RED RIVER STATE BANK,

Plaintiff,

vs.

PARKSIDE PLACE, LLC,
WATERTOWN DEVELOPMENT
COMPANY, BORDER BANK,
MULINDA CRAIG, JESSE CRAIG, AND
CODINGTON COUNTY, SOUTH
DAKOTA,

Defendants.

CIV. 14CIV24-000065

**AMENDED ANSWER AND
COUNTERCLAIMS OF
DEFENDANTS PARKSIDE
PLACE, LLC, MULINDA
CRAIG AND JESSE CRAIG**

PARKSIDE PLACE, LLC, MULINDA
CRAIG, AND JESSE CRAIG,

Defendants and Third-Party
Plaintiffs,

vs.

CHARLES AARESTAD,

Third-Party Defendant.

CIV. 14CIV24-000065

THIRD-PARTY COMPLAINT

COMES NOW Defendants and Third-Party Plaintiffs, Parkside Place, LLC, and Jesse Craig, by and through their attorney, Mark A. Schwab, of Schwab, Thompson, & Frisk, West Fargo, North Dakota, and Defendant and Third-Party Plaintiff, Mulinda Craig, by and through her attorney, Joshua D. Zellmer, of Myers Billion, LLP, Sioux Falls, South Dakota, and files their Answer and Counterclaim against Plaintiff, Red River State Bank,

and Third-Party Complaint against Third-Party Defendant, Charles Aarestad, and in support thereof would show unto the Court the following matters and facts:

[¶1] Defendants, Parkside Place, LLC, Mulinda Craig and Jesse Craig (hereinafter “Defendants”), for their Answer to Plaintiff’s Complaint, state:

[¶2] Except as otherwise answered or specifically admitted, qualified, or explained, each and every allegation and statement of Plaintiff’s Complaint is denied.

[¶3] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of Plaintiff’s Complaint and, therefore, deny the allegations therein.

[¶4] Defendants admit the allegations set forth in paragraphs 2, 3, 4, 5 and 6 of Plaintiff’s Complaint.

[¶5] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of Plaintiff’s Complaint and, therefore, deny the allegations therein.

[¶6] Defendants admit that paragraph 8 is a summation of the relief sought by Plaintiff. To the extent that it implies or suggests anything other than said summary, such allegations are denied.

COUNT I – PROMISSORY NOTES (GENERATIONS AND MULINDA CRAIG)

[¶7] Paragraph 9 is an incorporation paragraph for which no response is required.

[¶8] Defendants admit the allegations set forth in paragraph 10(a)-(j) insofar as Parkside Place, LLC, through its principals, did execute certain notes. To the extent these

allegations imply or allege anything other than executed copies of the Notes, those allegations and implications are denied.

[¶9] Defendants admit the allegations set forth in paragraph 11(a)-(d) insofar as Defendant Mulinda Craig did execute certain notes. To the extent these allegations imply or allege anything other than that executed copies of the Notes, those allegations and implications are denied.

[¶10] Defendants admit the allegations set forth in paragraph 12 to the extent certain modifications were made to the Mulinda Craig Notes but deny the remaining allegations in paragraph 12.

[¶11] Defendants deny the allegations in paragraphs and place Plaintiff to its strictest proof of the allegations contained therein.

[¶12] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 15 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶13] Paragraph 16 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT II – GUARANTY (JESSE CRAIG)

[¶14] Paragraph 17 is an incorporation paragraph for which no response is required.

[¶15] Defendant Jesse Craig admits the allegations in paragraph 18 to the extent a commercial guaranty was executed but denies any other allegations or implications.

[¶16] Paragraphs 19, 20, and 21 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT III – FORECLOSURE OF PERSONAL PROPERTY SECURITY

INTERESTS

[¶17] Paragraph 22 is an incorporation paragraph for which no response is required.

[¶18] Defendants admit that certain security agreements were executed as alleged in paragraph 23. To the extent that any other allegations or implications are made or implied, those are denied.

[¶19] Defendants deny the allegations made in paragraph 24 and affirmatively assert that Plaintiff fails to clearly identify the specific security interests at issue, but merely sets forth an unnumbered copy of a contract clause.

[¶20] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 and, therefore, deny the allegations therein.

[¶21] Paragraph 26 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶22] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of Plaintiff's Complaint and, therefore, deny the allegations therein.

COUNT IV - FORECLOSURE OF MORTGAGES

[¶23] Paragraph 28 is an incorporation paragraph for which no response is required.

[¶24] Paragraph 29 is admitted to the extent that certain mortgages were executed by Parkside Place, LLC. To the extent that that any other allegations are made, those allegations or implications are denied.

[¶25] Paragraph 30 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶26] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 31 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶27] Paragraphs 32 and 33 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶28] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 34, 35, and 36 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶29] Paragraphs 37, 38, 39, and 40 are denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

COUNT V – APPOINTMENT OF A RECEIVER (GENERATIONS)

[¶30] Paragraph 41 is an incorporation paragraph for which no response is required.

[¶31] Defendants admit that the document specified in paragraph 42 states what is recited, but to the extent any other allegation or implication is made, those are denied.

[¶32] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 43 and 44 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶33] Paragraph 45 is denied and Defendants place Plaintiff to its strictest proof of the allegations contained therein.

[¶34] Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of Plaintiff's Complaint and, therefore, deny the allegations therein.

[¶35] Paragraph 47(A)-(O) is a prayer for relief for which no response is required. To the extent a response is required, this paragraph is denied.

AFFIRMATIVE DEFENSES

[¶36] Plaintiff's Complaint fails to state a claim upon which relief may be granted.

[¶37] Plaintiff's Complaint fails to join a necessary party.

[¶38] Plaintiff's Complaint is barred by contributory negligence.

[¶39] Plaintiff's Complaint is barred by the statute of frauds.

[¶40] Plaintiff's Complaint is barred by duress.

[¶41] Plaintiff's Complaint is barred by estoppel.

[¶42] Plaintiff's Complaint is barred by fraud.

[¶43] Plaintiff's Complaint is barred by laches.

[¶44] Plaintiff's Complaint is barred by license.

[¶45] Plaintiff's Complaint is barred by waiver.

[¶46] Plaintiff's Complaint is barred by agreement.

[¶47] Plaintiff's Complaint is barred by reliance.

[¶48] Plaintiff's Complaint is barred by modification.

[¶49] Plaintiff's Complaint is barred by accord and satisfaction.

[¶50] Plaintiff's Complaint is barred by acceptance.

[¶51] Plaintiff's Complaint is barred by release.

[¶52] Plaintiff's Complaint is barred by setoff.

[¶53] Plaintiff's Complaint is barred by assumption of risk.

[¶54] Plaintiff's Complaint is barred by unclean hands.

[¶55] Plaintiff's Complaint is barred by payment.

[¶56] Plaintiff's Complaint is barred by its failure to mitigate damages.

[¶57] Plaintiff's Complaint is barred by election of remedies.

[¶58] Plaintiff's Complaint is barred by failure of consideration.

[¶59] Plaintiff's Complaint is barred by the applicable statute of limitations.

[¶60] Defendants affirmatively assert that Plaintiff lacks standing in this matter.

[¶61] Defendants affirmatively assert breach of an implied contract.

[¶62] Defendants affirmatively assert that any liability for Plaintiff's damages, if any, is limited by law and the terms of the contract.

[¶63] Plaintiff's claim for attorney's fees is frivolous and not supported by any law or contract.

[¶64] Pending completion of discovery, Defendants reserve their right to amend and allege all affirmative defenses and/or counterclaim and/or crossclaims available pursuant to the South Dakota Rules of Civil Procedure, including, but not limited to, those set forth in SDCL 15-6-8(c).

COUNTERCLAIM AGAINST RED RIVER STATE BANK

THIRD PARTY COMPLAINT AGAINST CHARLES AARESTAD

[¶65] Defendants, as and or their Counterclaim against Plaintiff, Red River State Bank, state and allege as follows:

JURISDICTION AND VENUE

[¶66] Defendant and Third-Party Plaintiff, Jesse Craig, is a citizen of the State of North Dakota and the sole member of the Parkside Place, LLC.

[¶67] Defendant and Third-Party Plaintiff, Mulinda Craig, is a citizen of the State of North Dakota.

[¶68] Jesse Craig and Mulinda Craig are husband and wife.

[¶69] Parkside Place, LLC is a North Dakota limited liability company.

[¶70] Red River State Bank is a bank formed under the laws of the State of Minnesota having is principal place of business in Halstad, Minnesota.

[¶71] Third- Party Defendant, Charles Aarestad, ("C. Aarestad") is a citizen of the State of Minnesota.

[¶72] C. Aarestad, is a shareholder and the Executive Vice President of RRSB.

[¶73] Venue is proper in Codington County, South Dakota.

[¶74] Several years prior to 2017, Martin Peterson, a banker with Town and Country Credit Union, in Fargo, North Dakota, had been involved with financing various projects for Defendant Jesse Craig, a well-known developer.

[¶75] Based upon information and belief, along with a history of working with Jesse Craig, Martin Peterson was familiar and aware of Defendant Jesse Craig's ability to develop commercial and residential property.

[¶76] Around May of 2017, Martin Peterson began working at Plain Commerce Bank in Watertown, South Dakota.

[¶77] Sometime around 2017, Martin Peterson began contacting Defendant Jesse Craig to elicit the development of roughly three hundred (300) apartment units in the City of Watertown, South Dakota.

[¶78] Martin Peterson made certain introductions to employees and members the City of Watertown, as well as certain employees and members of the Watertown Development Company.

[¶79] In an effort to attract economic development in Watertown, South Dakota, the City of Watertown, along with various members of the Watertown Development Company, offered certain favorable Tax Increment Financing “TIF” options to defray the front-end building and operational costs of undertaking development efforts for multiple apartment buildings in the City of Watertown, South Dakota.

[¶80] Based upon the economic development offerings from the City of Watertown and the Watertown Development Company, Defendant Jesse Craig began development plans for multiple apartment buildings totaling around 300 units, provided adequate and commercially viable financing could be attained.

[¶81] At all relevant times, Martin Peterson was aware of Defendant Jesse Craig’s plan to sequentially begin construction of four (4) large mixed use apartment buildings in Watertown, namely: The Lofts, Parkside Place, Generations on 1st, and The Ruins.

[¶82] In and around October 2019, Defendant Jesse Craig began construction of The Lofts, financed with another lender, with the other planned buildings to begin as scheduled.

[¶83] Martin Peterson was aware of Defendant Jesse Craig’s development plan and financing terms.

[¶84] In and around the Spring of 2020, Martin Peterson went to work as a banker for Plaintiff, Red River State Bank (“RRSB”).

[¶85] Martin Peterson, on behalf of his employer, RRSB, as well as RRSB’s shareholder and Executive Vice President, Charles Aarestad, began contacting Defendant Jesse Craig in an effort to entice him into financing his remaining three (3) Watertown development projects using RRSB.

[¶86] Charles Aarestad and Martin Peterson represented that RRSB would finance the remaining three (3) apartment buildings at a competitive rate and terms.

[¶87] Defendant Jesse Craig relied upon the representations and statements of Charles Aarestad and Martin Peterson and undertook business efforts to begin the financing package for all three remaining buildings.

[¶88] RRSB, by and through its employees and officers, Martin Peterson and Charles Aarestad, made specific oral and written representations to Defendant Jesse Craig that RRSB would have other banks “participate” in the series of loans to “offset [the] internal lending limit of RRSB.”

[¶89] Defendant Jesse Craig relied on the statements and representations and believed there would be no internal lending limitation issues for the three (3) anticipated projects.

[¶90] Defendant Jesse Craig initiated financing for construction, as well as the commitment for permanent financing, under the belief that adequate financing would be provided as promised by RRSB.

[¶91] Defendant Jesse Craig, in good faith, relied upon the statements and representations made by both Martin Peterson and Charles Aarestad.

[¶92] RRSB, by and through its employee, Martin Peterson, approved by the Executive Vice President, Charles Aarestad, offered “*construction* financing” for the apartment building known as “Parkside Place” in the amount of \$4.2 million dollars.

[¶93] RRSB, by and through its employee, Martin Peterson, and approved by Executive Vice President, Charles Aarestad, also offered to provide permanent financing for Parkside Place upon the completion of construction, for an amount equal to 80% LTV (loan to value).

[¶94] Relying on the RRSB’s commitment to finance, in and around May of 2020, Defendant Jesse Craig began construction of the complex known as “Parkside Place.”

[¶95] Relying on RRSB’s commitment to finance the three (3) building projects, shortly thereafter, on or about November, 2020, and as planned, construction began on the second apartment building known as “Generations on 1st”.

[¶96] During construction of Parkside Place, RRSB agreed to provide certain “overlines” in the form of short-term loans to Defendant Jesse Craig and his wife, Defendant Mulinda Craig, to meet certain construction costs.

[¶97] Defendants Jesse Craig and Mulinda Craig, relying on RRSB’s commitment for permanent financing in the amount of 80% LTV upon completion, borrowed funds on a short-term basis to cover various construction costs.

[¶98] During the overlapping construction of Generations on 1st, RRSB agreed to provide similar “overlines” in the form of short-term loans to Defendant Jesse Craig, and his wife, Defendant Mulinda Craig, to meet certain construction costs related to Generations on 1st.

[¶99] Prior to completion of Parkside Place, and during the construction phase of Generations on 1st, Defendant Jesse Craig began the construction of The Ruins, as planned.

[¶100] In and around March of 2020, with construction ongoing, the United States was hit with the Covid 19 Pandemic, resulting in supply shortages and labor delays.

[¶101] After completion of Parkside Place, in or about August, 2021, the “as-built” appraised value was \$6,640,000.

[¶102] Despite having an “as-built” appraisal of \$6,640,000, RRSB was unable or unwilling to provide permanent financing for Parkside Place, consistent with 80% of the “as-built” LTV or \$5,312,000.

[¶103] RRSB provided permanent financing for \$4,200,000, rather than the full amount as agreed.

[¶104] RRSB failed to include the “overlines” related to Parkside Place into the permanent financing package.

[¶105] Charles Aarestad made various representations and assurances that the overlines related to Parkside would be included with Generations’ permanent financing.

[¶106] Charles Aarestad repeatedly and regularly extended the “term” of overlines related to Parkside and Generations while Generations on 1st was being completed.

[¶107] Defendant Jesse Craig relied upon Charles Aarestad’s representations and assurances, including the regular extensions of the various overlines related to Parkside Place and Generations.

[¶108] After opening for lease in and around August, 2021, Parkside Place became financially stable and was able to support its permanent financing obligations, as well as all operating expenses.

[¶109] In and around February, 2022, Generations on 1st obtained its Certificate of Occupancy.

[¶110] Defendant Jesse Craig requested an “as-built” appraisal for Generations upon its completion.

[¶111] RRSB failed or refused to obtain an “as-built” appraisal Generations on 1st.

[¶112] Contrary to RRSB’s numerous representations and assurances, RRSB again failed or refused to provide permanent financing according to the 80% LTV commitment, thereby causing the short-term “overlines” to remain unsatisfied.

[¶113] After opening for lease on or about March 31, 2022, Generations on 1st also became financially stable and was able to support its debt and all operating expenses.

[¶114] RRSB has never obtained an “as built” appraisal.

[¶115] Defendant Jesse Craig objected to RRSB’s unwillingness to provide permanent financing at the 80% LTV for Generations on 1st.

[¶116] RRSB has yet to provide permanent financing despite providing written commitment to do so on November 23, 2020.

[¶117] On or about January 1, 2023, with The Ruins construction nearing completion, RRSB, claimed various defaults associate with the overlines and construction delays due to Covid 19.

[¶118] Based upon information and belief, RRSB, Charles Aarestad, and others affiliated with RRSB, failed to *timely* disclose that RRSB was unable to provide financing for both Parkside Place and Generations on 1st at levels necessary to meet the 80% LTV on an “as-built” basis, as otherwise promised.

[¶119] Based upon information and belief, RRSB, Charles Aarestad, and others affiliated with RRSB had failed to *timely* disclose that RRSB was unable to finish construction financing for The Ruins.

[¶120] On or about January 31, 2023, RRSB presented a Forbearance Agreement without disclosing the material fact that RRSB would be unable to continue to provide construction and ultimately permanent financing for The Ruins, as well as permanent financing for Generations on 1st.

[¶121] Had RRSB, Charles Aarestad, or others affiliated with RRSB, *timely* disclosed the material fact that RRSB was unable to continue to provide financing as otherwise agreed, Defendant Jesse Craig would not have entered into the Forbearance Agreement.

[¶122] Had RRSB been able to provide permanent financing based upon the 80% LTV of the “as-built” appraisal for Parkside Place, as promised, and relied upon by Defendants Jesse and Mulinda Craig, all “overlines”/short-term financing would have been timely retired as otherwise agreed.

[¶123] Had RRSB been able to provide permanent financing based upon the 80% LTV of the “as-built” appraisal for Generations on 1st, as promised, and relied upon by Defendants Jesse and Mulinda Craig, all “overlines”/short-term financing would have been timely retired as otherwise agreed.

[¶124] Based upon information and belief, RRSB was unable or unwilling to fund the remaining construction draws to complete the project known as The Ruins.

[¶125] Based upon information and belief, and contrary to the promises and representations made by RRSB, Charles Aarestad, and other affiliates of RRSB, to Defendant Jesse Craig,

RRSB was unable to use “participants” to avoid internal lending limits for this development project.

[¶126] Had Defendant Jesse Craig known RRSB was unable to provide adequate construction financing he would have found an alternative lender.

[¶127] Had RRSB obtained the “as-built” appraisals for both Parkside Place and Generations on 1st and provided permanent financing at the promised 80% LTV level, all overlines would have been retired or otherwise satisfied.

[¶128] The Second Forbearance Agreement was initially presented to Defendant Jesse Craig on or about June 29, 2023, and contained a provision releasing any and all claims Defendant Jesse Craig, or the various entities would possibly have against RRSB.

[¶129] Defendant Jesse Craig declined to sign the second proposed Forbearance Agreement.

[¶130] In or around November, 2023, Charles Aarestad, individually and as an officer of RRSB, began pressuring Defendant Jesse Craig into selling the two stabilized projects, Parkside Place and Generations on 1st, to Charles Aarestad, individually, for an amount equal to what was owed against each project.

[¶131] The amount Charles Aarestad offered for the two projects was well below Fair Market Value.

[¶132] Defendant Jesse Craig did not agree to sell Parkside Place and Generations on 1st to Charles Aarestad for the price he demanded.

[¶133] Defendant Jesse Craig demanded that RRSB provide adequate and accurate note payoff amounts, and the application of payments that had been made.

[¶134] RRSB repeatedly failed to provide Defendant Jesse Craig with an adequate payoff amount reflecting payment allocations.

[¶135] A dispute between Defendant Jesse Craig and Charles Aarestad and other affiliates of RRSB, arose as to the amounts and prior payments being applied to each separate project.

[¶136] After Defendant Jesse Craig refused to voluntarily sell the two performing properties to Charles Aarestad at a below market price, Defendant Jesse Craig was served with a default notice demanding, among other things, that Defendant Jesse Craig, on behalf of Parkside Place, LLC, and Generations on 1st, execute a Purchase Agreement for the sale of each to Charles Aarestad, at the unagreed upon price, or face a foreclosure action along with RRSB invoking its assignment of rents thereby cutting off all cashflow to the various entities.

[¶137] The following notice was sent to Defendant Jesse Craig, and the entities:

[¶138] The Attached Notice, as marked as **Exhibit C**, contains the following:

- a. The Bank hereby demands the following actions be taken:
- b. On or before Wednesday, December 20, 2023, provide copies of the debt instruments for the loan with Border State Bank (i.e., note, security agreement, mortgage, business loan agreement, etc.) that encumbers the Parkside Property.
- c. On or before Wednesday, December 20, 2023, the payment due on Note #51438 for 12/1/23 (\$22,525.00) must be remitted to the Bank. Payments for Note #51438 need to be made current and all subsequent payments timely made.
- d. On or before Friday, December 29, 2023, deliver to the Bank a written commitment or executed loan modification from Border State Bank to release the Border State Bank mortgage on the Parkside Property.
- e. On or before December 31, 2023, execute and deliver a signed purchase agreement for the sale of the Parkside Property acceptable to the Bank. The closing must occur on or before March 31, 2024. In that it does not appear a

sale to a third party is viable at this point, Charles Aarestad and/or his assignors will provide a draft purchase agreement for the sum of \$5,440,771.81. It is anticipated this draft purchase agreement will be provided to Mr. Grossman on Wednesday, December 20, 2023.

[¶139] The notice contains a demand for Defendants to sign a purchase agreement for the sale of Parkside Property, and to sell it to a personal officer of the bank for a substantially lower price than what it is worth.

[¶140] Based upon information and belief, RRSB invoked its assignment of rents against each entity to economically pressure Defendant Jesse Craig into selling the performing properties to Charles Aarestad and his father, individually.

[¶141] New default notices were drafted, devoid of the mandate to sell the two performing properties and were served upon Defendants Jesse Craig, Mulinda Craig, and Parkside Place, LLC, as well as Generations on 1st, LLC.

[¶142] Based upon information and belief, the banks alleged default, which is the gravamen of their now three complaints, and the only operative allegations in them, was based not only on a demand to pay certain amounts due, but to force the sale of the properties to an inside bank officer at RRSB.

[¶143] RRSB was dealing in bad faith by making certain loans to avoid their inside lending limits.

[¶144] RRSB served the first demand to force Defendant Jesse Craig to sell the properties at a significant discount to the shareholders of the bank, namely Charles Aarestad.

[¶145] Based upon information and belief, RRSB failed to properly and adequately “participate” the loans to other banks to provide enough lending limit to the Craig projects.

COUNT I – BREACH OF CONTRACT

[¶146] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶147] RRSB and Defendants have multiple loans agreements.

[¶148] In particular, the term sheets and loan documents set forth that RRSB was to participate out certain portions of the loans to other banks and to obtain permanent financing. The loan documents, which are cross-collateralized, also set forth loan amounts which were not available to finish the projects.

[¶149] RRSB failed to perform and/or breached their obligations under the loan agreements and contracts.

[¶150] By failing to perform under the contracts, RRSB has caused damages to Defendants in an amount to be determined at trial.

COUNT II - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR

DEALING

[¶151] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶152] Every contract contains an implied covenant of good faith and fair dealing which prohibits either contracting party from preventing or injuring the other party's right to receive the agreed benefits of the contract. Good faith is derived from the transaction and conduct of the parties. Its meaning varies with the context and emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.

[¶153] RRSB breached the implied covenant of good faith and fair dealing in several ways.

[¶154] RRSB and its agents, including Charles Aarestad and Martin Peterson, made and serviced loans on projects they were not fully capable of fulfilling or servicing as set forth in the term sheets.

[¶155] Further, in their Notice of Default, rather than seeking payments to bring the loan up to date, RRSB demanded that Defendants sell the properties for well under market value, clearly in bad faith and in complete violation of fair dealing.

[¶156] As a result of this breach, Defendants have suffered damages in an amount to be determined at trial.

COUNT III – ACTUAL FRAUD

[¶157] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶158] RRSB and Charles Aarestad, personally and individually, by making these loans knowing RRSB was violating their lending limits and allowing the Mulinda Notes to be executed to avoid lending limits on the cross-collateralized projects, committed fraud by (1) suggesting as a fact of that which is not true by one who does not believe it to be true; (2) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true; (3) The suppression of that which is true by one having knowledge or belief of the fact; (4) a promise made without any intention of performing it.

[¶159] Said actual fraud was committed by RRSB and its agents and Charles Aarestad, personally and individually, to the contract, or with its/his connivance, with intent to deceive

the Defendants thereto and to induce them to enter into the contracts and loan agreements, as well as the Forbearance Agreement.

[¶160] RRSB and Charles Aarestad, personally and individually, made a promise for RRSB to make certain loans they knew RRSB could not make or service and which violated its lending limits.

[¶161] In doing so, it forced the Craigs to take on personal notes and guarantees.

[¶162] Counterclaimant's have been damaged by RRSB's fraudulent acts in an amount to be determined at trial.

COUNT IV – CONSTRUCTIVE FRAUD

[¶163] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶164] RRSB and its agents, and Charles Aarestad, personally and individually, by the acts set forth above, committed constructive fraud by breach of their duties, including both contractual and through implied covenants of good faith and fair dealing which, without any actual fraudulent intent, gained an advantage by misleading Jesse Craig, and his related entities, and Mulinda Craig to their prejudice;

[¶165] As a result of RRSB and Charles Aarestad's constructive fraud, Counterclaimant's have been damaged in an amount to be determined at trial.

COUNT V - DECEIT UNDER SDCL 20-10-1

[¶166] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶167] RRSB and its agents, and Charles Aarestad, personally and individually, willfully deceived Defendants with the intent to induce Defendants to alter their position with respect to the various loans to position to their injury or risk.

[¶168] As a result of their deceit, RRSB and Charles Aarestad, personally and individually, are liable for any damage which Counterclaimants have thereby suffered.

COUNT VI – NEGLIGENT MISREPRESENTATION

[¶169] Defendants restate and reaffirm each and every matter and allegation contained in the preceding paragraphs as if fully set forth herein.

[¶170] RRSB and its agents, and Charles Aarestad, personally and individually, made misrepresentations to Jesse Craig, and his related entities, and Mulinda Craig to their including but not necessarily limited to RRSB's ability to make certain loans and Mulinda's Craig's ability to service the loans.

[¶171] RRSB and its agents and Charles Aarestad, personally and individually, made such misrepresentations without reasonable grounds for believing the statements to be true.

[¶172] RRSB and its agents and Charles Aarestad, personally and individually, made such misrepresentations without reasonable grounds for believing the statements to be true.

[¶173] RRSB and its agents and Charles Aarestad, personally and individually, made such misrepresentations without reasonable grounds for believing the statements to be true.

[¶174] made such misrepresentations to induce Jesse Craig, and his entities, and Mulinda Craig to enter into contracts with Plaintiff, RRSB.

[¶175] Jesse Craig, and his entities, and Mulinda Craig actually and justifiably relied on the statements of RRSB agents and Charles Aarestad, and changed their position.

[¶176] As a result of their negligent misrepresentations, RRSB and Charles Aarestad, personally and individually, are liable for any damage which Counterclaimants have thereby suffered.

RESERVATION OF RIGHTS

[¶177] Counterclaimants reserve the right to amend their Counterclaims and Third Party Complaint to add any other appropriate claims and/or parties as additional facts are obtained through investigation and discovery.

PRAYER FOR RELIEF

[¶178] WHEREFORE, Defendants Parkside Place, LLC, Mulinda Craig and Jesse Craig, demand judgment against Plaintiff and Third-Party Defendant, Charles Aarestad, as follows:

- a. Dismissing Plaintiff's Complaint in its entirety;
- b. For a judgment against Red River State Bank for breach of contract and breach in implied contract, in an amount to be determined at trial in favor of Defendants;
- c. For rescission of any contracts or notes with Red River State Bank and Counterclaims;
- d. For a judgment against RRSB and Charles Aarestad, personally and individually, for actual fraud, constructive fraud and/or deceit in an amount to be determined at trial;
- e. For a judgment against RRSB and Charles Aarestad, personally and individually, for negligent misrepresentation in an amount to be determined at trial;

- f. For punitive damages against RRSB and Charles Aarestad, personally and individually, upon leave of Court in an amount to be determined at trial;
- g. For an award of prejudgment interest, court costs and attorney's fees incurred in defending this action; and
- h. For such other and further relief as the court deems just and equitable.

JURY DEMAND

[¶179] Pursuant to Rule 15-6-38 of the South Dakota Rules of Civil Procedure, Defendants demand a trial by jury of all issues so triable.

Dated: May 6, 2024

By: /s/ Mark A. Schwab
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*ATTORNEYS FOR DEFENDANT MULINDA
CRAIG*



Date: 1/26/2021

To: Craig Development, The Ruins LLC, Jesse Craig

From: Martin Peterson Loan Officer Red River State Bank

Subject: Term Sheet for Apartment Construction in Watertown SD

This memo is drafted today to outline the terms and conditions of the construction and permanent financing of a 63 unit apartment complex known as "The Ruins" in Watertown SD.

Construction Phase:

Loan Amount: \$7,200,000

Rate: Variable @ WSJ Prime + 1.10% (4.35%)

Draw Period: 12 Months

Interest Only Period: 18 Months

Security: 1st REM on Proposed Property, Blanket Business UCC filing against The Ruins LLC a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 90% of construction cost or appraisal less TIF whichever is lower.

Draws and Lien Waivers to be done through First Dakota Title Watertown SD.

Permanent Phase:

Loan Amount: \$7,200,000 (50% participated to SD REDI Program)

Rate: 10 year fixed rate @ WSJ Prime + 1.10% at the time of funding.

Term: 10 year

Amortization: 20 year

Payment Frequency: Monthly P&I beginning one month from funding date.

Security: 1st REM on Proposed Property, Blanket Business UCC filing against The Ruins LLC a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 90% of construction cost or appraisal less TIF whichever is lower.

As completed appraisal required to be completed.

Terms are subject to the completion of work and the OC (Occupancy Certificate) being issued with no unsatisfied construction liens, and all lien waivers being received by First Dakota Title.

Martin Peterson
Red River State Bank
Loan Officer

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300 2nd Ave W • Halstad, MN 56548 • 218-452-1131
Toll Free 1-800-452-1131

EXHIBIT

B



Date: 11/23/2020

To: Craig Development, Generations on 1st LLC, Jesse Craig

From: Martin Peterson Loan Officer Red River State Bank

Subject: Term Sheet for Apartment Construction in Watertown SD

This memo is drafted today to outline the terms and conditions of the construction and permanent financing of a 72 unit apartment complex known as "Generations on 1st" in Watertown SD.

Construction Phase:

Loan Amount: \$8,340,000.00

Rate: Variable @ WSJ Prime + 1.10% (4.35%)

Draw Period: 12 Months

Interest Only Period: 18 Months

Security: 1st REM on Proposed Property, Blanket Business UCC filing against Generations on 1st LLC a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 80% of construction cost or appraisal less TIF whichever is lower.

Draws and Lien Waivers to be done through First Dakota Title Watertown SD.

Permanent Phase:

Loan Amount: \$8,340,000.00

Rate: 5 - 7 year fixed rate @ WSJ Prime + 1.10% at the time of funding.

Term: 5 - 7 year

Amortization: 25 year

Payment Frequency: Monthly P&I beginning one month from funding date.

Security: 1st REM on Proposed Property, Blanket Business UCC filing against Generations on 1st a SD LLC, unlimited unsecured personal guarantee from Jesse Craig.

Conditions:

Note to be participated to other banks to offset internal lending limit of RRSB.

LTV not to exceed 80% of construction cost or appraisal less TIF whichever is lower.

As completed appraisal required to be completed.

Terms are subject to the completion of work and the OC (Occupancy Certificate) being issued with no unsatisfied construction liens, and all lien waivers being received by First Dakota Title.

Martin Peterson
Red River State Bank
Loan Officer

EXHIBIT

A