



## CITY OF BURLINGTON

ADMINISTRATION DEPARTMENT  
300 N. Pine Street, Burlington, WI, 53105  
(262) 342-1161 – (262) 763-3474 fax  
[www.burlington-wi.gov](http://www.burlington-wi.gov)

**AGENDA**  
**COMMUNITY DEVELOPMENT AUTHORITY (CDA)**  
**Tuesday, November 24, 2015**  
**224 East Jefferson Street, Burlington, WI**  
**Council Chambers**  
**5:30 p.m.**

Bil Scherrer, Chairman  
Robert Miller, Mayor  
Bob Grandi, Aldermanic Representative  
Jack Eckola  
Chuck Rule  
Jim Spiegelhoff  
Thomas Wiemer

1. Call to Order
2. Roll Call
3. Approval of minutes from November 3, 2015
4. Persons desiring to be heard
5. Topic: Approval of a Real Estate Mortgage Subordination Agreement between the City of Burlington and KW Precast, LLC
6. Adjournment

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**Note:** Notice is hereby given that a majority of the members of the Common Council may be present at this meeting. Although this may constitute a quorum of the Council, the Council will not take any action at this meeting.

**Note:** If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.



**CITY OF BURLINGTON  
COMMUNITY DEVELOPMENT AUTHORITY  
MEETING MINUTES  
November 3, 2015 at 5:30 p.m.  
224 E. Jefferson Street**

**1. CALL TO ORDER**

Chairman Bil Scherrer called the meeting of the Community Development Authority to order at 5:30 p.m.

**2. ROLL CALL**

The following commissioners were in attendance: Chairman Bil Scherrer, Mayor Bob Miller, Alderman Bob Grandi, Tom Wiemer, Jack Eckola, Chuck Rule, and Jim Spiegelhoff.

Also in attendance: City Administrator Carina Walters, Bear Development Attorney John Hotvedt, and Racine County Economic Development Corporation Business Finance Manager, Carolyn Engel.

**3. APPROVAL OF MINUTES FROM June 3, 2014**

A motion to approve the minutes from June 3, 2014 was made by Commissioner Weimer with a second by Commissioner Eckola. With all in favor, the motion carried.

**4. CITIZEN COMMENTS**

There were no citizen comments.

**5. TOPIC: Presentation from Janelle Topczewski, Loan Specialist for Racine County Economic Development Corporation, regarding Bear Development, LLC-Fox Crossing Apartments.**

Carolyn Engel attended the meeting in place of Topczewski and proceeded with the presentation.

Engel explained that the purpose of the meeting was to disclose new information on the Bear Development LLC "Bear" loan application that was approved in January of 2013 and which is now preparing to close on its funding through the City of Burlington Tax Increment District (TID) Revolving Loan Fund (RLF).

Engel went on to say that since the loan was originally approved, there were some disclosures that were not contemplated when the proposal first went before the loan committee or the CDA. She explained that those disclosures included that the property would require a low to moderate income for 18 years, a tax lien of nearly \$3 million could be placed on the property if the owners fail to continue to maintain its low-income housing units as agreed, and the investment company will have the ability to buy out Bear's interest and become the managing member of the borrowing entity.

Engel stated that the RCEDC staff and loan committee evaluated the risk and continues to support and recommend approval of this credit and said that even though the collateral risk could be significant if tax liens are placed ahead of the TID-RLF, the risk of it actually occurring is minimal because tax liens would only occur if the property were no longer being offered to low-income tenants and that was unlikely.

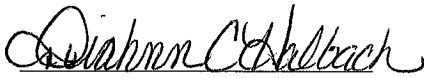
Commissioner Miller asked how many of the 24 units will be required to have low to moderate income. Attorney Hotvedt clarified that this is regarding Phase 1 of the Fox River Crossing and that only 4-6 of the units are available at market rate, all other units are subject to the WHEDA restrictions.

Commissioner Grandi asked what the terms of the loan is. Engel replied that the loan was made at the rate that's standard for that loan fund which is 75% of prime or 1.625%, with a required 16 year term over a 35 year amortization.

There was no further discussion.

**6. ADJOURNMENT**

A motion was made by Commissioner Weimer with a second by Commissioner Spiegelhoff to adjourn the meeting. With all in favor, the meeting adjourned at 5:40 p.m.



Recording Secretary  
Diahnn C. Halbach  
Burlington City Clerk



**To:** City of Burlington Community Development Authority  
**FROM:** Janell Topczewski, Compliance/Closing Specialist  
**DATE:** November 24, 2015  
**RE:** KW Precast/Illini Precast

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The purpose of this memorandum is to provide the Burlington Community Development Authority (CDA) information regarding the forgivable loan between the CDA and KW Precast and request the CDA approve the Chairman of the committee to sign a real estate subordination agreement for the property held as collateral for the City loan.

On July 2, 2013 the CDA approved a \$200,000 forgivable loan to KW Precast, LLC for a term of ten years (copy of the resolution is attached as Exhibit A). This was an incentive loan to assist KW Precast in re-establishing the operations formerly run as JW Peters in Burlington. In order to qualify for loan forgiveness KW Precast needed to create 64 full time jobs by December 31, 2015 and retain those positions for 7 years. The previous City Administrator, Kevin Lahner, negotiated the terms of this transaction.

RCEDC staff was contacted in November 2015 by KW Precast requesting the CDA execute a real estate mortgage subordination agreement that was to be signed at the time of the loan closing. KW Precast provided RCEDC with an email from Kevin Lahner where he conceptually agreed to the subordination; however, the document was never executed. After discussions with current City Administrator, Carina Walters, it was determined that it would be appropriate to bring this matter before the CDA for formal approval as the subordination was not referenced in the original CDA Resolution.

This matter has been discussed with City of Burlington legal counsel, John Bjelajac, who indicated the City staff had no objection to the proposed real estate mortgage subordination agreement; however, Attorney Bjelajac indicated the matter needed to be brought before the CDA for formal approval.

**SUMMARY**

Based on the information above it is requested by KW Precast that the CDA approve a real estate mortgage subordination agreement be signed by the chairman of the committee in regards to the forgivable loan the CDA provided to KW Precast.

**COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF BURLINGTON  
RACINE COUNTY, STATE OF WISCONSIN**

July 2, 2013

Resolution No. 112

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**A RESOLUTION AUTHORIZING A \$200,000 FORGIVABLE LOAN  
TO KW PRECAST, LLC FOR A TERM OF TEN YEARS**

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**WHEREAS**, KW Precast, LLC has purchased a concrete manufacturing plant at 472 West Market Street and with the desire to rehabilitate and increase production at the plant while increasing local employment opportunities; and,

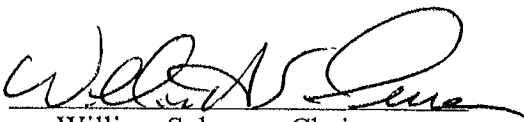
**WHEREAS**, a Forgivable Loan in the amount of \$200,000 has been recommended by City staff and the Racine County Economic Development Corporation (RCEDC) to be used by KW Precast to finance improvements to the manufacturing plant and increase employment therein; and,

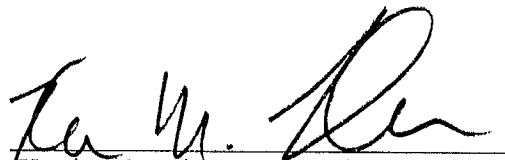
**WHEREAS**, the City desires to provide KW Precast with a Forgivable Loan in the amount of \$200,000 for a term of ten years in exchange for the creation of sixty-four (64) full-time jobs by December 31, 2015 while retaining said jobs for the term of the loan, as described in the business loan agreement, attached hereto as "Attachment A".

**NOW, THEREFORE, BE IT RESOLVED** that the Community Development Authority of the City of Burlington, Racine County, State of Wisconsin does hereby approve a Forgivable Loan in the amount of \$200,000 to KW Precast, LLC, 472 West Market Street, for a term of ten years in exchange for the creation of sixty-four (64) full-time jobs by December 31, 2015 and retaining said jobs for the term of the loan, as stated in "Attachment A".

**BE IT FURTHER RESOLVED** that the Community Development Authority Executive Director is hereby authorized and directed to execute this agreement on behalf of the City.

Dated this 2<sup>nd</sup> day of July 2013.


  
William Scherrer, Chairman

  
Kevin M. Lahner, Executive Director

MEMORANDUM

TO: Community Development Authority of Burlington ("CDA")

CC: Mayor Robert Miller  
City Administrator Carina Walters  
City Treasurer Steve DeQuaker

FROM: Atty. John M. Bjelajac   
Burlington City Attorney

DATE: November 18, 2015

RE: Request of KW Precast, LLC for the CDA to Sign a Real Estate Mortgage Subordination Agreement

On October 11, 2013, the CDA loaned to KW Precast, LLC ("KW") the sum of \$200,000.00 for use in the business operations of KW at its business located at 500 West Market Street, Burlington, Wisconsin (the "Property"). This loan (the "Loan") was facilitated by, and is being administered by, the Racine County Economic Development Corporation ("RCEDC"), using TIF 3 funds.

Per standard procedure, and through documents prepared by the RCEDC, KW signed and delivered to the CDA a Business Note evidencing the \$200,000.00 loan. For collateral, KW executed and delivered a Mortgage on the Property, as well as Personal Guarantees from Craig Wagenbach and Ming King, the Members of KW. The loan package also provided for a forgiveness of the entire \$200,000.00 loan amount if KW created and maintained at least 64 full time jobs through 2023.

A copy of the Mortgage (unrecorded copy) is attached as Exhibit A. At Paragraph 1(a) of the Mortgage, the Mortgage contains express provisions making its mortgage lien subordinate to a prior mortgage given by KW to Cole Taylor Bank, N.A. (the "Bank") dated June 29, 2012. That reference in the CDA Mortgage in fact refers to the Bank's June 29, 2012 mortgage loans described in the proposed Real Estate Mortgage Subordination Agreement (the "Subordination Agreement") attached hereto as Exhibit B.

KW is requesting the CDA to approve and execute the Subordination Agreement attached as Exhibit B. It is this writer's understanding that the Bank is willing to lend further monies to KW

that would be secured by one or more further mortgages on the Property, but on the condition that the said new Bank mortgage(s) on the Property be superior to, and not subordinate to, the original CDA Mortgage (Exhibit A) that KW executed and delivered to the CDA.

If approved by the CDA, the Subordination Agreement would (i) confirm the superiority of the Bank's June 29, 2012 mortgage loans in the total original principal amount of \$2,250,000.00 (as already agreed to in the original CDA Mortgage, as described above), and (ii) any further future Bank mortgage loans made by the Bank to KW.

The anticipated further future loans from the Bank to KW will, of course, increase the total KW mortgage debt from the original principal amount of \$2,250,000.00 to an undetermined future total loan(s) amount superior to the CDA mortgage. This increase would very probably make the CDA Mortgage, standing alone, an insufficient item of collateral for the original \$200,000.00 loan from the CDA to KW.

That being said, however, the risk to the CDA of not receiving its original loan monies back from KW appears to be remote, in light of the following:

1. Under the terms of the CSA/KW Loan, the entire loan will be forgiven if KW maintains at least 64 full time jobs through 2023, as described above. All present indications are that KW will be meeting this jobs goal, and no loan repayment would in that case be required. The matter of collateral then becomes a totally moot issue.
2. If for any reason KW fails to meet its jobs goal and also fails to repay any required portion of the original CDA Loan, the CDA can still rely on the Personal Guarantees that are in place as further, and probably more desirable, collateral.

From a legal vantage, and for the reasons described above, this writer has no objection to the CDA approving and executing the Subordination Agreement if that is the decision of the CDA.

Thank you.

State Bar of Wisconsin Form 21-2003  
**MORTGAGE**

Document Number

Document Name

KW Development, LLC

("Mortgagor," whether one or more) mortgages to Community Development Authority of Burlington

its successors or assigns ("Mortgagee," whether one or more), to secure payment of \$ 200,000.00 evidenced by a note or notes, or other obligation ("Obligation") dated the same date hereof executed by KW Precast, LLC

to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Racine County, State of Wisconsin ("Property");

SEE ATTACHED LEGAL DESCRIPTION

Recording Area

Name and Return Address

**Janell Topczewski, Racine County  
Economic Development Corporation  
2320 Renaissance Blvd  
Sturtevant, WI 53177**

Parcel Identification Number (PIN)

This is not homestead property.  
(~~is~~) (is not)

This is a purchase money mortgage.  
(is) (~~is not~~)

**1. MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:  
Mortgage from Mortgagor to Cole Taylor Bank, N.A. dated June 29, 2012.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against a loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee



otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided the Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity. If this Mortgage is subordinate to a superior mortgage lien, a default under the superior mortgage lien constitutes a default under this Mortgage.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under paragraph 9, below) Mortgagee shall mail notice to Mortgagor specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 15 days from the date the notice is mailed to Mortgagor by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

10. **ASSIGNMENT OF RENTS.** Mortgagor hereby transfers and assigns absolutely to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form of agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats., as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

**CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:**

- A. All fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired.
- B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have all of the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are \_\_\_\_\_;

(6) the state of organization and the organizational identification number of the debtor (if applicable) are \_\_\_\_\_; and

(7) the address of the secured party is 300 North Pine Street, Burlingt, Wisconsin, 53105

13. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

14. **JOINT AND SEVERAL/LIMITATION ON PERSONAL LIABILITY.** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one. Unless a Mortgagor is obligated on the Obligation secured by this Mortgage, Mortgagor shall not be liable for any breach of covenants contained in this Mortgage.

15. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

16. **MARITAL PROPERTY STATEMENT.** Any individual Mortgagor who is married represents that the obligation evidenced by this instrument was incurred in the interest of Mortgagor's marriage or family.

Dated October 11, 2013

[Signature] (SEAL)  
\* Mink King, Member, KW Development, LLC

[Signature] (SEAL)  
\* Craig Wagenbach, Member, KW Development,

\_\_\_\_ (SEAL)  
\* \_\_\_\_\_

\_\_\_\_ (SEAL)  
\* \_\_\_\_\_

**AUTHENTICATION**

**ACKNOWLEDGMENT**

Signature(s) \_\_\_\_\_

STATE OF ILLINOIS )

authenticated on \_\_\_\_\_

Cook ) ss. COUNTY )

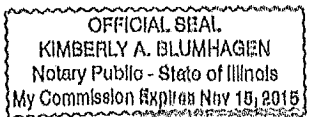
\* \_\_\_\_\_  
TITLE: MEMBER STATE BAR OF WISCONSIN  
(If not, \_\_\_\_\_  
authorized by Wis. Stat. § 706.06 )

Personally came before me on 10/11/13  
the above-named Mink King and Craig Wagenbach

to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

THIS INSTRUMENT DRAFTED BY:  
Attorney Jeffrey J. Molinski  
State Bar No: 1069243

[Signature]  
\* KIMBERLY A. BLUMHAGEN  
Notary Public, State of ILLINOIS  
My commission (is permanent) (expires: 11-15-15)



(Signatures may be authenticated or acknowledged. Both are not necessary.)  
NOTE: THIS IS A STANDARD FORM. ANY MODIFICATION TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

MORTGAGE  
\*Type name below signatures.

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FORM NO. 21-2003

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REAL ESTATE MORTGAGE SUBORDINATION AGREEMENT

In consideration of Lender's granting any extension of credit or other financial accommodation to KW Precast, LLC & KW Development, LLC

(Mortgagor, whether one or more), to Mortgagor and another, or to another guaranteed or Indorsed by Mortgagor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Mortgagee ("Mortgagee") hereby subordinates to Colo Taylor Bank (Lender) in the manner and to the extent described in this Agreement all interests, rights and title in the property described in paragraph 1 together with all privileges, hereditaments, easements, and appurtenances, all rents, leases, issues, and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, and all existing and future improvements and fixtures, if any (the "Property") under a mortgage from Mortgagor to Mortgagee dated June 29, 2012, and recorded in the office of the Register of Deeds of Racine County, Wisconsin, on July 9, 2012, as Document No. 2323089 (Mortgagee's Mortgage), in (VOLUME, PAGE, ETC.)

Recording Area  
Name and Return Address  
Parcel Identifier Number

1. Description of Property. The legal description of the Property is as follows:  
See Exhibit A (Attached)

If checked here, the description continues or appears on reverse side or attached sheet.  
2. Superior Obligations. Mortgagee's right, title and interest in the Property as against any person other than Lender or Lender's assignee is expressly reserved and not affected by this Agreement. As between Mortgagee and Lender, the priorities granted Lender by this Agreement are limited to and shall not exceed the obligations checked below ("Obligations"), provided the same are in fact secured by a properly recorded mortgage on the Property from Mortgagor to Lender ("Lender's Mortgage"):

- (a) The following note(s):  
Note #1 dated June 29, 2012, in the sum of \$1,000,000, plus interest, from KW Development, LLC (Name of Maker) to Lender;  
Note #2 dated June 29, 2012, in the sum of \$750,000, plus interest, from KW Precast, LLC (Name of Maker) to Lender;  
Note #3 dated June 29, 2012, in the sum of \$500,000, plus interest, from KW Precast, LLC (Name of Maker) to Lender;  
and any renewals, extensions or modifications thereof, but not increases in principal amount.

(b) The sum of \$ plus interest.

(c) All present and future credit extended by Lender to Mortgagor, to Mortgagor and another, or to another guaranteed or Indorsed by Mortgagor. 3. Priority. Mortgagee agrees that the lien of Lender's Mortgage shall be prior to the lien of Mortgagee's Mortgage described above to the extent and with the effect described in paragraph 4 on the reverse side. Mortgagee agrees to the Additional Provisions on the reverse side.

Signed and Sealed, \_\_\_\_\_ (Date)  
Community Development Authority of Burlington (SEAL)  
(Type of Organization)

By: \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)  
By: \_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)

AUTHENTICATION  
Signatures of \_\_\_\_\_  
authenticated this \_\_\_\_\_ day of \_\_\_\_\_

OR ACKNOWLEDGEMENT  
STATE OF WISCONSIN }  
County of Racine } ss.  
This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_ (Name(s) of person(s))  
as \_\_\_\_\_ (Type of authority, e.g., officer, trustee, etc., if any)  
of \_\_\_\_\_ (Name of party on whose behalf instrument was executed, if any)

Title: Member State Bar of Wisconsin or authorized under Sec. 706.08, Wis. Stats.

This instrument was drafted by \_\_\_\_\_  
\*Type or print name signed above.

Notary Public, Wisconsin  
My Commission (Expires) (Is) \_\_\_\_\_

#### ADDITIONAL PROVISIONS

4. **Division of Proceeds.** To the extent Mortgagee is entitled to them by virtue of Mortgagee's Mortgage, all claims, awards and payments made as a result of the exercise of the right of eminent domain against the Property, or any part, all rents, income or profits of the Property, all compensation received for the taking of the Property, or any part, by condemnation proceedings, all compensation received as damages for injury to the Property, or any part, all proceeds from insurance on improvements to the Property, and all net proceeds arising from a foreclosure against the Property or a deed given in lieu of foreclosure ("Payments"), shall, as between Mortgagee and Lender, be paid, distributed or otherwise dealt with in the manner and to the extent required by the terms and conditions of Lender's Mortgage, notwithstanding terms and conditions to the contrary contained in Mortgagee's Mortgage, until the Obligations are paid in full or Lender's Mortgage is satisfied. If any Payments are received by Mortgagee before the Obligations are paid in full or Lender's Mortgage is satisfied, Mortgagee shall deliver the Payments to Lender for application to the Obligations, indorsed or assigned, if necessary, to effect transfer to Lender. Payments made or received after satisfaction of Lender's Mortgage or payment in full of the Obligations shall be paid, distributed or otherwise dealt with as though this Agreement did not exist.

5. **Protective Advances.** If Mortgagor fails to perform any of Mortgagor's duties set forth in Mortgagee's Mortgage or in Lender's Mortgage, and if Mortgagee or Lender performs such duties or causes them to be performed, including paying any amount so required ("Protective Advances"), the Protective Advances shall be added to the Obligations if paid by Lender or, if paid by Mortgagee with the consent of Lender and secured by Mortgagee's Mortgage, given the priority accorded such advances under the Mortgagee's Mortgage as though this Agreement did not exist.

6. **Modification of Lender's Mortgage.** The Mortgagee agrees that, subject to the provisions of paragraph 2, the Lender shall have the right to modify, amend and change any and all of the terms of the Lender's Mortgage and the indebtedness secured by Lender's Mortgage without any obligation to notify, or to obtain the consent of, Mortgagee and without in any way affecting any of the rights, priorities or interests of Lender set forth in this Agreement.

7. **Successors and Assigns.** This Agreement benefits Lender, its successors and assigns, and binds Mortgagee and its heirs, personal representatives, successors and assigns, and is not intended to benefit any other person or entity.

Exhibit "A"

PARCEL I:

LOT 1 OF CERTIFIED SURVEY MAP NO. 2975 RECORDED APRIL 13, 2010 IN VOLUME 9, PAGES 605-609 AS DOCUMENT NO. 2247378, BEING PART OF THE NORTHEAST 1/4, SOUTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND PART OF THE NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN IN THE CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.

P.I.D.# 206-02-19-06-009-010  
500 WEST MARKET STREET

PARCEL II:

A PARCEL OF LAND BEING PART OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 AND PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID NORTHWEST 1/4 SECTION; THENCE NORTH 88°46'40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 SECTION 500.00 FEET TO THE PLACE OF BEGINNING OF THE PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE CONTINUE NORTH 88°46'40" EAST ALONG SAID NORTH LINE OF SAID NORTHWEST 1/4 SECTION 1563.88 FEET; THENCE SOUTH 00°55'24" EAST, PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4 SECTION, 475.00 FEET; THENCE SOUTH 88°46'40" WEST, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4 SECTION, 2065.88 FEET TO A POINT ON THE WEST LINE OF SAID NORTHWEST 1/4 SECTION; THENCE NORTH 00°55'24" WEST, ALONG AND UPON SAID WEST LINE OF SAID NORTHWEST 1/4 SECTION, 225.00 FEET; THENCE NORTH 88°46'40" EAST, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST 1/4 SECTION, 500.00 FEET; THENCE NORTH 00°55'24" WEST, PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4 SECTION, 250.00 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHWEST 1/4 SECTION AND THE PLACE OF BEGINNING OF SAID PARCEL. SUBJECT TO THE RIGHTS OF THE PUBLIC OVER THE WESTERLY 33 FEET THEREOF FOR ROAD PURPOSES (SPRING VALLEY ROAD). SAID LAND BEING IN THE TOWN OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.

P.I.D.# 002-02-19-06-018-000  
5421 MORMON ROAD