



AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

TUESDAY, MAY 11, 2021, 1:30 PM
Virtual Meeting. Public may join via Zoom.

A. Zoom Meeting Information.

1. This item contains documents which provide call in information and instructions for the Zoom meeting.

B. Roll Call.

1. Members: Gary Delveaux, Chair; Matt Schueller, Vice-Chair; Ald. Barbara Dorff, Deby Dehn, Kathy Hinkfuss, and Melanie Parma.
Liaisons: Jeff Mirkes and Leah Weycker.

C. Approval of the Agenda.

1. Approval of the agenda for the May 11, 2021, meeting of the Redevelopment Authority.

D. Approval of Minutes.

1. Approval of the minutes from the April 13, 2021, meeting of the Redevelopment Authority.

E. Regular Business.

1. Consideration with possible action regarding a Development Agreement with Merge, LLC for a project at 239 Arndt St. (Parcel 3-551), 101 Bridge St. (Parcel 3-554-A), and 119 Bridge St. (Parcel 3-556).
2. Consideration with possible action on requests for planning options for properties located at 420 S. Broadway (Parcel 3-569), 402 S. Broadway (Parcel 3-572), and 419 S. Maple (Parcel 2-947).
3. Consideration with possible action on a potential development agreement with Toonen Properties for a project at 2840 University Ave. (Parcel 21-301).

4. Consideration with possible recommendation to the City Council on continuing a financing guaranty with HCW, LLC for a project at 301 N. Adams Street.
5. Consideration with possible action on a substantial amendment to the 2020 Annual Action Plan for the reallocation of \$200,000.00 in CDBG funding from Affordable Housing Reconstruction Project to Infrastructure & Park Improvements in CDBG Eligible Areas.
6. Consideration with possible action to approve a one year lease with On Broadway to utilize 325 N. Broadway (Parcels 5-586 and 5-587) as a pocket park for the purpose of promoting outdoor activity and community gathering.

F. Informational.

1. Update on Housing Study.
2. Financial report and check register.
3. Director's report and project updates.
4. Next meeting: June 8, 2021 at 1:30 PM. (Unless a special meeting is needed.)

G. Adjournment.

- 1) THIS MEETING IS RECORDED: THE VIDEO OF THIS MEETING AND MINUTES ARE AVAILABLE ONLINE AT www.greenbaywi.gov
- 2) ACCESSIBILITY: Any person wishing to attend who requires special accommodation because of a disability, should contact the City Safety Manager at 920-448-3125 at least 48 hours before the scheduled meeting time so that arrangements can be made.
- 3) QUORUM: Please take notice that a majority or quorum of the Common Council will attend this Redevelopment Authority meeting and will constitute a meeting of the Common Council for purposes of discussion and information gathering relative to this agenda.
- 4) REPRESENTATION: The party requesting the communication, or their representative, should be present at this meeting.

Virtual Meeting Instructions



Redevelopment Authority

Zoom Meeting Information

Join Zoom Meeting

<https://us02web.zoom.us/j/83188044732?pwd=YUducEM2VUZWOGVYZzMyNTA0c1FJQT09>

Meeting ID: 831 8804 4732

Password: 084117

One tap mobile

+13017158592,,83188044732# US (Germantown)

+13126266799,,83188044732# US (Chicago)

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

Meeting ID: 831 8804 4732

Password: 084117

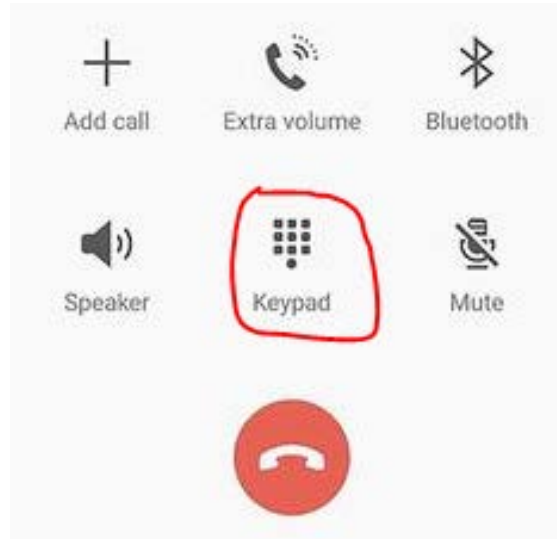
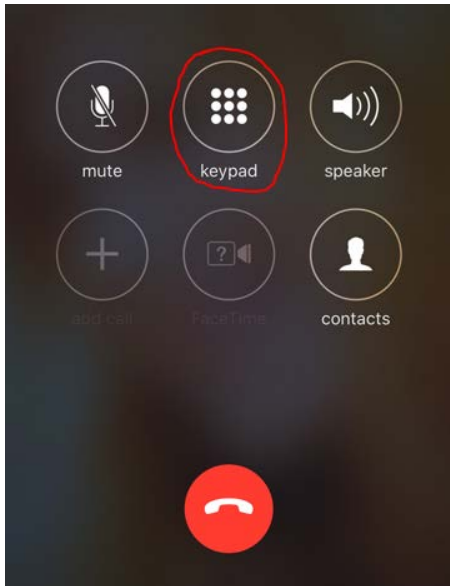
Find your local number: <https://us02web.zoom.us/j/83188044732?pwd=YUducEM2VUZWOGVYZzMyNTA0c1FJQT09>

Additional Information

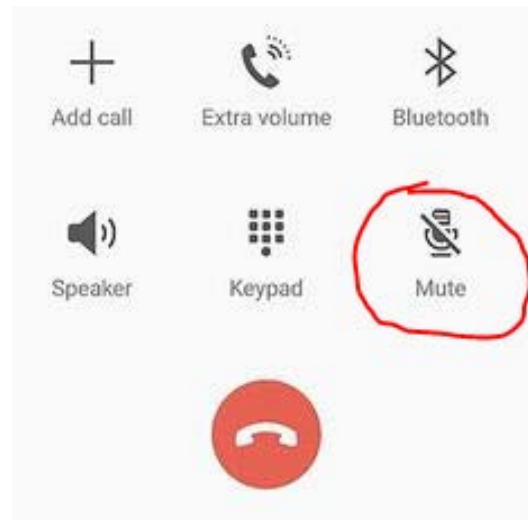
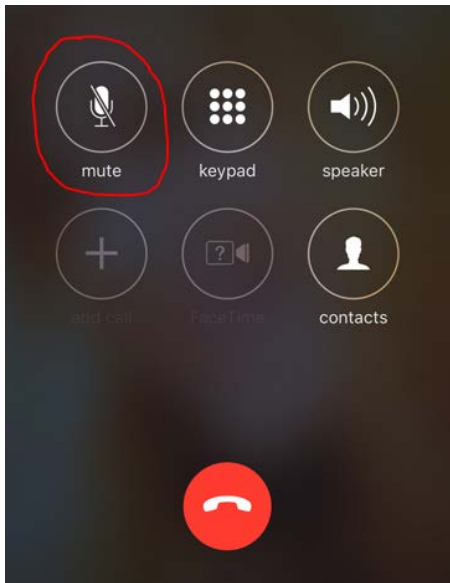
1. Wisconsin Open Meetings Law still applies
 - a. Persons interested in speaking to an item must give their name and address
 - b. Committee/Commission/Board members will still follow *Roberts Rules of Order*
2. All zoom meetings will have a password in the instructions. Please enter when prompted.
3. Please log into the Zoom meeting 10 minutes before the meeting starts to ensure proper technology is working.
 - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
4. Once you are in the meeting please mute yourselves.
 - a. You may unmute yourself when you are called upon to speak.
5. Waiting room
 - a. When you call in, all callers/participants will be placed in a “waiting room.”
 - b. Persons on the agenda will be admitted to the meeting, and then once the item is concluded, the host will permanently mute you from the meeting (you can still hear the meeting).
6. Using Zoom with a tablet or computer
 - a. Tablet—you will be asked to sign in. Download the app either with the Apple Store or the Play Store
 - b. Computer—you will be asked to sign in. You may download the app or click on the link to open Zoom in your browser.
7. Registering
 - a. The host may ask you to register for the meeting. A registration link will be sent to you along with the invite. You’ll receive another email confirming that you’re registered for the meeting.
 - b. If you’re using a phone, your registration will still be tied to an email.
8. Raising your hand
 - a. Committee members—you can either use CivicClerk and request to speak or you can “raise your hand” in the zoom meeting (you’d need to use a computer or tablet) to let the host know you’d like to speak. You can also un-mute yourselves and start speaking.
 - b. Persons on the agenda—you can “raise your hand” but you’d need to use a computer. You will be allowed to speak, per Wisconsin Open Meetings Rules, once the committee has “opened the floor for interested parties to speak.” Once the committee is finished with your agenda item, the host will mute you permanently, unless the committee opens the floor again.
9. What devices should I use?
 - a. Smart phone (please see more detailed instructions on page 3)
 - b. Land line
 - c. Tablet—well in advance of the meeting, please download the Zoom Meeting app before you join a meeting by using either the Apple Store or the Play Store. You will be asked to input your name, thus identifying you for the meeting. You’ll also be asked to verify your email.
 - d. Computer—well in advance of the meeting, please download the Zoom Meeting app, but you can also click on a link to open the Zoom Meeting in your browser. You will be asked to input your name, thus identifying you for the meeting.
 - e. For tablet and computer users—if you download the app you will be asked to verify your email.
10. Zoom etiquette
 - a. Muting yourselves when you’re not talking will prevent your background noise from interfering with others’ ability to listen to and participate in the meeting.
 - b. If you’re using a telephone, please identify yourself with your phone number and name before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourselves.
11. Closed session
 - a. Persons in the Zoom meeting will be put into a waiting room while the committee meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
 - b. Persons watching live on YouTube will see a gray screen with the City logo during closed session.
12. Persons interested in attending anonymously or listening to the meeting may call in by dialing *67 followed by the phone number above.

Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
2. When prompted, enter the Meeting ID number followed by #
 - a. If you're using a smartphone, you can access the keypad by clicking "Keypad" on your screen



3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not need to talk, please make sure your phone is on **Mute**
 - a. If you're using a smartphone, look at your screen and click the Mute button



- b. If you're using a computer, you should see a Mute button in the Zoom application





Report to the
**Redevelopment Authority
of the City of Green Bay**

MEETING DATE

May 11, 2021

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # E.1

Consideration with possible action regarding a Development Agreement with Merge, LLC for a project at 239 Arndt St. (Parcel 3-551), 101 Bridge St. (Parcel 3-554-A), and 119 Bridge St. (Parcel 3-556).

BACKGROUND

The following is a summary of the proposed development agreement between Merge, LLC and the City:

Developer is proposing to construct two buildings: a four (4)-story mixed-use structure with two wings connected on the north side of the building (Building One) with approximately one hundred twenty-nine (129) market-rate rental units and approximately four thousand (4,000) square feet of restaurant and/or retail space; and a separate four (4)-story residential structure with two wings connected on the west side of the building (Building Two) with approximately ninety-six (96) market-rate rental units; and related improvements. These 225 units are proposed to be constructed on 5.66 acres of land at the "Shipyards." Building One must be completed by December 2023, and Building Two must be completed by December 2025.

The City is responsible for transferring the property, and preparing a CSM with land for the extension of public right of way for Arndt and Bridge Streets and any easements needed for the project, along with construction of those streets. The City is also responsible for construction of public amenities including a multi-modal path along the waterfront, floating docks, kayak launch, other outdoor recreation amenities and a plaza.

The project is located in TID #22. The Development is projected to be valued at \$21 million, and must be assessed at a minimum of \$15 million in order to qualify for a prorated amount of the requested TIF assistance. Payments will be up to 70% of the available increment annually. TIF Assistance is capped at no more than \$7.5 million.

RECOMMENDATION

Staff is recommending approval of the development agreement, and that the RDA recommend approval and forward the agreement on to the City Council for final approval.

FISCAL IMPACT

The development is projected to generate sufficient TIF funding to cover projected project costs. Site development costs are also being offset by EPA and WEDC funding assistance.

ATTACHMENTS

1. 8.1 - Shipyard - Merge - 3-551 - Concept Plan - 200324
2. Merge Development Agreement RDA final

PULLBACK

PROJECT DATA

FACTS // What do we know? What is given?

GOALS // What do we want to achieve + why?

CONCEPTS // How can we achieve the goals?

NEEDS // What quantity + quality is required?

239 Arndt Street / 119 Bridge Street

Existing site condition is a vacant industrial site of 233,784 SQ FT (5.367 acres).

Zoning: D2 Downtown Two

Max ground floor area: 40,000 SF

FAR: Min. 1; Max 8 (no setbacks required)

Max Height: None

Located in “On Broadway” Business Improvement District.

Raised site with fill to be out of floodplain - no underground parking.

Walk Score: 67 (city average: 41) Bike Score 87!

2015 IBC and Wisconsin State Amendments

Reference Green Bay 2014 Downtown Plan “AuthentiCity” and “State of Downtown Report”

Transform this end of the city.

Create a dense walkable residential development that maximizes use of limited downtown waterfront.

Maximize units with views of the Fox River and the Shipyard park

Restaurant facing the urban edge to add additional vibrancy and attract people to the site.

Create an anchor to the south end of the Broadway District that supports the vibrant district culture while also spurring further development on S. Broadway, “starting a domino effect”.

Architecture should be authentically of Green Bay and the Broadway district.

“materials reflecting the district’s history or the formation of the community encourage people to think about Green Bay and the district, or maybe even instill a sense of wonder about the community’s story” Streetscape TV Report

Incorporate massing of adjacent industrial buildings and elevate the context.

Building orientation and geometry to maximize views toward river and Shipyard park.

Incorporate attractive landscaping and lighting to extend park feeling from Shipyard Park to Riverwalk.

Juxtapose intentional elements from historic industrial context.

“equally important to scale is detail—a Broadway district experience relates strongly to the sense of its relationship to the river, industry and the craft felt in its buildings.” Streetscape TV Report

Retail at restaurant: 14’ clear height, 4000 SF.

Half-level covered parking at building with restaurant. All other ground floor to be walk ups.

225 Total Units

Micros - 20% (450 SF)

Studios - 20% (500 SF)

1 BD - 20% (650 SF)

1+ BD - 20% (700 SF)

2BD - 20% (900 SF)

Provide amenities including courtyard, patio terrace space, private balconies, kayak and fishing storage.

Support pedestrian-friendly designs such as outdoor seating, outdoor gathering areas, active commercial corner, and public or quasi-public spaces.

Green Bay Shipyard

Merge Urban Development Group

PROJECT STAKEHOLDERS

Joy Hannemann

Brent Dahlstrom

Jon Tiaber

On Broadway

City of Green Bay

CORE PURPOSE

Create attainable housing options in a walkable urban setting that uses this site to its full potential.

Connect and respond to the adjacent Shipyard Park

To build a lasting relationship with the City of Green Bay for future development.

CHARACTER + FEEL

Blend the industrial fabric of the Green Bay riverfront with a new building that is contextually sensitive yet contemporary and exciting.

Embrace Green Bay’s appreciation of art, the flourishing culinary scene, it’s industrial roots and it’s emerging high-tech workforce.

Support and expand on the active and recreational activities of the adjacent Shipyard park.

END USER DESCRIPTION

Young professionals, working class people, and empty nesters will be drawn to the attractive housing adjacent to the Shipyard Park, with views of the river and park-like setting.

Abundant day lighting, sustainable and natural materials, and smart design will be attractive features that will drive demand for these urban residential units.

PULLBACK

PROJECT DRIVERS

SERVE // SPACES FOCUSED
ON LIFE OF *PEOPLE + PLACE*

PEOPLE // *Multiplicity*

The quality or state of being multiple or various

The Broadway district is a culturally rich district that is diverse in its racial, ethnic, and economic makeup. The bulk of people coming into the district are young singles and couples.

The community contains a strong art and culinary scene. Broadway is home to Green Bay's most dense collection of public art.

Designed to serve both blue collar and high tech work force.

PLACE // *Anchor*

Reliable, something that serves to hold firmly

The adjacent Shipyard Park development will create a tourism and recreation destination at the south end of the Broadway District. Dense residential development will activate the new park and enliven the waterfront, which will spur further development on the south end of the district.

Project site is situated between juxtaposed places of work (active shipyard and riverfront) and play (large shipyard park).

MAKE SENSE // QUALITY EXECUTION
SHAPED BY *REGIONALISM + ENDURANCE*

REGIONALISM // *Form*

The essential nature of a thing

Building forms and materials inspired by a history of industrial, ship building, and paper making structures, detailed in a contemporary way, to create a modern interpretation of the old buildings that formerly lined the Fox River.

The dominant feature of the site is the Fox River. Amenities should allow people to view and interact with it in various ways, during each season.

Pedestrian focused experience to promote activity and interaction with the various community activities that take place year round.

ENDURANCE // *Hardy*

Bold, Brave, capable of withstanding adverse conditions

Industrial quality, durability, and timelessness will be referenced in the architecture

Incorporate solar panels to offset energy cost of common areas and shared amenity area.

As the project site is raised up & out of the flood plain, it should not disconnect itself from accessing the riverfront.

Materials and detailing should create a hybrid character of the industrial past and the high-tech future.

MEAN IT // HOLISTIC CONCEPTS
DEVELOPED WITH *CLARITY + OPTIMISM*

CLARITY // *Shipyard*

a yard, place, or enclosure where ships are built or repaired

Incorporate clean lines and bold features that are prevalent throughout midwest industrial architecture

Allow the architecture to direct the flow of pedestrians' views and movement as they are they spill out to the riverfront.

Use building and landscaping to shape and promote the pedestrian experience as a hub of community.

OPTIMISM // *Recreation*

Refreshment of strength and spirits after work

This development should not add additional burden to the lives of its users. The architecture and site should create areas of play and rest that rein-vigorate the lives of its users

Provide different scales of dynamic spaces to create an active and peaceful environment that engages with the river.

Green Bay Shipyard

Merge Urban Development

+ DRIVERS // INCREASING SPECIFICITY

+DRIVER 1 // *Urban Flow*

The architecture shapes the movement & views that spill out onto the Fox River and the surrounding city

+DRIVER 2 // *Hybrid History*

Mixed character of the site's industrial and shipping past with its high-tech future

+DRIVER 3 // *Revitalization by Recreation*

The adjacent Shipyard Park will create a tourism and recreation destination at the south end of the Broadway corridor. Dense residential development will activate the new park and enliven the waterfront.

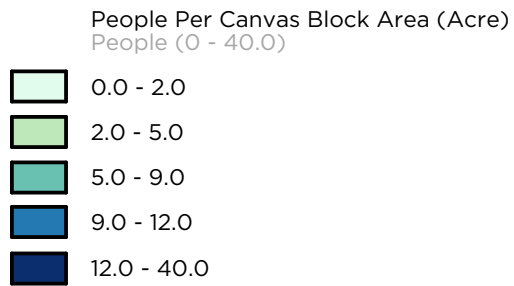
GREEN BAY SHIPYARD

SOCIOECONOMIC BENCHMARKS

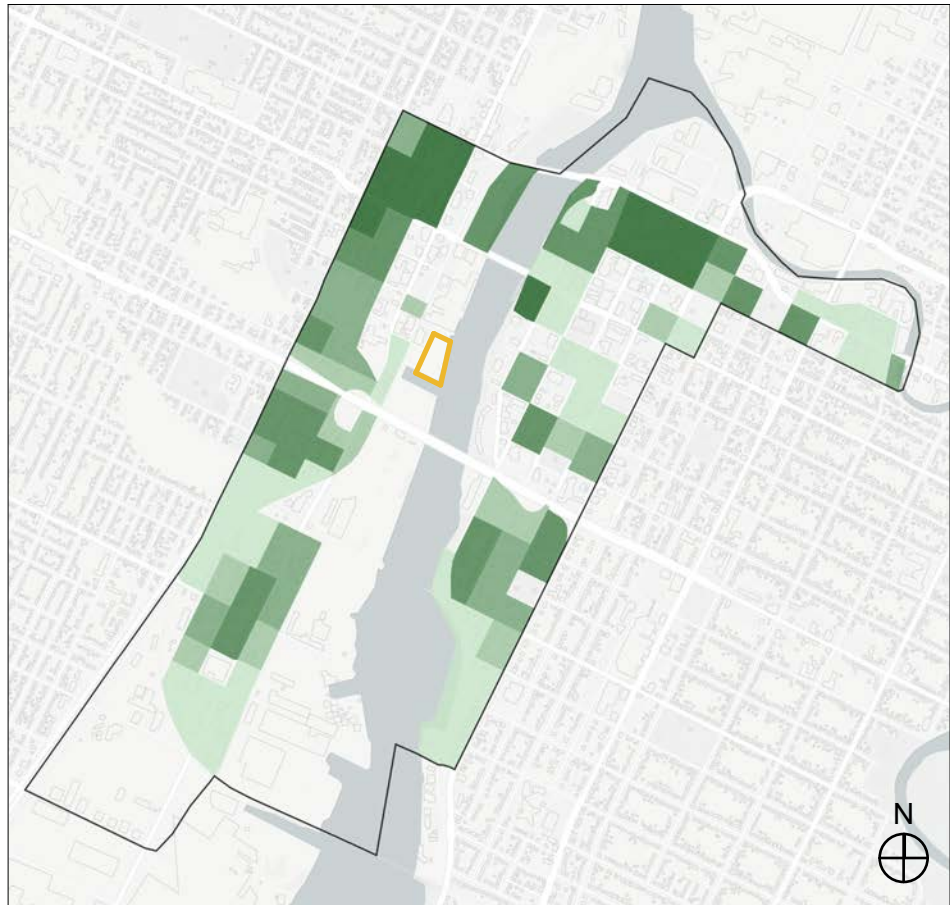
People Per Canvas Block Area



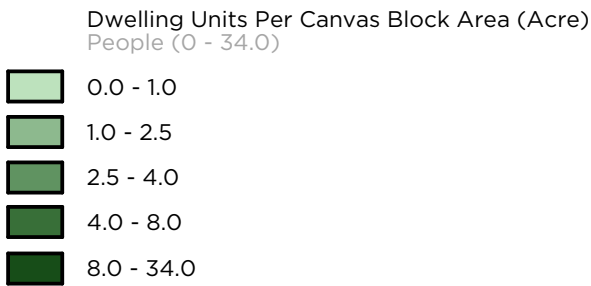
- Project Parcel Location
- Project Study Area



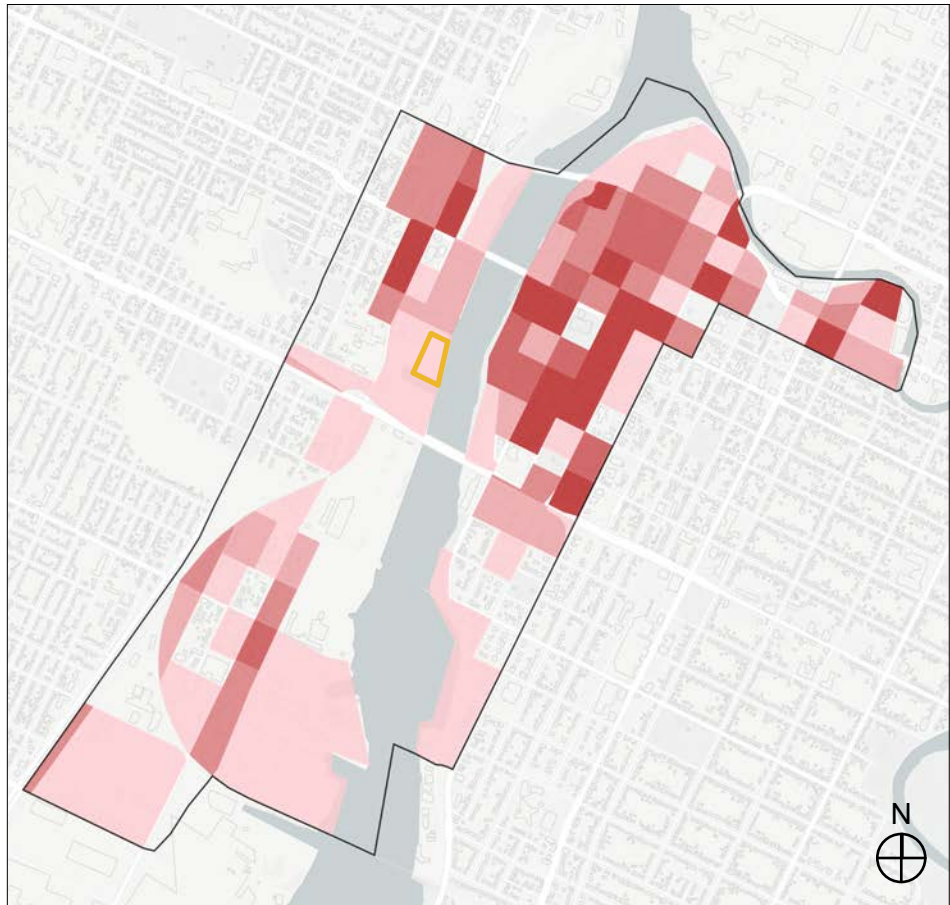
Dwelling Units Per Canvas Block Area



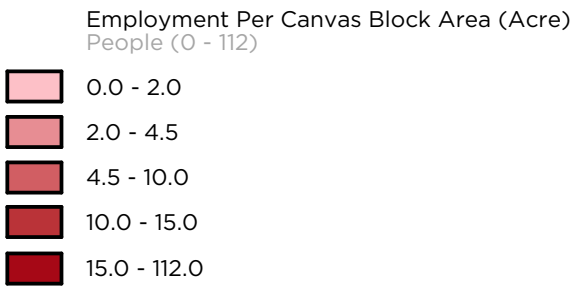
- Project Parcel Location
- Project Study Area



Employment Units Per Canvas Block Area



- Project Parcel Location
- Project Study Area



GREEN BAY SHIPYARD

SOCIOECONOMIC BENCHMARKS

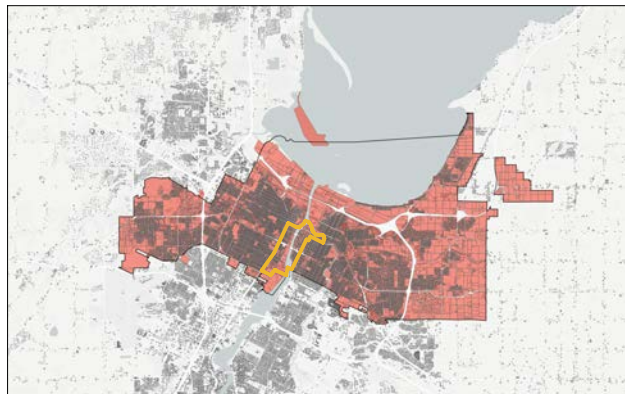
Green Bay Shipyard Study Area Map



Green Bay Shipyard Study Area Data

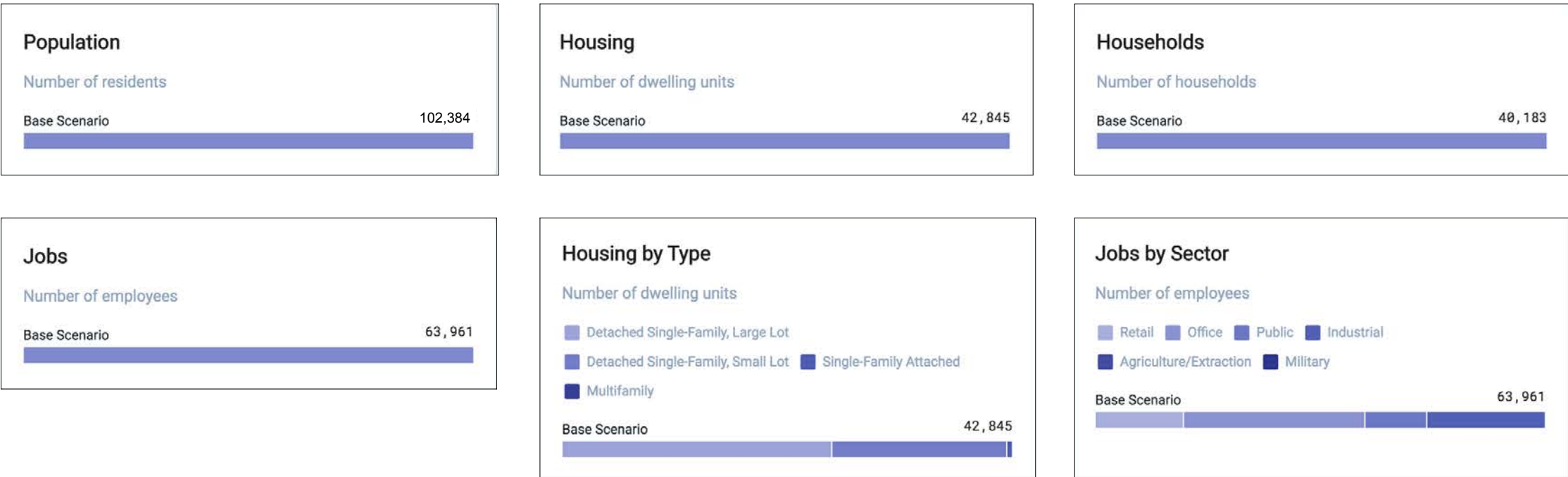


Green Bay City Jurisdiction Map



Secondary Source:
- https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml
- <https://censusreporter.org/profiles/14000US55009000800-census-tract-8-brown-wi/>

Green Bay City Jurisdiction Data



REGIONALISM

EXISTING CONTEXT

- PROJECT SITE
- PARKS
- 1/2 MILE RADIUS
OR 5 MINUTE WALK
- PUBLIC EVENT SPACE

BICYCLE TRANSPORTATION

- BICYCLE LANES
- PROPOSED BICYCLE LANES
- FOX RIVER TRAIL

PEDESTRAIN PATHS

- RIVERWALK
- POTENTIAL RIVERWALK
EXPANSION
- FUTURE HUBBARD
STREET PROMANADE

POINTS OF INTEREST

1. ACE MARINE
2. TITLETOWN BREWERY
3. COPPER STATE BREWERY CO.
4. NEVILE PUBLIC MUSEUM
5. THE CANNERY PUBLIC MARKET
6. T2 ACCELERATOR
7. KI CONVENTION CENTER
8. HAMPTON INN DOWNTOWN
9. SCHREIBER FOODS
10. BAYLAKE CITY CENTER
11. THE CHILDREN'S MUSEUM OF GREEN BAY (OLD LOCATION)
12. HOTEL NORTHLAND
13. MEYER THEATRE
14. THE AUTOMOBILE GALLERY
15. FORT HOWARD ELEMENTARY SCHOOL
16. THE GREATER GREEN BAY CHAMBER OF COMMERCE
17. BROWN COUNTY COURTHOUSE
18. THE TARLTON THEATRE
19. CUP O JOY MUSIC VENUE
20. GREEN BAY COMMUNITY THEATRE

PARKS & PUBLIC SPACES

21. FUTURE SHIPYARD PARK
22. THE CITYDECK
23. LEICHT MEMORIAL PARK
24. FRANK B. SEYMOUR PARK

EVENT LOCATIONS

25. FARMER'S MARKET ON BROADWAY
& TASTE ON BROADWAY
26. SATURDAY FARMERS MARKET

TITLETOWN BREWERY



THE CITYDECK



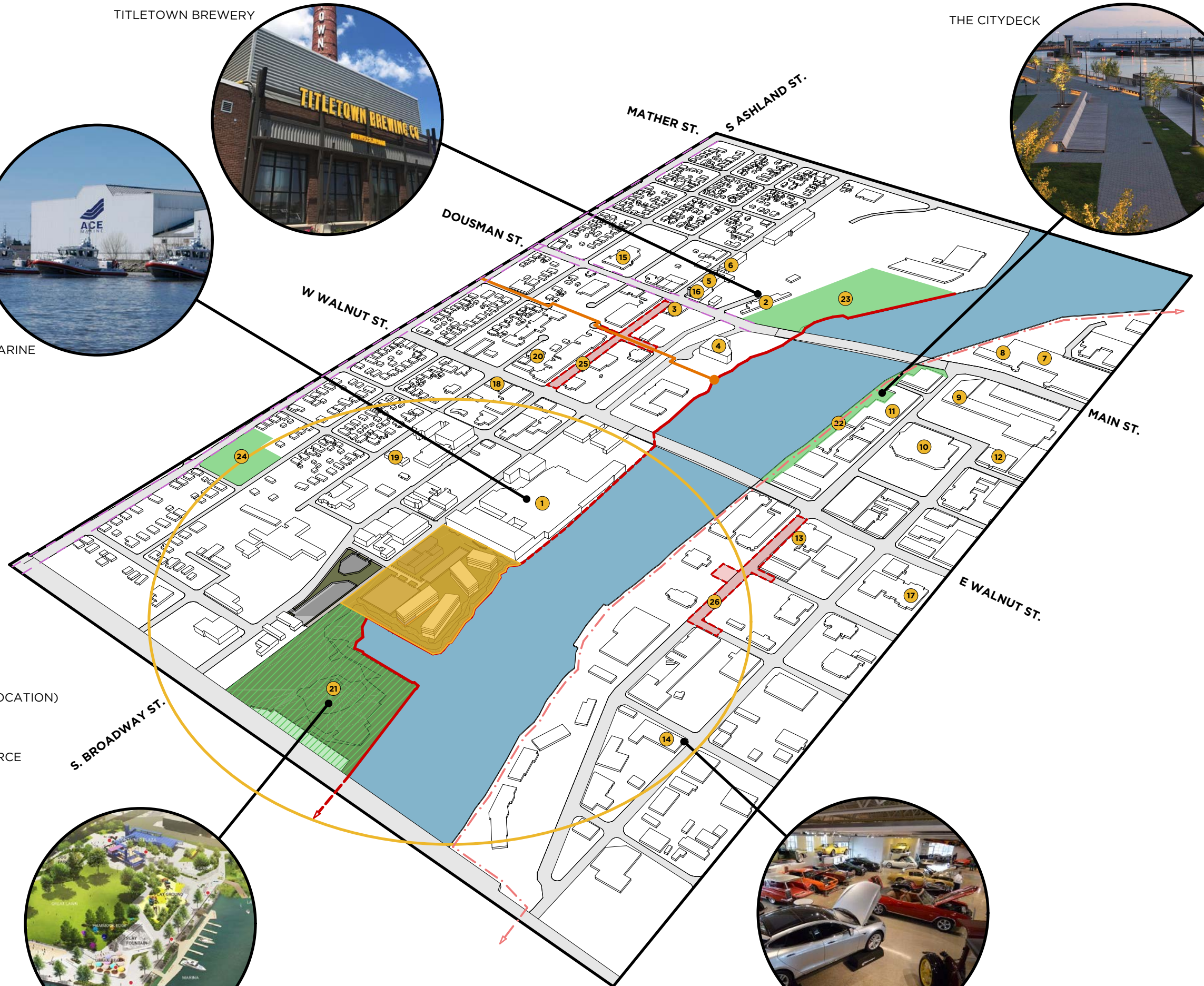
ACE MARINE



FUTURE SHIPYARD PARK



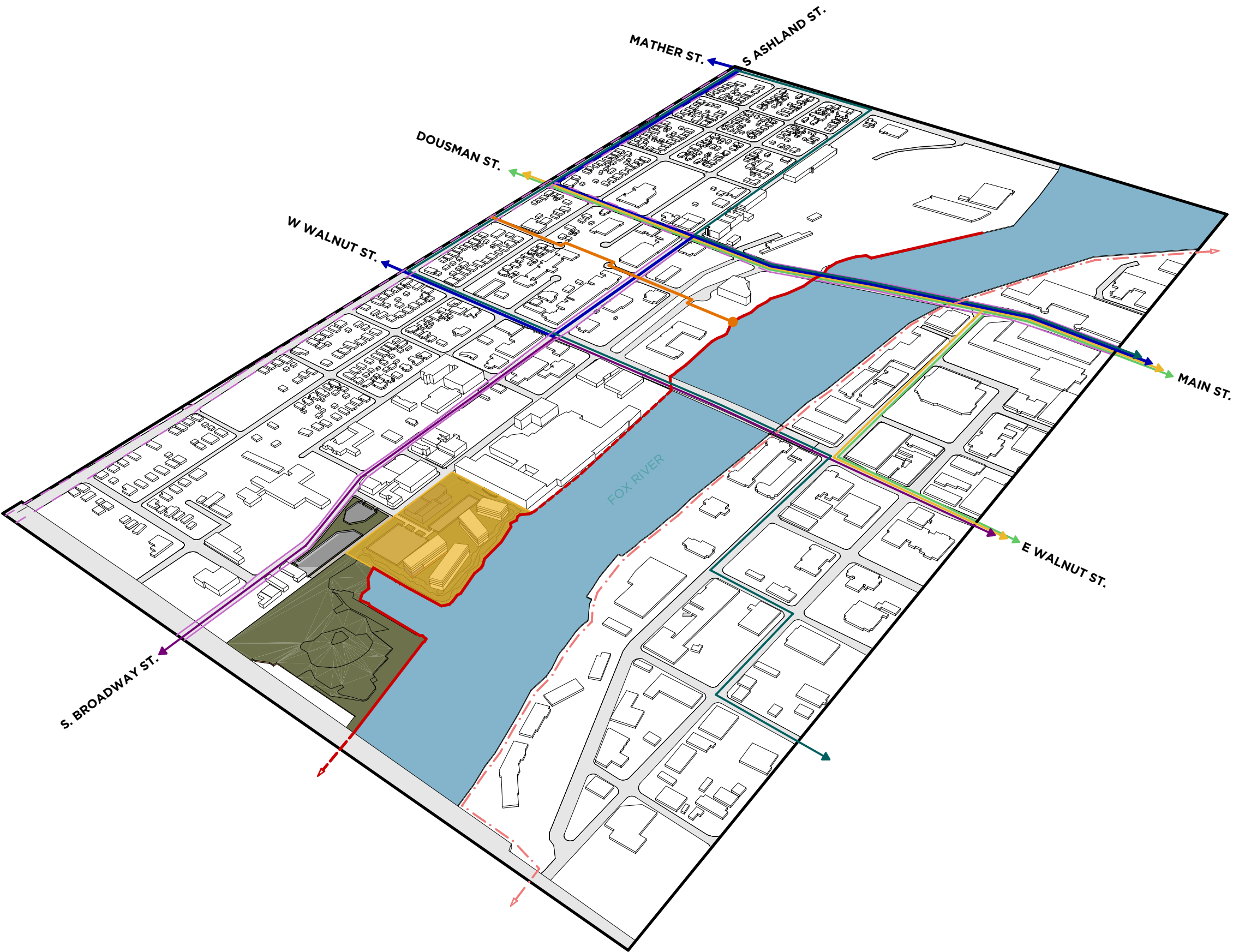
THE AUTOMOBILE GALLERY



REGIONALISM

PUBLIC CIRCULATION

- PROJECT SITE
- BUS ROUTES**
 - #3 SILVER LINE
 - #4 BLUE LINE
 - #5 PLUM LINE
 - #8 GREEN LINE
 - #9 GOLD LINE
 - #13 RIVER LINE
- BICYCLE TRANSPORTATION**
 - BICYCLE LANES
 - PROPOSED BICYCLE LANES
 - FOX RIVER TRAIL
- PEDESTRAIN PATHS**
 - RIVERWALK
 - POTENTIAL RIVERWALK EXPANSION
 - FUTURE HUBBARD STREET PROMANADE



GREEN BAY SHIPYARD

OPPORTUNITY ZONE HOUSING + WATERFRONT MIXED-USE

PROJECT DRIVERS

Urban Flow - The architecture shapes the movement & views that spill out onto the Fox River and the surrounding city

Hybrid History - Mixed character of the site's industrial and shipping past with its high-tech future.

Revitalization by Recreation - The adjacent shipyard park will create a tourism and recreation destination at the south end of the Broadway corridor. Dense residential development will activate the new park and enliven the waterfront.

TOTAL DEVELOPMENT

Gross: 189,500 SF

Residential: 175,000 SF (225 Units)

Commercial: 4,000 SF

Parking: 322 Total Spaces
(290 Spaces on Grade)
(32 Spaces 1/2 Level Garage)

BUILDING 1

4 Story Mixed-Use
117,500 GSF (4,000 SF Commercial / 12,500 SF Parking)
(101,000 GSF x 80% Efficiency) / 630 SF = 129 Units
Required Residential Parking = 162*
Required Restaurant Parking = 40**

BUILDING 2

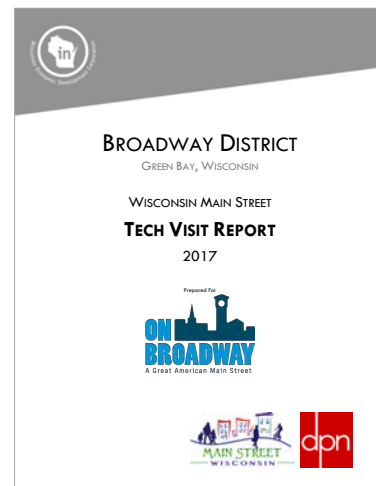
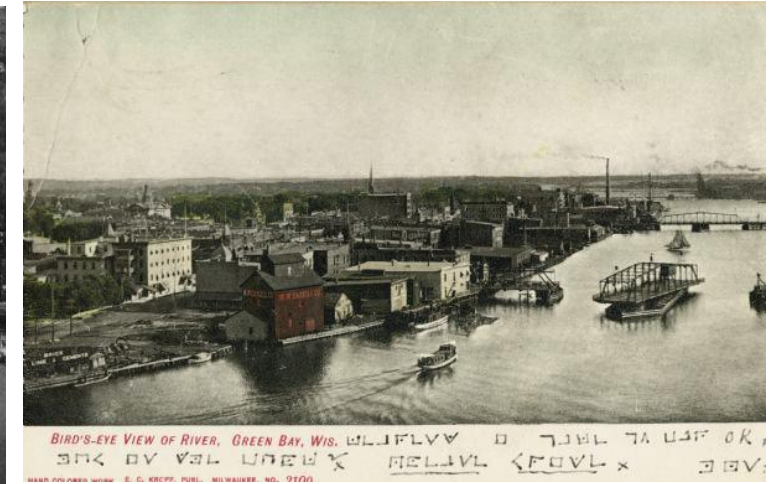
4 Story Residential
72,00 GSF
(72,000 GSF x 80% Efficiency) / 600 SF = 96 Units
Required Residential Parking = 120*

-  **RESIDENTIAL**
-  **RETAIL**
RESTAURANT
-  **PARKING GARAGE**
1/2 LEVEL UNDERGROUND
-  **EXISTING**
INDUSTRIAL OFFICE
-  **NODES OF INTEREST**
-  **PEDESTRIAN PATHS**



GREEN BAY SHIPYARD

VISUAL INSPIRATION



GREEN BAY SHIPYARD

FORM & MATERIAL PALETTE



GREEN BAY SHIPYARD

SITE PLAN



GREEN BAY SHIPYARD

VIGNETTE



GREEN BAY SHIPYARD

VIGNETTE



GREEN BAY SHIPYARD

VIGNETTE



GREEN BAY SHIPYARD

VIGNETTE





City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 2021

MERGE @ THE SHIPYARD

This Development Agreement is made this _____ day of _____, 2021,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and MERGE, LLC, an Iowa limited liability company ("Developer").

RECITALS

- A. Developer has proposed to acquire and develop certain real property, identified for real estate tax purposes and address as:

<u>Tax Parcel</u>	<u>Address</u>	<u>Acres</u>	<u>Assessed Value</u>
3-551	239 Arndt St.	4.67	\$0.00
3-554-A	101 Bridge St.	0.29	\$0.00
3-556	119 Bridge St.	0.70	\$0.00

- B. The parcels listed above shall be referred to as the "Property." The Property comprises approximately five and sixty-six hundredths acres (5.66) of land. A map of the Property is herein attached as EXHIBIT A; a legal description of the Property is herein attached as EXHIBIT B. The City and/or RDA and/or Developer shall cause a Certified Survey Map ("CSM") to be prepared, approved, and recorded with the Brown County Register of Deeds, which shall illustrate all new parcels created through the actions of Section III. B. I., and which is herein attached as EXHIBIT C.
- C. Developer intends to complete a Project, which involves the construction of a four (4)-story mixed-use structure with two wings connected on the north side of the building (Building One) with approximately one hundred twenty-nine (129) market-rate rental units and approximately four thousand (4,000) square feet of restaurant and/or retail space; and a separate a four (4)-story residential structure with two wings connected on the west side of the building (Building Two) with approximately ninety-six (96) market-rate rental units; and related improvements. The Proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT D.
- D. As of January 1, 2020, the Property has an aggregate assessed value of zero dollars (\$0.00), which based on the assessed tax rates in effect as of January 1, 2020, the Property yields approximately:
1. Zero dollars (\$0.00) in total real estate taxes annually (assessed mill rate of \$24.62);
 2. Zero dollars (\$0.00) in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of \$24.62; and

3. Zero dollars (\$0.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$9.72).
- E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be twenty-one million dollars (\$21,000,000.00) which is anticipated to yield approximately:
1. Five hundred five thousand, four hundred seventy dollars (\$505,470.00) in total real estate taxes annually (assessed mill rate of \$24.62);
 2. Five hundred five thousand, four hundred seventy dollars (\$505,470.00) in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of \$24.62; and
 3. One hundred ninety-eight thousand, six hundred sixty dollars (\$198,660.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$9.72).
- F. Pursuant to the provisions of §66.1105, Wis. Stats. (the "Tax Increment Law"), the City has included the Property within Tax Increment District Number Twenty-Two: The Shipyard ("TID 22" or the "TID"), which will provide part of the financing for certain costs of the Project.
- G. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to environmental remediation; clearing of land; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which TIF assistance may be afforded Developer.
- H. The City and RDA desire to have Developer perform the Project in order to generate economic activity and tax base for the community consistent with the City Comprehensive Plan.
- I. In order to induce Developer to undertake the Project, such that the Project will remediate environmental contamination and/or enhance the physical (soil, water, air) landscape, build new structures with high-performance designs, systems, and finishes, create a significantly higher per-acre property value than adjacent properties and the City average, generate property taxes greater than the cost of providing infrastructure and services, build new structures for individuals of all ages and abilities, is located in places easy to reach on foot, bicycle, or transit, expand non-motorized transportation networks, expand our range of residential and commercial real estate products, create and/or enhance unique public spaces, amenities, and art, and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

I. PURPOSE

- A. Incorporation of Proceedings, Exhibits, and Recitals. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted by the Developer in conjunction with any and all approvals as granted by the City or RDA, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement by reference, upon attachment, or upon consent by amendment if necessary if not referenced or attached at the time of execution of this Agreement.

- B. Implementation Schedule. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth and/or incorporated herein. Any material modification or deviation from an approved schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld. City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project upon receipt of complete and accurate application materials. Notwithstanding the above, this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property as part of the City's customary processes.
- C. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitutes the entire Agreement between the parties hereto in respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement shall be deemed to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City or RDA, granting approvals or conditions attendant with such approval, the terms of this Agreement shall be deemed controlling and the City and RDA will take the necessary action to amend any conflicting approvals or conditions.
- D. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base within the City, the City intends to provide the TIF Incentives as set forth in this Agreement. The City intends to recover its costs through the Available Tax Increment generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

Whenever in this Agreement a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand. As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

- A. "Affiliate" means any entity majority owned or controlled by, in control of, or under common control with Developer, or is a subsidiary of which Developer is a member.
- B. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.
- C. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- D. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.
- E. "Base Value" means the aggregate assessed value of the Property when the TID was created, which shall be zero dollars (\$0.00).

- F. "City" means the City of Green Bay, Brown County, Wisconsin.
- G. "Completion Date" means the substantial completion of both Building One and Building Two, as evidenced by issuance of certificates of occupancy for those buildings.
- H. "Concept Plan" means the plan for the Project.
- I. "Developer" means MERGE, LLC, or any assignee of the same.
- J. "Future Project" means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement.
- K. "Plans and Specifications" means the plans and specifications developed for the Project.
- L. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
- M. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.
- N. "Project" means the Project as defined in the Recitals.
- O. "Public Art" means art that shall be accessible to the public, and includes all forms of original creations of visual art, conceived in any medium, material, or combination thereof, including paintings, drawings, stained glass, and murals in any media; statues, bas relief, mobile, kinetic, electronic, neon, or other sculptures; environmental artworks; fountains, arches or other structures intended for ornament; integrated and functional architectural elements of a structure; video and other media-based works; inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints; crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials; artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself.
- P. "Public Improvements" means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:
 - 1. road, pedestrian, and bicycle improvements; and
 - 2. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and
 - 3. telephone, high-speed cable, and related technology infrastructure; and
 - 4. natural gas, electrical power, and other public utilities; and
 - 5. any related engineering, grading, erosion control, and landscaping; and
 - 6. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.
- Q. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section III. B. 5.

- R. "Special Assessment" means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.
- S. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.
- T. "Tax Increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year's equalized value of all taxable property in the TID.
- U. "TID" means Tax Increment District Number Twenty-Two: The Shipyard ("TID 22" or the "TID"), of the City of Green Bay, which has been established and is in good standing by the City of Green Bay, Wisconsin. The City created TID 22 in 2019; TID 22 terminates in 2046.
- V. "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.
- W. "TIF Incentive" means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. TAX INCREMENT FINANCING

- A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the "but for" test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer. The Developer's out of pocket costs for any such independent analysis requested by the City or RDA shall be a Qualified Expense reimbursable to the Developer notwithstanding the limitations in Section III.C.2.
- B. Nature of TIF Incentive. The TIF Incentive available to Developer under this Agreement shall be defined as the following:
 - I. Property Transfer. The City and/or RDA shall convey the Property to the Developer through the following process:
 - a) The City and/or RDA shall contribute the Property to Developer or, upon Developer's request, to Developer's Affiliate, free and clear of liens and encumbrances that materially prohibit development of the Property as herein proposed, via warranty deed, in exchange for an interest in transferee with a percentage interest and capital account commensurate with its proportionate value, as agreed by the parties, and shall provide an owner's policy of title insurance at the time of conveyance.
 - b) The City and/or RDA shall prepare and obtain approvals for a CSM, for which desired parcel boundaries are herein attached on the Preliminary Concept Plan (EXHIBIT C), which shall include:
 - (I) The creation of a new right-of-way and/or City and/or RDA-owned parcel that extends fifty (50) feet in width from the existing eastern Fox River

shoreline of 101 Bridge Street, 119 Bridge Street, and 239 Arndt Street (Tax Parcels 3-554-A, 3-556, 3-551) and the existing southern Fox River shoreline of the 239 Arndt Street (Tax Parcel 3-551); and

(II) The creation of a new right-of-way and/or City and/or RDA-owned parcel, south of the existing Arndt Street right-of-way, which extends fifty (50) feet from the western boundary of 239 Arndt Street (Tax Parcel 3-551) to the eastern terminus of the existing Arndt Street right of way; and

(III) The City and/or RDA will, as required, grant the Developer easements to permit the construction, operation, and maintenance of a permanent patio, landscaping, berms and/or retaining walls as required by federal, state, and local floodplain regulations within the new right-of-way and/or City and/or RDA-owned parcel(s) described above in (I) and (II).

c) Upon recording of such CSM with the Brown County Register of Deeds, all references to Property shall include all such new parcels created through the actions of this Section III. B. I.

d) The RDA shall have a right to put its interest in the Developer or, upon Developer's request, to Developer's Affiliate, (as referenced in section III.B.I.a)) to an Affiliate of Developer (as specified by Developer) for the purchase price of \$1,000 at any time after the aggregate assessed value of the Property is equal to or greater than \$18,750,000.

e)

2. Public Improvements. Prior to the dates or timelines specified below, the City and/or RDA shall, at their expense, complete the following Public Improvements in accordance with all applicable codes and ordinances:

a) Arndt Street. One year after the date a certificate of occupancy is issued for Building One, appropriate paving, landscaping, lighting, controls, and other improvements required to ensure a safe, comfortable crossing of the CN railroad tracks for both motorized and non-motorized users, in compliance with current industry standards. The RDA and/or City shall take steps in accordance with all applicable codes and ordinances to rename the segment of Arndt Street east of Broadway to a new name agreeable to the parties.

b) Bridge Street. One year after the date a certificate of occupancy is issued for Building Two, appropriate paving, landscaping, lighting, and other improvements required to ensure safe, comfortable, and contiguous pedestrian accommodations on Bridge Street between Broadway and the Fox River, in compliance with current industry standards.

c) The Shipyard. The City and/or RDA shall construct a signature public recreation and entertainment facility at 100 W. Mason St. (Tax Parcel 2-78) and surrounding property, in accordance with all applicable codes and ordinances, which includes the following phases and timelines:

- (I) Phase I - December 1, 2022. A multi-modal public path and/or boardwalk along the entire waterfront boundaries of the slip (cove); a floating dock for transient boaters; and an accessible kayak launch.
 - (II) Phase 2 – One year after a certificate of occupancy is issued for Building One. A great lawn for concerts, festivals, and other events; a dog park; an urban beach, playground, play fountain or splash pad, and/or similar amenities.
 - (III) Phase 3 – One year after a certificate of occupancy is issued for Building Two. A commercial plaza with permanent and/or seasonal structures for food, beverage, retail, and recreation.
- d) Environmental Remediation: The City and/or RDA shall submit and obtain a post closure modification request in accordance with requirements of the Wisconsin Department of Natural Resources (herein “WDNR”) which allows for modification of the existing cap. The City will take necessary action to provide a site that has obtained WDNR closure with continuing obligations. The City and/or RDA will utilize City’s environmental consultant (currently Stantec) to perform this work. Any further work warranted by the WDNR during site development, such as WDNR approvals, excavation and proper disposal of residual contamination, cap replacement, and installation of a vapor mitigation system, and associated costs is the responsibility of the Developer.
3. Off-Street Public Parking. In the event the City constructs off-street public parking improvements on properties located at 401 S. Broadway (Tax Parcel 3-568), 511-513 S. Broadway (Tax Parcel 2-949-A), 515 S. Broadway (Tax Parcel 2-70), 517 S. Broadway (Tax Parcel 2-71) and S. Broadway (Tax Parcel 3-568-1), the City will make parking available to the Developer on an as-available basis, for as long as such property remains undeveloped.
4. PAYGo Reimbursement. The City shall provide a TIF Incentive as a pay-as-you-go (PAYGo) obligation of the City, which is further defined as follows:
- a) The Developer guarantees that the Property shall have a minimum aggregate assessed value of fifteen million dollars (\$15,000,000.00) on or before January 1, 2026.
 - b) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures shall be reimbursed to Developer.
 - c) Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property as of January 1 of the year in which construction commenced. The difference in assessed values shall be known as the Incremental Property Value.
 - d) Incremental Property Value multiplied by the assessed mill rate, less payments of real estate taxes to the State of Wisconsin, shall be known as the Available TIF Increment.
 - e) Provided the aggregate assessed Property value meets or exceeds eighteen million, seven hundred fifty thousand dollars (\$18,750,000.00) on or before January 1, 2026, the City shall make available seventy percent (70%) of the remaining TIF Increment

to the Developer until all Qualified Expenditures have been repaid. Developer shall not be entitled to any TIF Increment unless the aggregate assessed Property value meets or exceeds fifteen million dollars (\$15,000,000.00). In the event the aggregate assessed Property value is between fifteen million dollars (\$15,000,000.00) and eighteen million seven hundred fifty thousand (\$18,750,000.00) on or before January 1, 2026, the City shall prorate the remaining TIF Increment available to the Developer, based on a percentage of fifty-six percent (56%) for an amount equal to fifteen million dollars (\$15,000,000.00), and seventy percent (70%) for an amount equal to eighteen million seven hundred fifty thousand (\$18,750,000.00). For example, if the aggregate assessed Property value is sixteen million eight hundred seventy-five thousand dollars (\$16,875,000.00) on January 1, 2026, the City shall make available sixty-three percent (63%) of the remaining TIF Increment to Developer.

- f) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, if the first occupancy permit is issued on September 1, 2023, the TIF Increment would be determined as of January 1, 2024 and the PAYGo reimbursement would first be payable in 2025.
 - g) The City shall take all actions necessary to continue the existence of the TID in good standing through its current 2046 termination date.
 - h) Upon the request of the Developer or an assignee of the Developer's payment rights hereunder, the City or RDA shall provide a written certification of facts regarding the current amount due to the Developer or assignee pursuant to Section III.B.4, the current Available TIF Increment, and a confirmation of the person or location to which the City will make payments.
 - i) The PAYGo Reimbursement shall be available to Developer unless and until Developer challenges any of its real or personal property taxes.
5. Qualified Expenditures. The TIF Incentive available to Developer under this Agreement shall be disbursed in the following priority, and only fund:
- a) Public Improvements, as defined in Section II. P., and environmental remediation, and asbestos abatement as required by State and Federal law; then
 - b) "Private Improvements" specifically approved by the City or RDA as stated in Section IV. C.; then
 - c) Any other activity specifically approved by the City or RDA.
6. Assignment. Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property upon approval of the RDA, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has an agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value and guaranteed aggregate assessed value generated by any third party purchaser and/or developer of any part of the Property. Notwithstanding the foregoing, Developer may sell or assign its payment

rights hereunder to any party without the consent of the City or the RDA following the Completion Date, provided that the Developer provides the RDA and the City with timely written notice and a copy of such fully executed sale or assignment instrument.

- C. Limitations. The TIF Incentive available to Developer for the Project is limited as follows:
1. Monetary Limitation. The TIF Incentive in any year shall not exceed seventy percent (70%) of the Available Tax Increment for the Property.
 2. Tax Incentive Cap. Subject to Section III.A., the City shall not be obligated to pay TIF Incentive in excess of the lesser of seven million five hundred thousand dollars (\$7,500,000.00) or the total amount of Qualified Expenses incurred and paid by Developer.
 3. Tax Receipts Limitation. Only the Available Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.
 4. Temporal Limitation. Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred and paid Qualified Expenditures, and provided Developer and all transferees have paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year by July 31, TIF Incentive payments shall be made on or before September 1 of each year; provided, however, in no event shall TIF Incentive payments continue after the earlier of the termination date of the TID or the termination of this Agreement if before the termination of the TID.
- D. No General Obligation of City. The City's obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.
- E. Other Grants and Credits. The City and RDA, as appropriate and in its sole discretion, may also apply for such other grants and credits in regard to the Project as they shall deem appropriate for the benefit of the Project and as may be required to achieve necessary financing for the Project, provided, however, the City and RDA make no representations or warranties about the availability of such grants and credits or whether any such grants or credits that may be available will be awarded.

IV. OBLIGATIONS OF DEVELOPER

- A. Concept Plan. Prior to July 1, 2021, Developer shall submit a Concept Plan to RDA for approval, which shall be based on, but may differ in minor respects from the Preliminary Concept Plan presented in the Term Sheet. The Concept Plan shall clearly identify:
1. The new boundaries of the Property as described in Section III. B. 1.; and
 2. The approximate location of any Future Projects proposed on the Property.
- B. Construction Documents. Prior to February 1, 2022, and prior to commencement of construction of any Phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix

and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval. The Construction Documents shall include:

1. Plans and specifications for structural, mechanical and electrical systems, materials; and
2. Full-color elevations for all sides of all proposed structures; and
3. Descriptions and actual samples of all exterior building materials; and
4. Descriptions and photographic examples of interior finishes; and
5. Other such essential items as may be reasonably determined by the RDA to be appropriate.

C. Development Budget. Prior to June 1, 2022, Developer shall submit a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval. The Development Budget shall include:

1. Not less than twenty million dollars (\$25,000,000) in “hard” construction costs for the entire Project; and
2. A line item of not less than ten percent (10%) of total Project costs for cost overruns and change orders; and
3. A line item of not less than one percent (1%) of the estimated aggregate assessed value of the Property, which shall be specifically dedicated towards
 - a) Public Art on the Property; or
 - b) Public Art within one-half (1/2) mile of the Property; or
 - c) A separate Public Art project(s) approved by the RDA and GBPAC; or
 - d) Funds for design and maintenance of Public Art, or any combination of the alternatives herein; and
4. Line items for each of the Qualified Expenditures for which the Developer is seeking a TIF Incentive, as identified in Section III.

D. RDA Approvals. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the Concept Plan, Construction Documents, or Development Budget, or any revisions; provided, however, that the RDA shall approve such revised Concept Plan, Construction Documents, or Development Budget unless it determines such revisions would materially impair the objectives of this Agreement, impose substantial financial burdens on the City or the RDA, or adversely affect the Concept Plan or not be consistent with adopted plans or applicable zoning districts for the area. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans. At any time during the implementation of the development contemplated by this Agreement, the RDA or Developer may propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the RDA and the Developer. At any time during the implementation of the development contemplated by this Agreement, Developer may submit to the RDA proposed revisions in the approved Concept Plan, Construction Documents, or

Development Budget in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan.

- E. Compliance with Planning, Zoning, Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:
 - 1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.
 - 2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.
 - 3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.
- F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than June 1, 2022, proof of equity in the form of the value of the Property, less any mortgages thereon, not less than twenty percent (20%) equity available for injection into the Project in an amount sufficient to obtain financing for all costs for the Project. Any available Developer funds obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any third party financing is used to pay Project costs.
- G. Proof of Financing. By no later than June 1, 2022, Developer shall have delivered proof reasonably satisfactory to the City and RDA of financing, which after injection of the Developer equity into the Project, will be sufficient in the determination of the City and RDA, to complete the Project according to the plans and specifications.
- H. Acquisition of Property. The City and/or RDA shall transfer all of the parcels comprising the Property and all of the necessary rights of way required for the Project in accordance with Section III. B. 1. herein. Each of the City, RDA and Developer shall provide copies of deeds and such other closing documents as requested by the other party regarding the purchase of the Property and rights of way. The Property and rights of way shall be owned in the name of the Developer.
- I. Certified Survey Map. The City and/or RDA shall prepare and obtain approvals for a CSM in accordance with Section III. B. 1. herein.
- J. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenses as set forth in the approved Development Budget.
- K. Improvement of Property. Developer shall promptly design and complete Building One of the Project by December 31, 2023, and thereafter design and complete Building Two by December 31, 2025. Substantial work on the Project shall commence no later than ninety (90) days after the last to occur of approval by the City and RDA of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, transfer of the Property as described in Section IV.H. and/or issuance of a building permit and all other permits or licenses required to commence construction, provided the Public Improvements described in Section III.B.2. are substantially completed by the City by the dates set forth herein. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after the Completion Date.

- L. Reports and Information. During the period before the commencement of construction, Developer shall, upon request, provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA, Developer shall, prior to the Completion Date, submit a copy of annual, unaudited financial statements for Developer.
- M. Copies of Documents. All documents from Developer to the City or RDA shall be submitted as hard copies shall be submitted in triplicate if so requested by the City or RDA. Documents may also be submitted electronically.
- N. Maintenance and Repair. Developer shall at all times following conveyance of the Property as described in Section 4.H., keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe and clean condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.
- O. Transfer or Sale of Project Property.
1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof to a party other than an Affiliate before termination of this Agreement, the Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer. The City or RDA may deny the request for any commercially reasonable reason. Upon notice to the City and RDA, Developer may assign all rights and obligations under this Agreement only to an Affiliate to own, manage and operate the Property. This Agreement shall run with the land and shall be binding upon all current and future owners of the Property. Owner shall not be required to provide the City or RDA with written notice of its intent to transfer in connection with the granting of any mortgage or security agreement to finance or refinance loans for the purchase of the Property or payment of costs of the Project.
 2. No Transfer to Exempt Entities. Prior to the closure of the TID, the Property shall not be sold, transferred or conveyed to, leased, or owned by any entity or used in any manner that would render any part of the Project Property exempt from taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement with the City and RDA in a form satisfactory to the City providing for acceptable payments to the City in lieu of taxes.
- P. Easements. Developer, its Affiliates, and/or its assignees or transferees, as applicable shall grant to the City such easements over the Property as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement, provided that the parties agree to work together in granting easements so that all such easements do not materially adversely affect the value or functionality of the Project.
- Q. Environmental.
1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before acquiring the Property, Developer shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in compliance with all Environmental Laws. Developer, City and RDA shall all share with each other copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same, which each party may have or obtain.

2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):
 - a) Arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property occurring during the Developer's period of ownership of Property; or
 - b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA, regarding Hazardous Materials under this Agreement.

Notwithstanding any of the foregoing, Developer shall not have any obligation under this Section if the loss, damage, claim, fine, penalty, assessment, liability or other charge or claim results from the direct or indirect actions of the City or RDA or arises from conditions present or events occurring prior to the Developer's acquisition of the Property.

3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:
 - a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and
 - b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any applicable Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.
 4. Survival. The provisions of this Section shall survive the conveyance to Developer of any City and/or RDA Property.
- R. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain until

the Completion Date, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:
 - a) Bodily Injury by Accident – one hundred thousand dollars (\$100,000.00) per accident;
 - b) Bodily Injury by Disease – one hundred thousand dollars (\$100,000.00) per employee; and
 - c) Five hundred thousand dollars (\$500,000.00) policy limit.
2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.
3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:
 - a) General Aggregate Limit – two million dollars (\$2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars (\$2,000,000.00);
 - b) Bodily Injury and Property Damage – two million dollars (\$2,000,000.00) per occurrence;
 - c) Fire Legal Liability Damage Limit – one hundred thousand dollars (\$100,000.00) per occurrence; and
 - d) Medical Expense Limit – ten thousand dollars (\$10,000.00) per person.
4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:
 - a) Bodily Injury – two hundred fifty thousand dollars (\$250,000.00) per person; and
 - b) One million dollars (\$1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars (\$250,000.00) per occurrence.

5. **Umbrella Coverage.** Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars (\$1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.
6. **Builder's Risk Insurance.** Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss and subject to any requirements of a mortgage on the Property or Project, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.
7. **Fire and Casualty Insurance.** Developer shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount equal to the assessed value of such improvements. In the event of loss the Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

S. **General Indemnity.**

1. **Protection Against Losses.** Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:
 - a) Any breach by Developer of the terms of this Agreement;
 - b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or
 - c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.
2. **Indemnification Procedures.** Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those

available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

The City's and RDA's obligations under this Agreement are conditioned upon the following:

- A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Iowa indicating Developer's existence and good standing, and statement of qualification to do business in the State of Wisconsin.
- B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.
- C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.
- D. Insurance. The Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.
- E. TID District. TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue. The City and RDA represent that as of the date of this Agreement, each has taken all of the actions required by the Wisconsin Department of Revenue in with regarding to the TID, is aware of no issues which could affect the good standing of the TID with the Wisconsin Department of Revenue, and no major changes to the TID which could affect its good standing are anticipated.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

The obligations of Developer under this Agreement are conditioned upon the following:

- A. TID. The TID shall remain in effect and in good standing as certified by the Wisconsin Department of Revenue.
- B. Due Authorization. The City Council shall consent to the City entering into this Agreement and shall authorize the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been

taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

- C. City/RDA Approvals. The City, the RDA or other applicable governmental bodies have provided all approvals contemplated by Sections IV.A. through IV.E. hereof,

VII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Developer represents and warrants to the City and RDA as follows:

- A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, by the Developer and are true and correct and there has been no material change in any of the same.
- B. No Material Change in Developer Operations. There has been no material change in the business operations of Developer since the date the parties began negotiation to enter into this Agreement that would adversely affect the ability of the Developer to perform its obligations hereunder.
- C. Compliance with Zoning. The Project will conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.
- D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property prior to the Completion Date, except for liens for claims to payment that are subject to a bona fide dispute, and, in that case, shall be removed by Developer posting bond or other security, paying one hundred and twenty percent (120%) of the lien claimed into court, escrowing funds or promptly taking other steps to remove the lien of record. Developer shall pay all other obligations relating to the Project prior to the Completion Date, including all creditors holding liens or mortgages against the Property when and as the same become due. Developer will pay all taxes and assessments levied against the Property when and as the same become due.
- E. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City or RDA pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.
- F. Good Standing. Developer is a limited liability company organized and existing in good standing under the laws of the State of Iowa, is duly qualified to conduct business in the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business.
- G. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary company action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- H. No Conflict. The execution, delivery, and performance of the obligations of Developer, the development company, and all principals of the development company pursuant to this Agreement

will not violate or conflict with the Articles of Organization or Operating Agreement of Developer or any indenture, instrument or material agreement by which Developer is bound, nor, to the knowledge of the officer of the Developer signing this Agreement, upon a due diligence evaluation, will the execution, delivery, or performance of obligations of Developer pursuant to this Agreement violate or conflict with any law applicable to Developer.

- I. No Litigation. To the knowledge of the officer of the Developer signing this Agreement upon a due diligence evaluation, there is no litigation or proceeding pending or threatened against or affecting Developer or the Property that would adversely affect the Project, Developer or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.
- J. No Default. No default, or event that with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.
- K. Compliance with Laws and Codes. The Project, when completed, will conform and comply in all respects with all applicable laws, rules, regulations and ordinances, including without limitation, all building codes and ordinances of the City. Developer will comply with, and will cause the Project to be in compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances at all times during its period of ownership of the Project.
- L. Fees or Commissions. Neither the City nor RDA shall be liable for any broker fees or commissions incurred by Developer in connection with the Property or any transactions contemplated by this Agreement.
- M. No Objection to Property Assessment. Prior to termination of this Agreement, Developer shall not file an objection to real or personal property assessment as provided under §70.47(7)(a), Wis. Stats

VIII. DEFAULT

- A. Developer Default. Each of the following shall be an Event of Default by Developer:
 - 1. Failure to Make Payment. Developer fails to make any payment required and such failure continues for a period of thirty (30) days after invoice due date;
 - 2. Failure to Abide by Other Terms. Developer fails to perform any other of its obligations under this Agreement and such failure continues for a period of thirty (30) days from the date of notice from the City or RDA; provided, however, if such cure cannot reasonably be accomplished within such thirty (30) days and the delay in cure does not materially impair the financial interests of the City or RDA, and if Developer promptly commences cure within the initial thirty (30) days and thereafter diligently and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default;
 - 3. Misrepresentation. Any representation or warranty of Developer in this Agreement or any agreement contemplated by this Agreement is untrue in any material respect when made;
 - 4. Fraud and Other Illicit Behavior. Developer or any of its members is convicted of, pleads no contest to, or enters into any other agreement other than a dismissal with no conditions as to any allegation of:

- a) Fraud; or
 - b) Indecent or illicit behavior that in the determination of the City or RDA would threaten the reputation of Developer or its ability to complete the Project according to the requirements of this Agreement;
 - 5. Insolvency. Prior to the Completion Date, the Developer or any guarantor of the obligations of Developer is insolvent or becomes the subject of a petition in bankruptcy, a receivership, a composition or any other proceeding designed for the benefit of creditors generally that is not dismissed within one hundred eighty (180) days of the date of filing;
 - 6. Involuntary Liens. Any lien is imposed upon the Property involuntarily due to the acts or omissions of Developer and such lien is not removed within sixty (60) days of it being imposed upon the Property.
- B. Remedies Upon Default. In the event of the occurrence of an Event of Default by Developer, the City may in its discretion:
- 1. Termination. Terminate this Agreement without further notice to Developer;
 - 2. Offset and Recoupment. Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach;
 - 3. Specific Performance. Sue for specific performance;
 - 4. Sue for Damages. Sue for all damages caused by the Event of Default;
 - 5. Other Remedies. Pursue any other remedies available to the City or RDA at law or in equity;
 - 6. Interest. Collect interest on all delinquent amounts owed to the City or RDA at the rate of eight percent (8%) per annum from the date such amount was due; and
 - 7. Costs and Attorney Fees. Collect all costs and fees, including reasonable attorney fees incurred by the City and RDA, or either of them, by virtue of the Event of Default.
- C. City or RDA Default. Developer shall have all rights and remedies available under law or equity with respect to any failure of the City and/or RDA to perform their obligations under this Agreement, but only after providing the City and RDA notice of such default and a failure by the City and/or RDA to commence attempts to cure such default within the thirty (30)-day notice period. Except for Event of Defaults caused by the failure to make payments to the Developer, if the City and/or RDA, as appropriate, commences cure within the thirty (30)-day notice period and thereafter reasonably and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default.
- D. Limitation of Damages. The foregoing notwithstanding, none of the parties shall be liable to any other party for any incidental, consequential, indirect, punitive or exemplary damages. All claims and damages asserted against the City or RDA shall be subject to statutory protections of municipalities and their officials and employees, including the immunity and limitations set forth in §893.80 Wis. Stats.

- E. No Waiver. Any delay in instituting or prosecuting any actions or proceedings or otherwise asserting the rights granted in this Agreement, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way, nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- F. Remedies Cumulative. Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party.

IX. TERMINATION

- A. Date of Termination. This Agreement shall terminate upon the earliest of the date:
1. All Qualified Expenditures have been repaid in full by Tax Increment;
 2. The City closes and terminates the TID;
 3. The Wisconsin Department of Revenue fails to certify or revokes certification of all or any portion of the TID or the Property;
 4. This Agreement is terminated because of an Event of Default; or
 5. The parties agree in writing to terminate this Agreement.
- B. TIF Payments termination. TIF payments shall terminate upon the earliest of:
1. The year in which the TIF Incentive equals the lesser of seven million five hundred thousand dollars (\$7,500,000.00)(plus costs of any independent analysis as provided in Section III.A.) or the total amount of Qualified Expenses incurred and paid by Developer as indicated by the Tax Incentive Cap in Section III. C. 2.;
 2. Twenty-two (22) years after the date of execution of this Agreement, which is 2042.
- C. Survival of Certain Provisions. Sections III. B. 1. d), IV.J., IV.O.2., IV. Q.2., IV. S, V.A., V.B., V.C.,V.D., V.E., VII.E., VII.G., VII.L., VIII.A., VIII. B., VIII.C., VIII. D., VIII. E., VIII. F., X.B., X.C., X.G., X J., X.N., X.O., X.P., and X. R. shall survive the termination of this Agreement.

X. MISCELLANEOUS PROVISIONS

- A. No Effect Until Executed. The terms of this Agreement shall have no force and effect unless and until this Agreement is executed by all Parties.
- B. Assignment. Except as provided below, prior to the Completion Date, Developer may not assign its rights or obligations under this Agreement without the express prior written consent of the City and RDA (other than to an Affiliate or Affiliates). Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld. Notwithstanding the foregoing:
- a) Permitted Assignment: Developer may assign all of its rights and obligations with respect to a portion of the Property to one or more Affiliates, without prior approval

of the City or RDA, so long as the proposed Affiliate assignee (i) agrees in writing to assume all of Developer's rights and obligations under this Agreement with respect to the portion of the Property transferred to the Affiliate, (ii) the Developer conveys all or a portion of the Property to the Affiliate assignee, (iii) the Developer provides the RDA and the City with timely written notice and a copy of such fully executed assignment and assumption agreement, and (iv) Developer directly or indirectly manages the Affiliate assignee.

- b) Collateral Assignment of Development Agreement. Developer may assign its rights and obligations under this Agreement with respect to all or a portion of the Property to a lender or lenders, solely for the purposes of providing collateral security for a loan issued to Developer for the purposes of the construction and development of the Project or any portion thereof. Any such assignment shall become effective only following an event of default by Developer under the terms of the loan. No such assignment shall relieve Developer of any of its obligations hereunder.
 - c) Transfers of Equity Interests. Nothing herein shall prevent, and RDA and City consent shall not be required for, the transfer of equity interests in Developer or in any direct or indirect owner thereof, any portion thereof among family members, or trusts for the benefit of family members for estate planning purposes.
- C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.
- D. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.
- E. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.
- F. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.
- G. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, pandemics, adverse weather conditions, legally required environmental remedial actions,

industry-wide shortage of materials or labor, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes herein above enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. The foregoing notwithstanding, a Force Majeure event may not be used to avoid an Event of Default if the delay caused by the Force Majeure event exceeds one hundred and eighty (180) days from the date the event occurred.

- H. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.
- I. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein. In the event this Agreement is not executed by both Parties prior to July 1, 2021, any and all approvals granted pursuant hereto or in conjunction herein by the City and/or RDA which are contemplated as part of this Agreement shall automatically expire.
- J. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given:
1. Upon receipt if sent via electronic mail (e-mail)
 2. Upon receipt if hand-delivered to the party or person intended; or
 3. One (1) business day after deposit with a nationally-recognized overnight commercial courier service, air bill pre-paid; or
 4. Three (3) business days after deposit in the United States Postal Service (USPS), postage prepaid, by certified mail, return receipt requested.

All correspondence shall be addressed by name and address to the party or person intended as follows:

To the City: City of Green Bay
 Attn: City Clerk
 100 North Jefferson Street
 Green Bay, WI 54301
 e-mail: Clerkinquiries@greenbaywi.gov

To RDA: Redevelopment Authority of the City of Green Bay
 Attention: Executive Director
 100 North Jefferson Street, Room 608
 Green Bay, WI 54301
 e-mail: Neil.Stechschulte@greenbaywi.gov

To the Developer: MERGE, LLC
 Attention: Brent Dahlstrom, Principal
 604 Clay Street
 Cedar Falls, IA 50613

e-mail: brent@mergeurbandevelopment.com

With a copy to: Squire Patton Boggs (US) LLP
Attention: Steven F. Mount
41 South High Street, Suite 2000
Columbus, OH 43215
e-mail: steven.mount@squirepb.com

The foregoing addresses shall be presumed to be correct until notice of a different address is given according to this paragraph.

- K. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.
- L. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- M. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.
- N. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.
- O. Recording of Agreement. The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording. Following termination of this Development Agreement and upon the request of an owner of any portion of the Property, the City and the RDA shall execute and record a memorandum indicating that this Development Agreement has been terminated and this Development Agreement no longer runs with the land nor binds owners of the Property (other than the Developer).
- P. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. The Developer warrants and represents that there will not be any mortgage or any other lien against the Property created by the Developer at the time this Development Agreement is recorded other than mortgages for the purchase of the Property and to finance costs of constructing the Project. This Development Agreement shall have precedence and shall take priority over any mortgage, lien or other encumbrance that may be recorded against the Property (or any portion thereof) after the recording of this Development Agreement (or Memorandum thereof) ; provided, however, that upon request of the Developer, the City and RDA shall execute such subordinations of this Development Agreement as may be reasonably required by a mortgagee providing financing for the Project.
- Q. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.

- R. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.
- S. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

[Signature pages follow]

Signature page 1 of 3

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed by duly authorized representatives of Developer, City and RDA as of the day and year first written above.

**DEVELOPER:
MERGE, LLC**

By: _____

Print Name and Title

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _____ day of _____ 2020, the above named _____, a member of MERGE, LLC, an Iowa limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

*

Notary Public, _____ County, Wisconsin
My Commission Expires _____

Signature page 2 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and
MERGE, LLC

THE CITY OF GREEN BAY

By: _____
Eric Genrich, Mayor

By: _____
Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _____ day of _____ 2021, the above named
_____ and _____, on behalf of the City of Green Bay,
a Wisconsin municipal corporation, to me known to be the person who executed the foregoing
instrument and acknowledged the same.

*

Notary Public, _____ County, Wisconsin
My Commission Expires _____

Signature page 3 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and
MERGE, LLC

**REDEVELOPMENT AUTHORITY OF THE
CITY OF GREEN BAY**

By: _____
Gary J. Delveaux, Chair

Attest: _____
Neil Stechschulte, Executive Director

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _____ day of _____ 2020, the above named
_____ and _____, on behalf of the Redevelopment
Authority of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person
who executed the foregoing instrument and acknowledged the same.

*

Notary Public, _____ County, Wisconsin
My Commission Expires _____

EXHIBIT A

Property Map



EXHIBIT B
Legal Description

239 Arndt Street – Tax Parcel 3-551

Block 1, Arndt's Addition to Fort Howard, now part of the City of Green Bay and that part of the unsurveyed part of Private Claim No. 2, West side of Fox River, in the City of Green Bay, Brown County, Wisconsin, described as follows:

Commencing at a point where the Northerly line of the surveyed part of Private Claim No. 2 West intersects the Westerly line of Pearl Street extended which point is located 248.3 feet Southerly along said Westerly line of Pearl Street from the Southerly line of Arndt Street; thence North 24° 42' 39" East along the Westerly line of Pearl Street extended 248.3 feet to the Northeast corner of Block 5, Arndt's First Addition to Fort Howard; thence South 64° 6' 21" East along the Southerly line of Arndt Street 573.01 feet more or less to the West government dock line Fox River; thence South 12° 35' 14" West along said government dock line 255.1 feet to the Northerly line of the surveyed part of said Private Claim No. 2 West; thence North 64° 6' 21" West along said Northerly line of the surveyed part of Private Claim No. 2 West 627.34 feet to the point of beginning; EXCEPT that part thereof that lies West of the center line of Pearl Street produced Southerly.

Lots 1 and 2, including the East ½ of Water Street vacated, Block 2, Arndt's Addition to Fort Howard now a part of the City of Green Bay.

Lot 3, Block 2 Arndt's Addition to Fort Howard now a part of the City of Green Bay, except the part thereof described in Volume 241 Deeds, page 234.

The vacated portion of Arndt Street extending Easterly from the Easterly line of Water Street (vacated) to the Fox River.

EXCEPTING THEREFROM:

- (a) The 20 foot main line right of way of the (former) C&NW RR Co., described at 4 Deeds 462.
- (b) The side track easement of the (former) C&NW RR Co., described at 90 Deeds 167

101 Bridge Street – Tax Parcel 3-554-A

That part of Lot Five (5), Block Two (2), according to the recorded Plat of Arndt's First Addition to the City of Fort Howard, now a part of the City of Green Bay, West side of Fox River, Brown County, Wisconsin, bounded on the West by a line 280 feet Easterly from and parallel to the Easterly line of Pearl Street and bounded on the East by the channel bank of Fox River, on the North by the Southerly line of Bridge Street, and on the South by the Southerly line of said Lot 5, Block 2, Arndt's First Addition.

119 Bridge Street – Tax Parcel 3-556

Part of Lots 3, 4 and 5, Block 2, Arndt's First Addition to Fort Howard, in the City of Green Bay, Brown County, Wisconsin, described as follows:

All that part of Lot 3, Block 2, lying Westerly of the West line of the premises conveyed to Fort Howard Paper Company as described in Jacket 38 Image 34, also the East 5 feet of vacated Water Street lying between the North and South lines of said Lot 3, Block 2, extended Westerly.
All that part of Lot 4 Block 2, lying between the East line of vacated Water Street and the Channel Bank of Fox River.

The Westerly 120 feet of Lot 5, Block 2; the easterly 5 feet of vacated Water Street lying between the North line of the aforesaid Lot 5 and the South line of the aforesaid Lot 4, Block 2 extended westerly.

EXHIBIT C
Certified Survey Map ("CSM")

[to be inserted]

EXHIBIT D
Preliminary Concept Plan

[to be inserted]



Report to the Redevelopment Authority of the City of Green Bay

MEETING DATE

May 11, 2021

PREPARED BY

Matt Buchanan, Staff

AGENDA ITEM # E.2

Consideration with possible action on requests for planning options for properties located at 420 S. Broadway (Parcel 3-569), 402 S. Broadway (Parcel 3-572), and 419 S. Maple (Parcel 2-947).

BACKGROUND

The Redevelopment Authority (RDA) has been approached by two Wisconsin developers, Impact Seven and General Capital Group, with separate requests for exclusive planning options for RDA-owned properties located at 420 S. Broadway (Parcel 3-569), 402 S. Broadway (Parcel 3-572), and 419 S. Maple (Parcel 2-947). This 4.6-acre site, often referred to as the former Badger Sheet Metal site, was acquired by the RDA in 2018 to facilitate future redevelopment. The site currently includes a 48,000 square foot warehouse building being used for temporary City storage, and a 1,000 square foot building being leased to Edge Barber Shop. A formal Request for Proposals (RFP) has not been released for this site. In March 2021, Common Council approved the Shipyard Corridor Redevelopment Guide which establishes a vision for the site that includes four- to five-story residential buildings with ground-floor commercial space and a green way to connect the Shipyard to Seymour Park.

Impact Seven requests a nine- to 12-month exclusive planning option to complete due diligence necessary to determine project feasibility. Impact Seven's preliminary proposal for the site includes three four-story buildings, consisting of approximately 238 market-rate apartments, reflecting a mix of 1, 2 and 3-bedroom units, over ground-level, structured parking. Impact Seven anticipates setting final rents to be affordable to households who earn 80%-110% of the County Median Income (CMI) for Brown County. The proposal also includes 9,400 square feet of ground floor commercial space which could include Edge Barber Shop and other established neighborhood businesses/organizations. Conceptual renderings include a public green way through the property as envisioned in the Shipyard Corridor Redevelopment Guide. Impact Seven intends to finance the project with the support of a Qualified Opportunity Fund investor, HUD 223(f) financing, and possibly TIF assistance. The project timeline estimates construction to be complete by end of 2023. Impact Seven estimates a construction cost of \$45 million to \$50 million.

General Capital Group requests a six month exclusive planning option to complete due diligence necessary to determine project feasibility. General Capital Group's preliminary proposal for the site includes a 100-unit mixed-use development consisting of one multi-story apartment with 84 one, two, and three-bedroom units, and three townhome structures with 16 3-bedroom units. General Capital Group anticipates setting final rents to be affordable to households who earn 30%-80% of the Area Median Income (AMI). The proposal also includes 2,000 square feet of ground floor commercial space, including a community serving facility intended to provide resident focused services and/or non-profit organizations. General Capital Group intends to provide supported Veteran's housing and supportive housing for persons with disabilities. Conceptual renderings also include a public green way through the property as envisioned in the Shipyard Corridor Redevelopment Guide. General Capital Group intends to finance the project with the support of WHEDA Tax Credits for affordable housing and possibly TIF assistance. The project timeline estimates construction to be complete by end of 2023.

RECOMMENDATION

Approval of a three (3)-month planning option with Impact Seven, Inc. for 420 S. Broadway (Parcel 3-569), 402 S. Broadway (Parcel 3-572), and 419 S. Maple (Parcel 2-947).

FISCAL IMPACT

Staff proposes the City charge a \$500 fee to the developer for the planning option, as is typically required. No other direct fiscal impacts are anticipated through the planning option.

ATTACHMENTS

1. Impact Seven Planning Option Request for former Badger Sheet Metal site
2. General Capital Group Planning Option Request for former Badger Sheet Metal site



May 4, 2021

Redevelopment Authority of the City of Green Bay
ATTN: Neil Stechschulte
100 N. Jefferson Street
Green Bay, WI 54301-5026

RE: Impact Seven Planning Option for 420 South Broadway Street

Dear Mr. Stechschulte:

Please accept this planning option proposal for the former Badger Sheet Metal Works site at **420 South Broadway – Parcel ID Number 3-569**. The proposal describes Impact Seven's intent to develop the property for a mixed-used development that includes multi-family housing and commercial space complemented with on-site, structured parking.

We appreciate the contribution this site makes towards redevelopment in Green Bay, and we're inspired by the revitalization envisioned for the South Broadway Corridor. Together with the transformative Shipyard District redevelopment, the Broadway Corridor promise to evolve into a vibrant and engaging urban center that will attract diverse households.

Impact Seven is motivated to provide housing in Green Bay because of the significant community investments made over these last years by the city; because of the high quality of life available in terms of jobs, education and civic amenities; and because of the high quality of the South Broadway Street site itself.

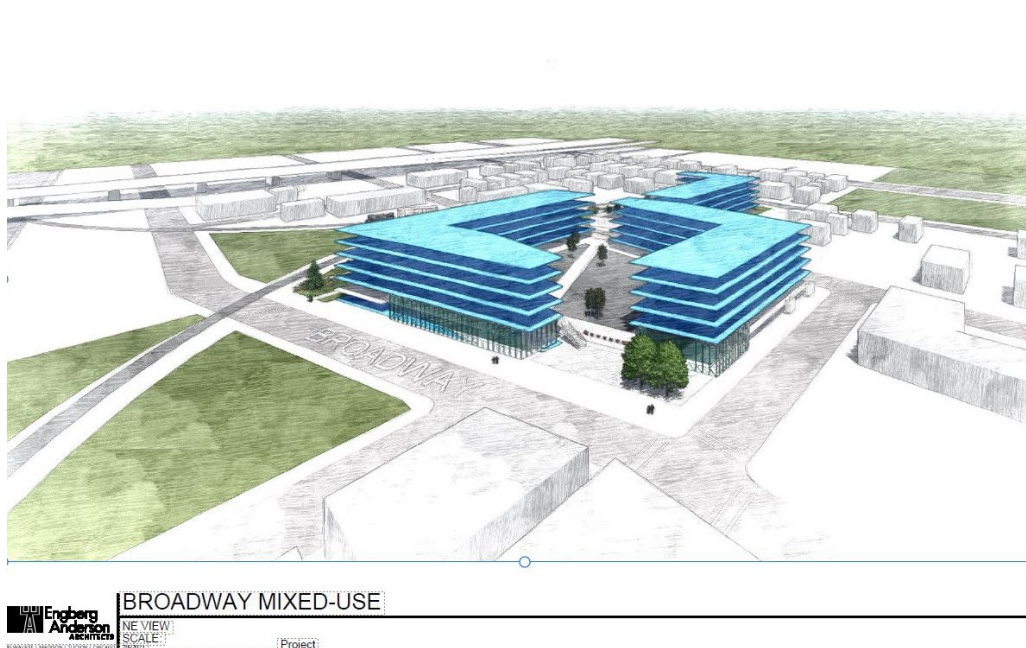
City staff introduced Impact Seven's Real Estate team to the Broadway Street site in 2020. We subsequently engaged the architectural firm Engberg Anderson to develop a preliminary site capacity study and massing plan. We strived to ensure that our building placement would reflect the city's plans and respond to both the neighborhood and riverside contexts. Please find an excerpt from that site study below in this letter, and a full copy is attached to this application.

In early 2021, we presented the preliminary concept to staff to garner initial feedback. Staff responded positively and they were receptive and supportive of the concept. Since that time, city staff have provided a wealth of technical assistance and we have continued to update staff as our plans are refined.

The South Broadway Street project is located on a city-owned site on which we propose to build three (3) four-story buildings consisting of approximately 238 high-quality, market-rate apartments, reflecting a mix of 1, 2 and 3-bedroom units, over ground-level, structured parking. Amenities are to include:

- Ground-level parking;
- Shared “green roof” courtyard over the parking level;
- In-unit laundry;
- Onsite community room;
- Onsite fitness room;
- Onsite leasing office and management agent;
- Co-located businesses.

Impact Seven strives to complement the goals for the South Broadway Corridor and adjacent neighborhoods that are called for in the Shipyard Neighborhood Investment Strategy and other city plans incorporated into the Strategy -- higher density mixed-use development, increased supply of affordable housing, alternatives to single-family detached housing and additional commercial development.



Design Intent

Our goal is to create a live, work, play environment that is compatible with the character of the emerging South Broadway Corridor. Some of the design features include:

- Reconnecting South Chestnut Avenue to the site, which also provides a connection to the interior of the buildings;
- Preserving mature trees at the northeast corner of the property and creating a plaza that would offer an inviting place for those who live, work or visit the area;
- Providing ground level, structured parking that would be capped with a 'green' roof that provides an interior courtyard at the second floor level and site lines that connect people with street activity and the outdoors;
- A public greenway along the south side of the property that provides linkages to the Shipyard site;
- Amenities and commercial space including a ground floor leasing office which would serve to screen parking in the center and rear of the buildings.

We also propose to engage commercial tenants who are interested to locate on site, and to incorporate their commercial space into the ground floor of the new building that fronts South Broadway. Impact Seven has reached out to the owner of The Edge Barbershop and the Green Bay Bicycle Collective and both businesses have expressed interest in securing commercial space here. We also receptive to additional commercial possibilities for the site.

Overall, we look to foster a development capable of attracting residents who value an urban lifestyle close to amenities, walking and biking opportunities, access to public transportation, services and public spaces for interaction and civic engagement.

Project Timeline

We anticipate 9-12 months due diligence and pre-development period will be needed to finalize plans for formal city approval once the planning option is executed. During this due diligence period Impact Seven would engage a team of professionals to:

- Conduct an ALTA-compliant survey of the lot;
- Research and analyze overall site conditions;
- Secure permanent financing;
- Secure zoning consistent with the proposed use of the property;
- Conduct environmental and geotechnical analyses;
- Finalize design plans;
- Secure purchase approval of the Impact Seven Board of Directors as a precondition of closing.

Financing

The site lies within the boundaries of an Opportunity Zone, which encourages and attracts private investment to accelerate local economic growth and job creation. Impact Seven proposes to cultivate and secure a partnering equity investor to the project, to support Impact Seven's own equity dollars.

We plan to pursue private construction financing, and upon stabilization to convert to HUD 223(f) permanent financing.

We welcome the opportunity to discuss TIF funding from the City in support of TIF-eligible costs as well as other city resources that may be available.

We anticipate providing unrestricted/market units at the Broadway project. Our pro forma market rents are indexed to WHEDA's 80% AMI rents for Brown County. We anticipate setting final rents to be affordable to households who earn 80%-110% CMI. Our current workforce housing project under construction in Middleton, provides a measure of units available at 60% AMI rents and supported via a "capitalized rents" agreement as part of our TIF development agreement with the City of Middleton. We'd welcome the chance to provide Green Bay leadership and staff more details about this "capitalized rents" tool for supporting affordability within market-rate projects, and to discuss whether it might be a fit for the Broadway project.

Summary of Qualifications

Impact Seven is a private, nonprofit 501 (c) 3 and US-Treasury designated Community Development Financial Institution (CDFI). We provide real estate development, property management and business development services throughout Wisconsin. Impact Seven's property management division, Impact Management, manages 1300 properties across the state, including having secured a management contract to manage the Neighborworks Green Bay portfolio, providing an active property management division at work in Green Bay.

Please find included with this proposal supporting materials that demonstrate our ability both to create high-quality projects and to perform on our commitments:

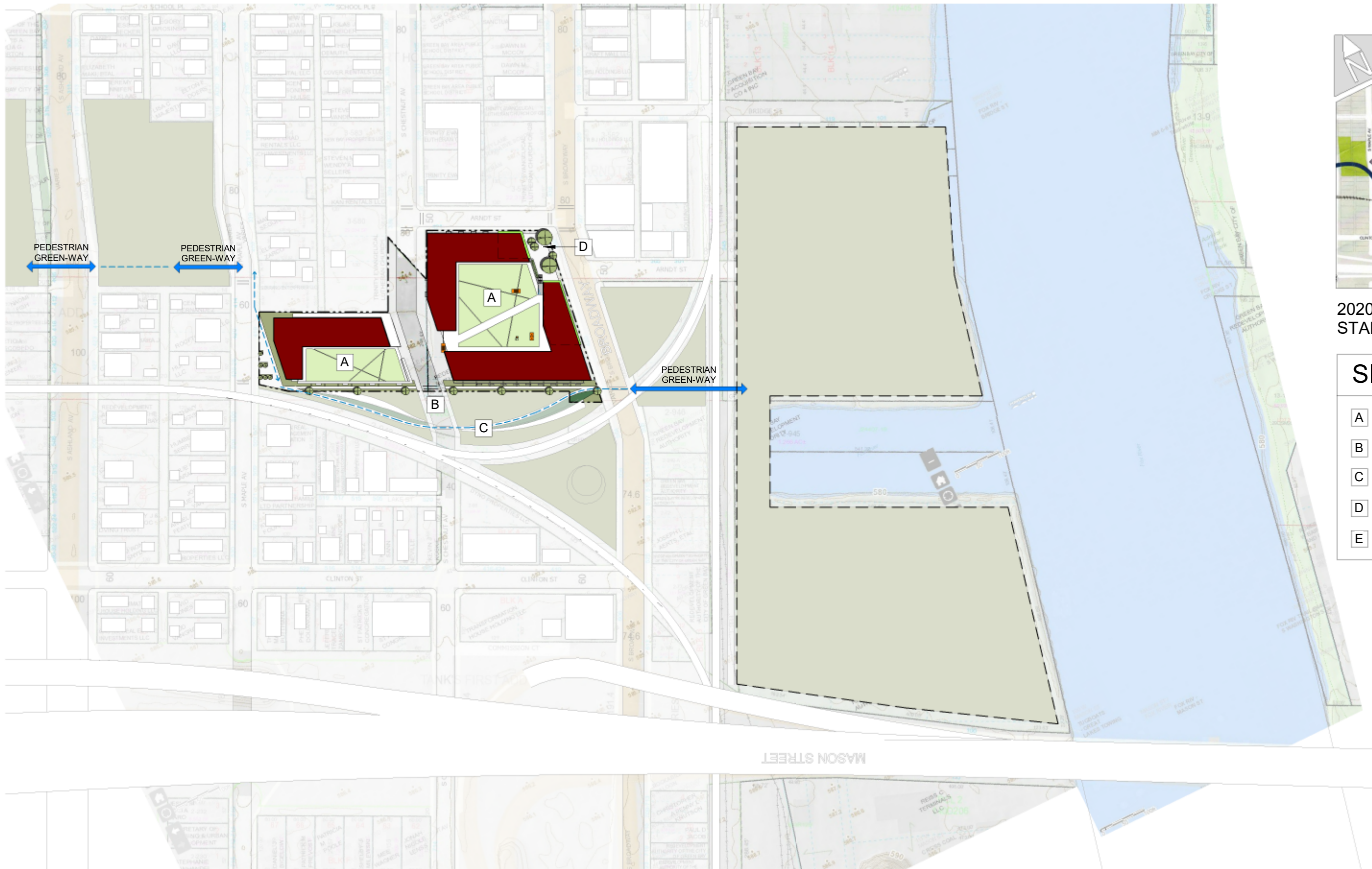
- Impact Seven 'Housing Resume' – This provides a summary of our housing program and key staff;
- Project Profiles – Selections of Impact Seven multi-family projects of similar size, scale and complexity;
- Trotta Building rendering – This is our 126-unit, market-rate project currently under construction in Middleton.

We are grateful for the RDA's time and consideration of our proposal and will provide any additional information upon request. Please don't hesitate to contact me with any questions. I can be reached by phone at 608-405-9064 or by email at michael.carlson@impactseven.org.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Carlson', with a long horizontal flourish extending to the right.

Michael Carlson
Vice President, Real Estate Development
Impact Seven, Inc.



2020 LAND-USE STUDY:
STANTEC

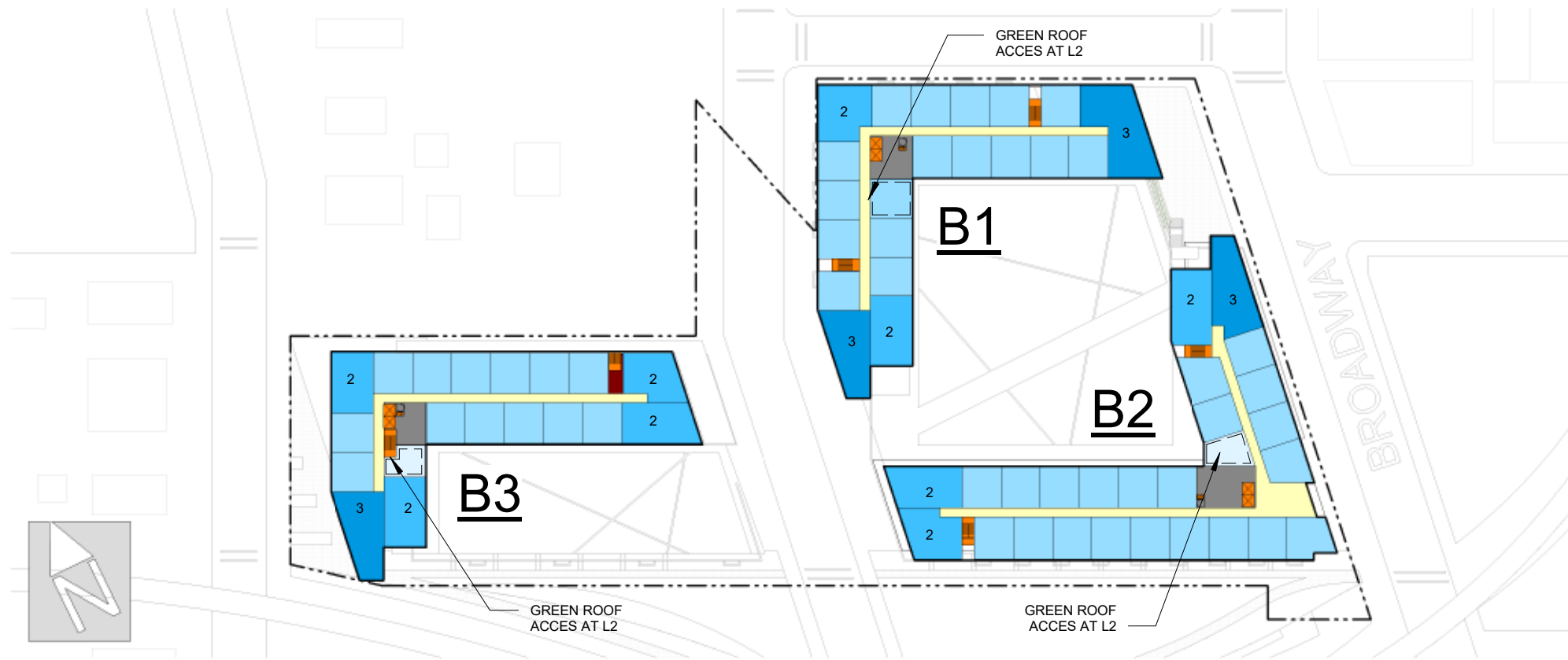
SITE PLAN - KEY

- A** GREEN ROOF
- B** STREET EXTENTION
- C** NATURALIZED GREEN-WAY/WATER-WAY
- D** URBAN PLAZA
- E** x

BROADWAY MIXED-USE

SITE PLAN
SCALE: 1" = 200'-0"
2/5/2021
Engberg Anderson Project No.

Project
Number

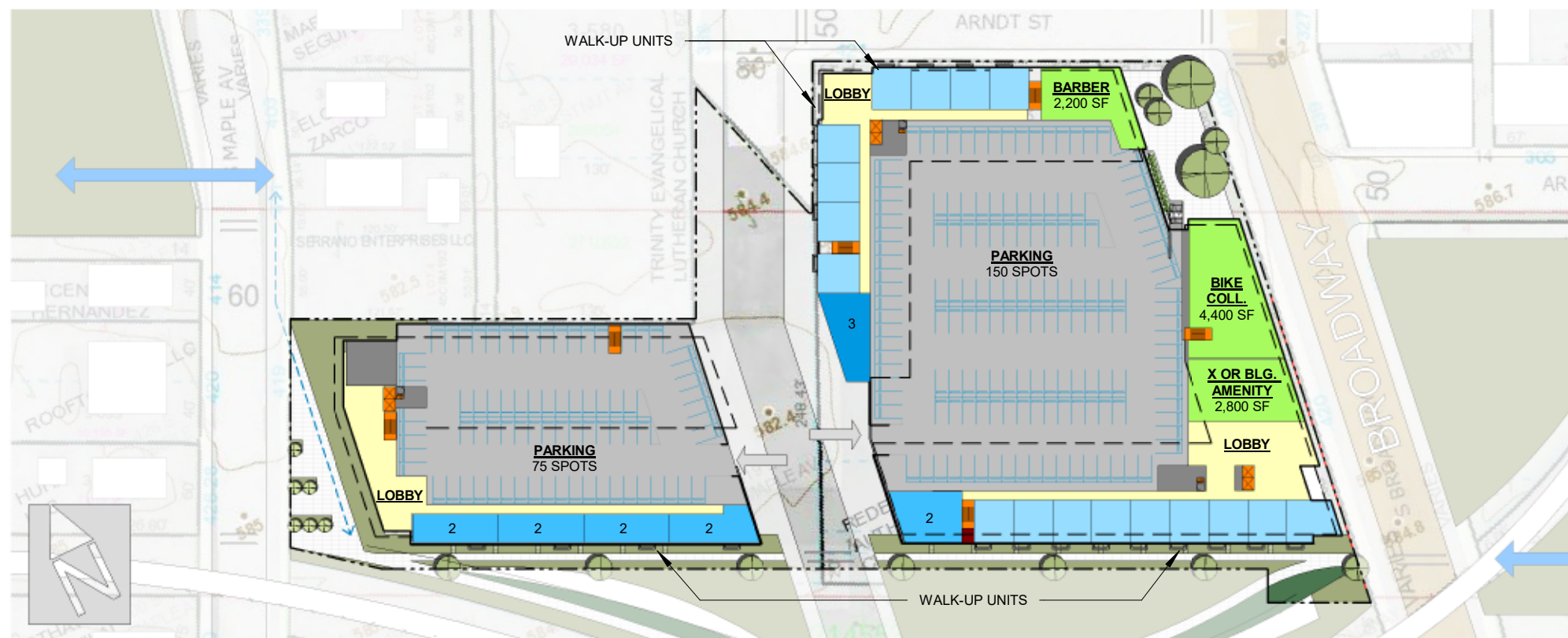


TYP. RES LEVEL PLAN

B1 - SCHEMATIC UNIT TOTALS									
		L1	L2	L3	L4	L5	L6	TOTAL	PERCENT
STUDIO	APPROX UNIT SF 500 SF	0	0	1	1	1		3	3%
ONE BEDROOM	715 SF	8	16	17	17	17		75	79%
TWO BEDROOM	1100 SF	0	2	2	2	2		8	8%
THREE BEDROOM	1300 SF	1	2	2	2	2		9	9%
		9	20	22	22	22		95	100%

B2 - SCHEMATIC UNIT TOTALS									
		L1	L2	L3	L4	L5	L6	TOTAL	PERCENT
STUDIO	APPROX UNIT SF 500 SF	0	0	1	1	1		3	3%
ONE BEDROOM	715 SF	9	21	21	21	21		93	82%
TWO BEDROOM	1100 SF	1	3	3	3	3		13	12%
THREE BEDROOM	1300 SF	0	1	1	1	1		4	4%
		10	25	26	26	26		113	100%

B3 - SCHEMATIC UNIT TOTALS									
		L1	L2	L3	L4	L5	L6	TOTAL	PERCENT
STUDIO	APPROX UNIT SF 500 SF	0	0	1	1	1		3	4%
ONE BEDROOM	715 SF	0	13	13	13	13		52	66%
TWO BEDROOM	1100 SF	4	4	4	4	4		20	25%
THREE BEDROOM	1300 SF	0	1	1	1	1		4	5%
		4	18	19	19	19		79	100%



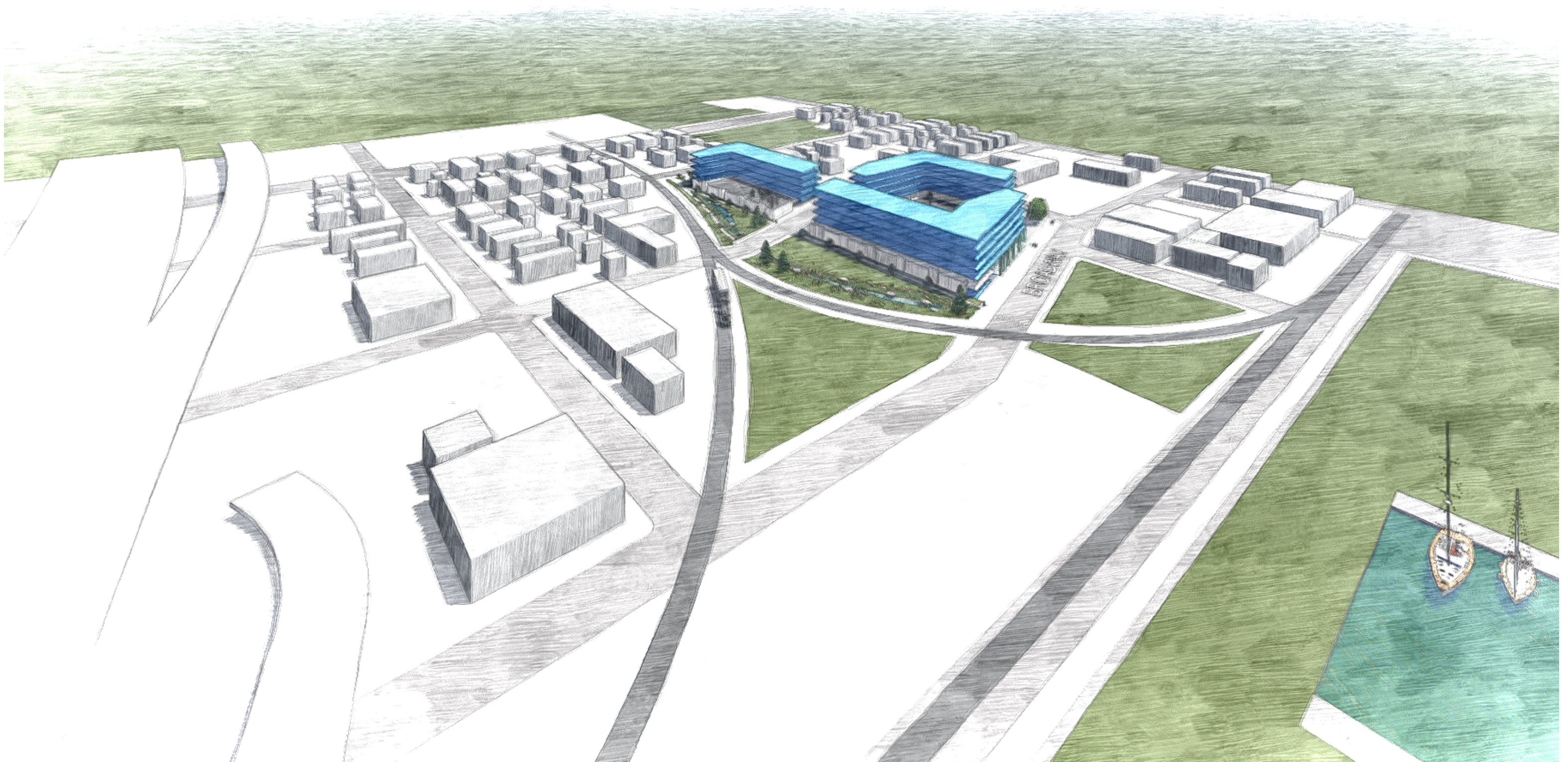
GROUND LEVEL PLAN

BROADWAY MIXED-USE

SCHEMATIC PLAN STUDY
SCALE: 1" = 100'-0"

2/5/2021

Project
Engberg Anderson Project No. Number

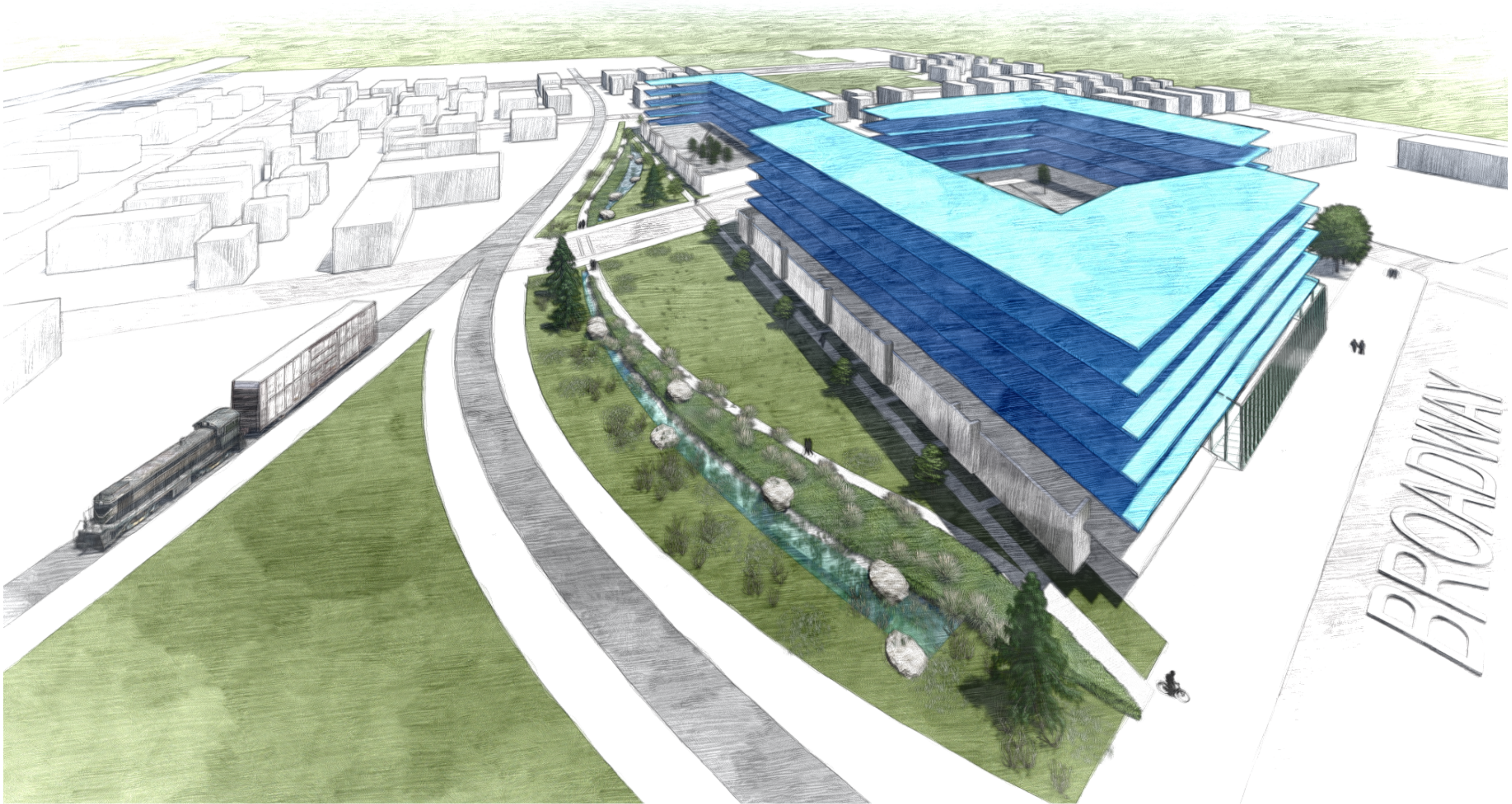


BROADWAY MIXED-USE

BIRDSEYE VIEW
SCALE:

2/5/2021

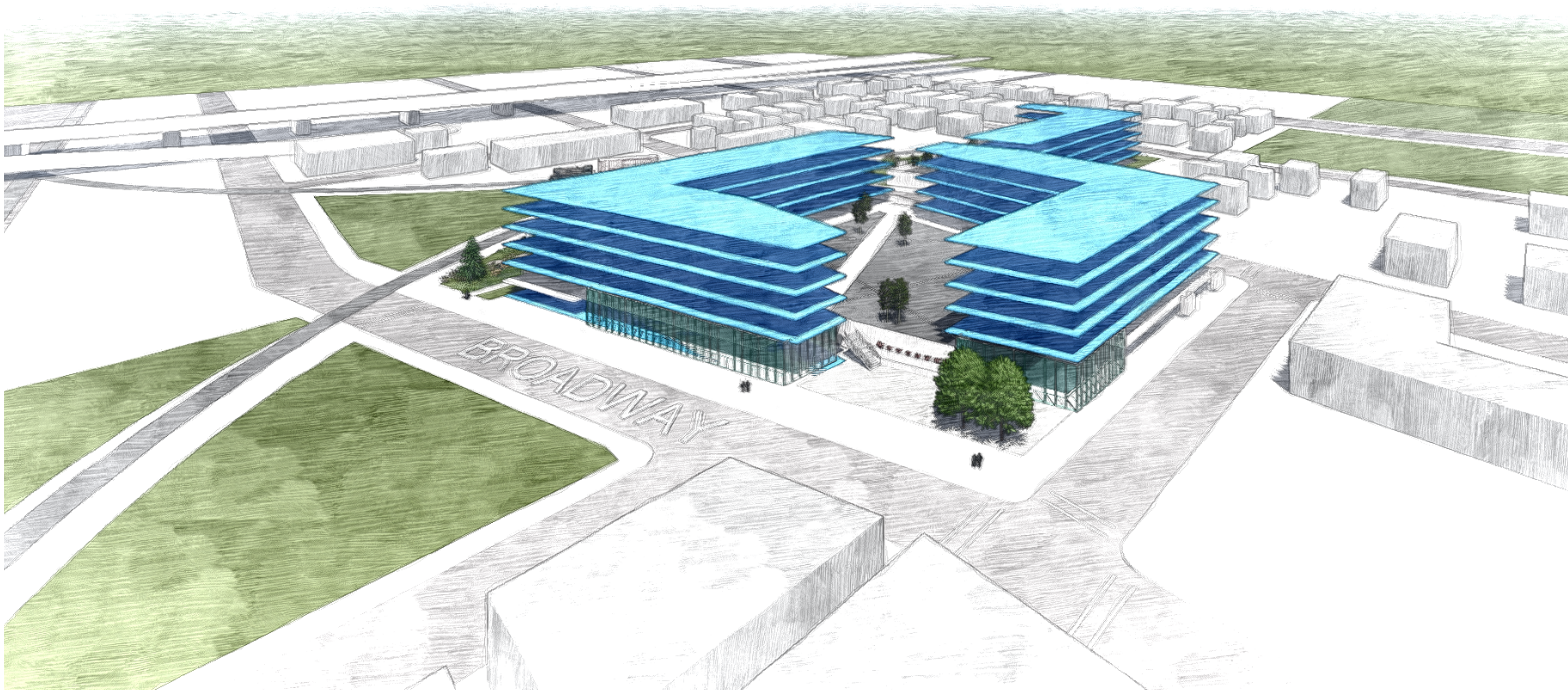
Project
Engberg Anderson Project No. Number



BROADWAY MIXED-USE

SE VIEW
SCALE:
2/5/2021

Project
Engberg Anderson Project No. Number



BROADWAY MIXED-USE

NE VIEW
SCALE:
2/5/2021

Project
Engberg Anderson Project No. Number

HOUSING RESUME



2016 Artist Lofts historic development; 45 units of affordable housing in Manitowoc, Wisconsin

DEVELOPMENT

Since its founding in 1970, Impact Seven has successfully developed or provided development consulting services for **over 2,400 affordable housing units** throughout Wisconsin. These projects have been financed with a wide variety of public funding sources such as:

- Low Income Housing Tax Credits (19 projects)
- HUD 202 and HUD 811 (45 projects)
- Section 8 Project-Based Rental Assistance (14 projects)
- USDA Rural Development 515 Loans (14 projects)
- FHLB Affordable Housing Program Funds (41 projects)
- HOME Funds (5 projects)
- Historic Tax Credits (5 projects)

In addition to contributing considerable equity and financing of its own, Impact Seven has leveraged these funds with investments from many Wisconsin banks, municipalities, foundations and other private and nonprofit partners.

Impact Seven began as a consultant for counties, municipalities and Native American communities. In this capacity, Impact Seven assisted with identifying needs, setting up ownership/management entities, assembling financing, and overseeing the construction and management of housing, industrial, commercial/retail and mixed-use developments. In 1985, Impact Seven began developing projects of its own. Today, Impact Seven is parent to 59 wholly-owned subsidiary corporations consisting of more than **1,200 units of affordable housing**. Projects are located across Wisconsin in rural communities, mid-sized metropolitan cities and urban Milwaukee neighborhoods. The list includes approximately **840 units set aside for elderly persons or persons with disabilities**.

Impact Seven's approach to housing development is built on three core values:



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- **Be flexible.** Understanding a community's needs and the flexibility to craft a project that is responsive to those needs are critical elements to a successful housing development. Impact Seven is committed to working with project partners and local stakeholders to build developments that support community goals and improve the lives of residents. We have broad experience with a range of rental housing development types such as new construction, historic and adaptive reuse, mixed-use, urban infill and rural developments. Impact Seven will work anywhere in the State of Wisconsin, whether it is an urban infill or rural rehabilitation.
- **Be sustainable.** Impact Seven seeks to develop rental communities that are sustainable from both a design and financial perspective. As a long-term owner, Impact Seven has a vested interest in utilizing building methods and materials that produce structures that are energy efficient and durable. In addition, Impact Seven employs rigorous underwriting to ensure its developments can remain affordable to tenants and will be financially viable over the long term.
- **Be resourceful.** Impact Seven has a successful track record of securing various grants, low-interest loans and other sources of "soft financing" that close budget gaps and provide long term affordability. Impact Seven views real estate development as a collaborative process and considers strong relationships to be an important resource.

KEY TEAM MEMBERS

Impact Seven's staffing and administrative capacity represents another strength. Key staff positions are identified below.



Brett Gerber, CPA
Chief Executive Officer

As CEO, Mr. Gerber is responsible for furthering the organization's mission and acting as the primary steward of its resources. Mr. Gerber supervises five Vice President positions overseeing three primary program areas and the overall administration of the organization. Mr. Gerber reports to the Board of Directors to establish and maintain strategic direction, governance and management processes. As a CPA with sixteen years of experience in executive non-profit management, Mr. Gerber brings strong financial acuity to organizational administration and the vetting of its projects, loans and investments.



Michael Carlson
Vice President of Real Estate Development

Mr. Carlson leads the team responsible for all real estate development projects, overseeing the planning, implementation and monitoring of all aspects of multifamily residential and commercial development projects from inception to completion including design, budgeting, construction and deal structuring. To ensure that developments are financially sound and responsive to each community's unique needs, Mr. Carlson builds and manages relationships with public and private development partners. With 18 years of diverse experience in housing and community development, construction and asset management, Mr. Carlson holds a B.A. from the University of Wisconsin – Madison and is a licensed real estate broker.



Jim Landreth, MArch
Director of Asset Management

Mr. Landreth brings 30 years of varied experience in finance, construction and architecture to Impact Seven's asset management function. Since 2010, Mr. Landreth has conducted analysis for a wide array of Impact Seven's real estate development activities, especially in underwriting and financial structuring. His current responsibilities include the development and implementation of comprehensive capital managements for each property and ongoing financial monitoring and quarterly analyses, ensuring that the rental and investment property portfolio remains financially sustainable and physically sound. Mr. Landreth has a Master's in Architecture from the University of Minnesota.



Terra Pawliuk-McGiffin, CPA
Vice President of Accounting

With seventeen years of accounting and operations experience, Ms. Pawliuk-McGiffin exercises fiscal oversight for all of Impact Seven's budgeting, accounting and audit compliance functions. Ms. Pawliuk-McGiffin has fiscal responsibility for a diverse asset portfolio totaling over \$189 million, more than 60 housing and loan pool subsidiaries, and an annual budget of \$6 million. She holds a B.S. in accounting from Lake Superior State University.



Lisa Barkelar, CPM
Vice President of Property Management

With over thirty years of experience in the management of multifamily rental housing portfolios and affordable housing funding source compliance, Ms. Barkelar leads Impact Seven's Property Management department and the overall management and operations of a portfolio totaling more than 1,200 housing units. With a degree in Sales, Marketing and Real Estate from Madison Area Technical College, Ms. Barkelar has earned numerous industry certifications including Certified Property Manager, HCCP/NCP designated for LIHTC and Certified Occupancy Specialist.



Caroline Loyas, MPS
Director of Resource Development

Ms. Loyas has ten years of experience in obtaining and structuring financing, grant and local funding, and tax credit allocations for affordable and mixed income housing. She assists in all aspects of affordable housing development for Impact Seven, including predevelopment, structuring, relationship development, grant administration and the establishment of long-term compliance protocols. Ms. Loyas holds a Master's degree in Community and Economic Development from Penn State University.



Tenants from Impact Seven's Franklin School Apartments and National Avenue Lofts

PROPERTY & ASSET MANAGEMENT

Impact Seven's Property Management Department currently manages over **1,200 units**. These units are located in **more than 100 distinct buildings** across Wisconsin, ranging from rural northern Wisconsin to urban metropolitan Milwaukee.

Project sizes range from single-family homes and duplexes to a 73-unit multifamily building. Our Property Management department lead Lisa Barkelar recently assumed leadership over this division, increasing Impact Seven's administrative capacity to better position the Property Management team for continued growth and success into the future.

The Impact Seven property management team includes **31 full-time and 21 part-time staff** who are highly qualified and experienced with the full array of income eligibility, accounting, reporting, maintenance and compliance requirements found in all major state and federal affordable housing programs, such as Low-Income Housing Tax Credits, HUD and RD project-based rental assistance. Positions are specialized around specific components such as affirmative marketing procedures, income eligibility and tenant recertification. Housing staff receive regular training and attend both national and statewide conferences including the WHEDA state housing conference, annual meetings and events of the Wisconsin Council for Affordable and Rural Housing and NeighborWorks Training Institutes.

Impact Seven invests in affordable properties as a long-term owner. In order to ensure the ongoing physical and financial sustainability of our real estate investments, Impact Seven's management structure is inclusive of an Asset Management function tasked with financial monitoring and capital planning. Since 2014, our Asset Manager has been part of the Real Estate Development Committee and is involved in new development projects from inception through completion and lease-up, assisting with financial analysis during the due diligence process, providing input for unit composition, income targeting and physical design and other matters affecting long-term self-sufficiency. For properties in Impact Seven's owned portfolio, the Asset Manager tracks performance via a Watch List system inclusive of financial health indicators such as occupancy and cash flow, and is responsible for maintaining 5- and 10-year capital needs assessments for each property in order to accurately budget for maintenance and capital improvements. The Asset Manager also plans for and coordinates the Year 15 LIHTC unwind and recapitalization.

For Impact Seven-owned properties under third party management, the Asset Manager works cooperatively with the property management company to represent the owner in regular meetings; reviews annual financials and audits; participates in and monitors the annual budgeting process; monitors cash flow, rent and reserve levels; and acts as the liaison between the property manager and the tax credit syndicator/investor. The Asset Manager continuously monitors the useful life of the building and its major systems, planning for capital needs and ensuring that reserves are funded at appropriate levels. Finally, the Asset Manager coordinates between the third-party property manager and Impact Seven's internal property management and accounting divisions to ensure that financial and occupancy information are entered into our management and accounting software. If for any reason a property fails to accumulate reserves at a sufficient level to fund needed improvements, the Asset Manager works with Impact Seven's Director of Resource Development to secure the necessary funding or financing.



ABOUT IMPACT SEVEN

Impact Seven is a private, nonprofit 501(c)3 corporation recognized as a trusted partner for developing, building and maintaining quality communities throughout Wisconsin and beyond. Impact Seven has two offices in Barron County, as well as a Milwaukee, Wisconsin office focused on southern regions of the state.

Impact Seven was founded in 1970 by Wisconsin residents in a seven-county area who were concerned with a waning economy and high poverty. Since then, the organization has grown into a well-established statewide community development corporation that organizes the resources and capacities of low-income communities to provide affordable housing and employment opportunities for residents. Over the past 49 years, Impact Seven has provided quality, affordable housing for tens of thousands of low-income households throughout the state, assisted thousands of successful business ventures throughout Wisconsin and created thousands of jobs.

Impact Seven is certified by the U.S. Department of the Treasury as a Community Development Financial Institution (CDFI), a unique type of nongovernmental entity established to provide credit, financial services and other development services to underserved markets or populations. At the end of 2018, Impact Seven had **total assets of \$184 million**, including \$125 million in net assets. Impact Seven currently maintains a **loan portfolio of over \$75 million**, primarily placed in loans for job-creating business development ventures. Through its partnership with WHEDA and other member institutions in the Greater Wisconsin Opportunity Fund, Impact Seven has brokered the placement of New Market Tax Credits since 2005, with **\$185 million in tax credit allocation** currently under management. In 2015, Impact Seven became a member of the Federal Home Loan Bank of Chicago, allowing the organization to access a range of financial products at extremely advantageous rates and terms. Impact Seven holds an investment-grade rating by Aeris, the foremost provider of third party assessments of CDFI loan funds, as well as analysis and advisory services for socially-motivated investors. Aeris rating helps Impact Seven guide capital to high quality community development projects.

In an addition, Impact Seven is a Community Housing Development Organization (CHDO) in Milwaukee and for Wisconsin's "balance of state" communities, which makes Impact Seven eligible for specially-designated HOME funds to develop affordable housing. Impact Seven has Exemplary status as one of 235 charter NeighborWorks America member organizations across the country, which gives Impact Seven access to grants, programmatic support, training and technical assistance for a broad range of community development initiatives.

For more information about Impact Seven, please visit www.impactseven.org.



SELECTED PROJECT PROFILES

Impacting Communities. Impacting Lives.

SEVEN04 PLACE APARTMENTS



>>> PROJECT TYPE

Affordable Housing

>>> IMPACT SEVEN'S ROLE

Co-Developer

>>> PARTNERS / FUNDING SOURCES

WHEDA

City of Milwaukee

UnitedHealthCare

Cinnaire

Wisconsin Economic Development
Corporation

IFF

Federal Home Loan Bank of Chicago
Developer Equity

Forward Community Investments

Local Initiatives Support Corporation



Seven04 Place Apartments is a proposed 60-unit multifamily apartment community located in the Walker's Point neighborhood of Milwaukee, within the fastest-growing census tract in the city. To accommodate both long-time neighborhood residents and newcomers, the development includes a mix of affordable and market-rate units, as well as fourteen units dedicated to permanent supportive housing for U.S. military veterans and other adults who are struggled with barriers to housing stability. Development costs will total \$12.2 million.

Amenities include in-unit washers and dryers, a multipurpose community room, fitness center and free high-speed internet. Wisconsin Green Build Home certification will ensure high energy efficiency, further reducing housing costs for residents.

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\$6.1 MILLION
total project cost

24 UNITS
of affordable housing

MITCHELL STREET MARKET LOFTS

MILWAUKEE

Indoor Heated Parking
Community Room
Resident Business Office
Exercise Room
Secure Access System
Web-Based Security Camera System
Private Balconies
Common Outdoor Patio Area
Energy-Efficient Windows and Utilities
Central Air Conditioning
14,000 sf of Green Roof

NeighborWorks
CHARTERED MEMBER



>>> PROJECT TYPE

New Construction

>>> IMPACT SEVEN'S ROLE

Co-Owner and Co-Developer

>>> PARTNERS / FUNDING SOURCES

Low-Income Housing Tax Credits
FHLB Affordable Housing Program
City of Milwaukee Neighborhood
Stabilization Program
MMSD Green Roof Grant
LISC Milwaukee
Home Depot

Located in Milwaukee's Muskego Way neighborhood, Mitchell Street Market Lofts is a new construction affordable housing community consisting of 24 apartments. This \$6.1 million project resulted from a partnership between public and private entities including Impact Seven, AndersonWebb, LLC, Wisconsin Redevelopment, LLC, WHEDA, Federal Home Loan Bank of Chicago, Metropolitan Milwaukee Sewerage District, City of Milwaukee, LISC Milwaukee and Home Depot.

Built on what was once a city-owned vacant brownfield lot, the 24 loft style two- and three-bedroom units are available to families earning less than 60% of Area Median Income. Amenities include a community room with an exercise area, a business center and free wireless internet, indoor parking, a playground, security cameras and key-card access, common outdoor deck and a green roof. Each unit contains a dishwasher, garbage disposal, balcony, in-unit washer and dryer, central air conditioning and large interior storage units.

AN IMPACT SEVEN REAL ESTATE DEVELOPMENT PROJECT



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ARTIST LOFTS



\$9.4 MILLION
total project cost

40 UNITS
36 designated affordable

- 2- and 3-Bedroom Loft-Style Units
- Exposed Architectural Elements
- Original Hardwood Floors
- Energy Star Lighting and Appliances
- Central Air-Conditioning
- On-Site Laundry
- Community Room
- Art Studio and Gallery
- On-Site Management
- Indoor Parking



>>> PROJECT TYPE

Historic Rehabilitation, Adaptive Reuse

>>> IMPACT SEVEN'S ROLE

Owner, Developer, Property Manager

>>> PARTNERS / FUNDING SOURCES

Low-Income Housing Tax Credits
Federal and State Historic Tax Credits
FHLB Affordable Housing Program
HOME Funds
City of Manitowoc Revolving Loan Funds
Bank Mutual Construction Loan

Artist Lofts is the transformation of an industrial building into an exceptional 40-unit loft-style apartment community. Mirro Plant #3 plant was originally constructed in 1929 by the nation's largest aluminum goods manufacturer, Manitowoc-based Aluminum Goods Manufacturing Company, also known as Mirro. By 2003, all Mirro manufacturing was transferred overseas, which left all of Mirro's original Manitowoc facilities either demolished or vacant. Through the multi-year efforts of Impact Seven and its development partner, Wisconsin Redevelopment, one of the last icons of Manitowoc's early industry now has new life as mixed-income housing and artist gallery space.

The five-story building provides two- and three-bedroom units that are affordable to a range of households, from those earning 30% of the Area Median Income up to those who can afford market rate rents. Amenities include tall ceilings, impressive windows and exposed architectural elements. Tenants have access to indoor parking, on-site management, a fitness room and a multi-purpose community room. Twenty-five percent of the project's apartment units are targeted to veterans. The Manitowoc County Veteran Services Office, working in conjunction with Lakeshore CAP, will provide veteran support services in space allocated in the development.

Artist Lofts features a studio and gallery space that will provide free or low-cost arts-focused programming, such as classes and exhibitions, to the tenants and greater Manitowoc Community. To celebrate Manitowoc's local artist community, the building also showcases two exterior murals completed by local artists.

During construction, the development team achieved a 27% participation from Disadvantaged Business Enterprises and 24% participation by local Manitowoc contractors and suppliers. At completion, Artist Lofts earned the highest energy-efficiency rating for multifamily developments in the history of the Wisconsin Green Built Homes. Construction commenced in November 2015 and full occupancy was achieved in September 2016.



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\$10 MILLION
total development cost

41 UNITS
of affordable housing



Historic Loft-Style Apartments
Single-Family Homes and Duplexes
Townhomes
Community Room
Exercise Room
Outdoor Spaces
On-Site Management
5,000 SF of Commercial Space



KING DRIVE COMMONS IV

Single-Family Homes, Duplexes and Apartments in Milwaukee



>>> PROJECT TYPE

Historic Mixed-Use, New Construction

>>> IMPACT SEVEN'S ROLE

Co-Owner, Co-Developer, Property Manager

>>> PARTNERS / FUNDING SOURCES

Low-Income Housing Tax Credits
FHLB Affordable Housing Program
City of Milwaukee HOME Funds
City of Milwaukee NSP Funds
CD Bank Permanent Loan
Chase Construction Loan

King Drive Commons IV (KDC IV) is the fourth and largest phase of a multi-year, campus-style revitalization effort surrounding the 2700 block of Dr. Martin Luther King, Jr. Drive in Milwaukee, Wisconsin.

Located in the north side Harambee neighborhood, KDC IV is a mixture of 41 new and renovated units including single family homes, duplexes, townhomes, and historic apartments. The first floor of the historic building on the well-traveled King Drive corridor consists of 5,000 square feet of commercial space, on-site property management offices, a community room and a fitness room. Twenty-nine of the units (71% of the total) are affordable to households earning at or below 50% of the Milwaukee Area Median Income (AMI). The remaining 12 units are affordable to households at or below 60% AMI. The unit mix consists of 13 two-bedrooms units, 24 three-bedroom units and four four-bedroom single family homes. Units are well sized for families with an average unit size of 1,485 square feet.

The King Drive Commons development effort began in 2002. Phases I through III, which consist of a total of 66 residential units and commercial space, were completed by Martin Luther King Economic Development Corporation (MLKEDC) with Wisconsin Redevelopment as consultant. On Phase IV, Impact Seven joined the team as the co-developer, co-owner and property manager. Like previous phases, KDC IV put city-owned residential lots and a vacant commercial building back into productive use.



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RICE LAKE

\$4.6 MILLION
total project cost

20 UNITS
of affordable housing

FRANKLIN SCHOOL APARTMENTS

Open Floor Plans
Original Hardwood Floors
Lofted Ceilings
Large Windows
Central Air-Conditioning
Garages and Covered Parking
Community Room
Extra Storage
Play Area

NeighborWorks
CHARTERED MEMBER



>>> PROJECT TYPE

Historic Rehabilitation, New Construction

>>> IMPACT SEVEN'S ROLE

Owner, Developer, Property Manager

>>> PARTNERS / FUNDING SOURCES

Low-Income Housing Tax Credits
Federal and State Historic Tax Credits
FHLB Affordable Housing Program
HOME Funds
NeighborWorks America Grant
Bremer Bank Construction and Permanent Financing

Once a vacant school campus, Franklin School Apartments is a new rental community providing 20 affordable apartments and townhomes on Rice Lake's main commercial corridor.

After more than eight decades of service, the Rice Lake School Board determined the school building could no longer support modern educational needs and vacated the building. In 2013, Impact Seven proposed an adaptive reuse to safeguard the 1936 landmark and respond to the area's demand for new rental housing options. Construction began in summer 2015 to convert the school building into 12 loft-style apartments and add 8 new townhomes on the former playground.

Both renovated and newly constructed buildings follow Wisconsin Green-Built Homes criteria for sustainable construction. The historic apartments provide either one or two bedrooms with an open plan design, high ceilings and design elements such as art niches and built-in shelving. The townhomes are designed to accommodate larger families with three-bedrooms, two bathrooms, ground level exterior entrances and a private garage. The development provides numerous common amenities such as a multi-purpose community room in the former gymnasium, on-site laundry, school-grade playground equipment and covered parking.

The project was made possible by significant public investment. All units are set aside for a mix of households, including those earning at or below 30%, 50% or 60% of the County Median Income (CMI). Rents are structured to be affordable to families at those incomes levels. In addition, Impact Seven has made a commitment to targeting applicants who are military veterans and maintains a referral relationship with the Barron County Veterans Service Office.



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GARDEN TERRACE APARTMENTS

>>> PROJECT TYPE

New Construction
Urban Infill

>>> IMPACT SEVEN'S ROLE

Owner
Developer
Property Manager

>>> PARTNERS / FUNDING SOURCES

WHEDA
City of La Crosse
Cinnaire
Federal Home Loan Bank of Chicago
NeighborWorks America
Home Depot Foundation
Private Donations

Crafted as part of local comprehensive efforts to eliminate veteran homelessness in La Crosse, the Garden Terrace Apartments is a multifamily housing community consisting of 50 apartments and a multi-purpose community center. Garden Terrace is a blended affordable community that provides fifteen units targeted to formerly homeless veterans, units affordable to households with low incomes, and eight units without rent restrictions.

Supportive services for veteran residents are provided by the Tomah VA Medical Center, the Wisconsin Department of Veterans Affairs, and Couleecap, Inc. The adjacent Kane Street Community Garden engages community members in gardening and gives away all of the produce it grows.



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\$15.9 MILLION
total project cost

74 UNITS
of affordable housing

MILWAUKEE

NATIONAL AVENUE LOFTS

- 1-, 2- and 3-Bedroom Apartments
- 3- and 4-Bedroom Townhomes
- Indoor Heated Parking
- Community Rooms
- Exercise Rooms
- Library and Media Rooms
- On-Site Leasing Office
- Web-Based Security System
- Private Porches and Balconies
- Energy-Efficient Appliances
- Central Air Conditioning

NeighborWorks
CHARTERED MEMBER



>>> PROJECT TYPE

New Construction

>>> IMPACT SEVEN'S ROLE

Owner, Co-Developer, Property Manager

>>> PARTNERS / FUNDING SOURCES

Low-Income Housing Tax Credits

1602 Gap Funds

FHLB Affordable Housing Program

National Avenue Lofts is a 74-unit rental development located at the southern gateway to Milwaukee's Historic Third Ward and downtown. This area was largely industrial in character and had many vacant industrial buildings. Impact Seven cleared a one story metal industrial building to make way for this new development and implemented a remediation plan to address the significant environmental contamination from its prior industrial uses. The new building uses a mix of materials and architectural forms that reflect the site's industrial past and the manufacturing that continues in nearby.

National Avenue Lofts was initiated by another developer that was unable to attract investors for Low-Income Housing Tax Credits (LIHTC) in the midst of the housing market crisis. Impact Seven was invited to step in to see the project to fruition. The project's financing includes \$10.8 million in equity from private investors, over \$3 million from WHEDA in Section 1602 gap funding, \$182,000 from the Federal Home Loan Bank of Chicago and a nearly \$1 million permanent loan from the Wisconsin Housing and Economic Development Authority (WHEDA).

Considered "new industrial chic," this architectural style fit in well with the surroundings and has won a number of awards including one of the buildings of the year by the *Wisconsin Daily Reporter*.



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May 4, 2021

Delivery via email

Chair Gary Delveaux
Green Bay Redevelopment Authority
100 N Jefferson Street, Room 608
Green Bay, WI 54301

RE: Exclusive Planning Option for Badger Sheet Metal Property (402 S Broadway Street)

General Capital Group would like to pursue redevelopment of the City owned brownfield site located at 402 S Broadway in Green Bay and desires to enter into an agreement to collaborate with the City of Green Bay and advance efforts to develop the site.

Our preliminary plan is to develop a beautifully designed, 100-unit mixed-use residential community. Our proposed project is a mixed density affordable residential development with three townhome structures containing a total of 16 3-bedroom units, and one (1) multi-story apartment building, consisting of 68 one-bedroom units and 16 two-bedroom units. This building will include a small amount of commercial space, as well as leasing and community space on the ground floor. We will work with our award-winning architects to create a design that responds to the character of the neighborhood. Our plan has been conceptualized considering the site challenges (environmental, shallow groundwater, and railroad) and with the City's specific development goals for the South Broadway Corridor in mind. We are confident our plan will foster the type of vibrancy the City is looking for.

To further refine design, costs, feasibility, and community support of the project, this letter serves to request a 6-month Exclusive Planning Option for General Capital Group. This planning option will allow the City and General Capital time to work towards a purchase contract at the end of the 6-month period, at that time to include earnest money. The Planning Option may be extended for upon mutual written agreement of both parties. We acknowledge project specifics and public assistance are not agreed to and are subject to City of Green Bay full review and approval. During the term of the Planning Option, the City shall not pursue discussions with other Developers.

General Capital Group is an experienced development team with a deep understanding of the tax credit process and is an established leader in the successful development of high-quality affordable housing. The following pages include additional detail on our experience, and additional preliminary project data. We look forward to continuing discussions on this site.

Sincerely,
General Capital Group

Summary of Developer Background

General Capital Group has a proven track record. Structuring innovative transactions with a deep understanding of property subsidy, public and private financing structures, and other soft money financing vehicles is a strong suit of our development team. This project is no exception, and our development team has the expertise required to navigate the complexity and execute the development. In the most recent round of allocations just announced, WHEDA awarded General Capital with Housing Tax Credits on all four projects on which it applied. One of these four is a 75-unit senior affordable project called Berkshire – Ashwaubenon, located on McCarthy Way in Ashwaubenon. Other active local business includes full renovation of Orchard Ridge, another 43-unit property in Ashwaubenon, and we are also under an Exclusive Planning Option for the redevelopment of a Village of Allouez owned parcel at Webster and St. Joseph's Street.

General Capital is a leading Milwaukee-area based real estate development firm focused on developing high quality, sustainable projects in established urban and suburban neighborhoods, each with a unique character reflecting the community in which it is developed. General Capital is a recognized leader in the development of high-quality affordable housing communities using federal, state and local housing financing programs in Wisconsin, Michigan and Illinois. Our core business also includes the development and acquisition of office, industrial, retail and market-rate multi-family assets. The firm was established in 1994 and has developed over 35 housing tax credit projects to date.

General Capital develops or repositions institutional quality assets that are typically held in the company's private portfolio for the long term. In selecting and executing its projects, General Capital works closely with municipalities to ensure that projects enhance long-term community goals and objectives. Such cooperation often leads to repeat public-private partnerships and joint ventures. For example, in the City of Niles, Michigan, General Capital is in the process of finishing its third housing development, representing over \$46.2 million of construction in that community alone.

General Capital's expertise is evidenced through the firm's 20+ year track record that includes more than 35 highly structured LIHTC developments, numerous grocery anchored shopping centers as a preferred development team for Kroger (Roundy's), student housing, life science, and multiple build-to-suit federal projects in Wisconsin and Florida. Principals Michael Weiss and David Weiss each have 35+ years of real estate experience and vast expertise. Please visit our website at www.generalcapitalgroup.com.

Preliminary Summary of Proposed Development

Our communities are designed to specifically meet the housing and supportive service needs to allow today's residents to flourish as part of an active, well-rounded community that provides a sense of self, well-being, and inclusion. More preliminary specific details of our proposed project include:

- **Unit Mix** will include 68 one-bedroom (650 SF) units, 16 two-bedroom (950 SF) units, and 16 three-bedroom townhome (1350 SF) units which with private direct entries which will cater to families.
- **Amenities** will include a fitness center, club room with Wi-Fi Cafe, on-site leasing office and heated enclosed parking at grade. Adequate parking will also be available for the proposed commercial/community use and visitors.
- A **Community Serving Facility (CSF)** will operate out of a dedicated portion of the first-floor commercial space at the site. A Community Serving Facility is a special designation of commercial space that is intended to provide an opportunity for on-site, resident focused services and/or non-profit organizations. We are interested in discussions with local non-profits, primarily focused on human service agencies serving children, families, and individuals. The CSF will be open year around and be geared towards and affordable to those at 60% or less of AMI. These services will be available not just for residents but also open to the public.
- **Supported Veterans Housing** We intend to work with the Brown County Veterans Service Office to establish a referral and outreach network to connect potential veterans in need of housing, as well as current veteran residents in need of support services with appropriate connections to appropriate resources.
- **Supportive Housing for Persons with Disabilities** Our proposal includes supportive housing units intended to serve persons with permanent developmental, physical, sensory, medical or mental health disability or a combination of impairments that make them eligible for long-term in-home care services. Our manager will work with numerous agencies (ADRC, Family Services, etc.) to connect residents with special needs with appropriate housing.
- **High quality property management and maintenance team will benefit residents**, along with access to common space amenities, including a community room and exercise space. Additionally, free, high-speed internet will be included.
- **Energy Efficiency** Our project will be certified through the Green Built Home program certified under the Wisconsin Environmental Initiative. This program requires the use of green building technology, high efficiency plumbing fixtures, energy efficient lighting and EnergyStar® furnaces and appliances, among others. Participation in this program assures the Village that our project will meet a stringent third-party verification process.

Together, these attributes provide a well-rounded, resident focused community that promotes resident interaction, activities, and events. Our communities are lively places, and our residents love to live there, as evidenced by extremely low unit turnover.

Conceptual Site Plan & Affordability

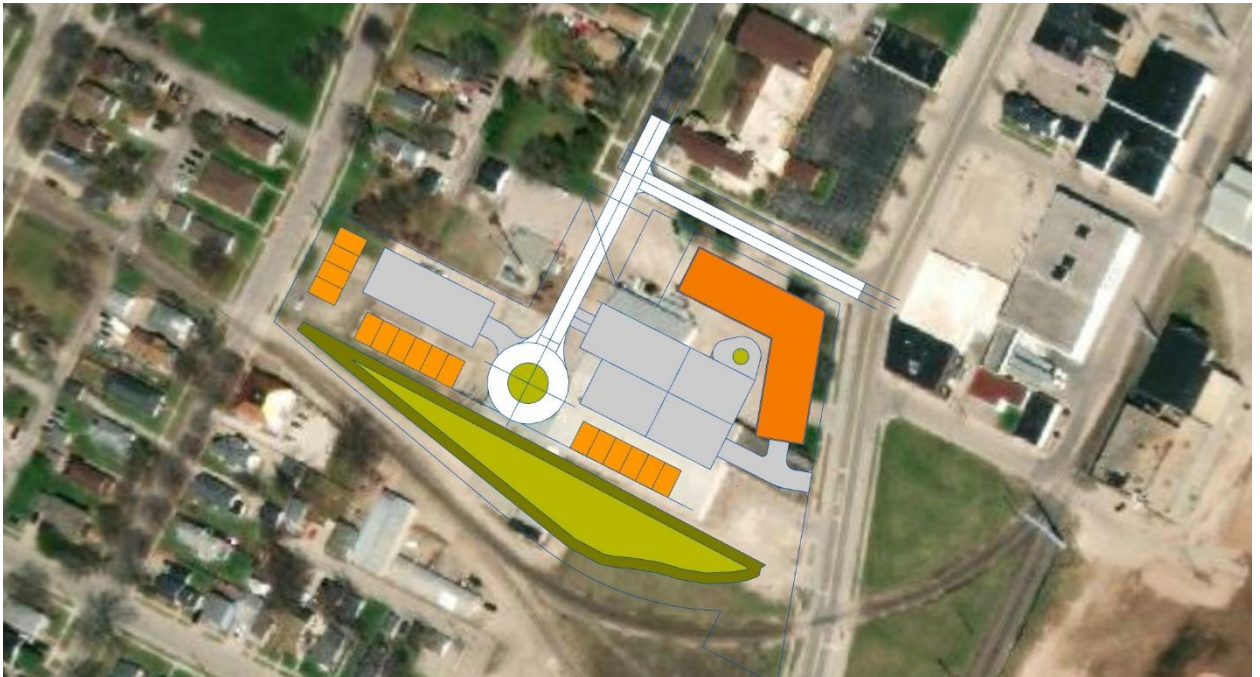
General Capital takes particular care in developing designs that reflect the local neighborhood context. We don't use building prototypes and standard floorplans. Each community is unique to its placement in the neighborhood and larger community. We find this approach to be ideal as residents will recognize elements of our design and find it comforting to feel that it fits into the community they call home.

Our team intends to develop a vibrant, intergenerational community that is oriented toward the corner of Arndt and S. Broadway. The proposed design is intended to complement the City's S. Broadway Corridor Master Plan and vision for the neighborhood, and promotes a mixed use, pedestrian friendly environment. The architectural vocabulary of the buildings will be taken from the surrounding neighborhood, including traditional massing, roof forms and building materials.

The main elevation of the primary apartment building will face Arndt and Broadway. Approximately 2,000 SF of commercial space and the building's community gathering, and leasing functions will face the street, providing life and activity at the street level, as envisioned by the City's Design Guidelines. Pedestrian seating areas will be placed behind architectural planters to help define the public/private outdoor realm along the street. The townhomes will face the water feature, and each have a front porch, reflecting the traditional development pattern of the surrounding neighborhood. Together, the residential structures frame an interior surface parking lot, well screened from the street, with high quality landscaping and pedestrian connections through the site and to the bike and pedestrian paths.

Our project will provide a wide spectrum of income and rent restrictions and unit types to meet the housing needs of a wide range of seniors, families, and individuals. Our project will include a range of affordability, from lower-income units with income limits at 30% Area Median Income ("AMI") to 80% units, across housing types ranging from one-bedroom units in an apartment-style setting to a three-bedroom townhome designed for families.

Conceptual Site Plan



Conceptual Aerial View



Project Timeline

Our proposed project will be developed in a single phase of 100 units. The schedule below reflects the “pre-development” schedule needed to apply for Housing Tax Credits in the December 2021 cycle, which allows developers to secure financing in Spring 2022.

PROJECT SCHEDULE	
Spring 2021	RFP/Planning Option Award
Summer 2021	Site Control
November 2021	Entitlements Complete
December 2021	WHEDA Tax Credit Application
Mid-April 2022	Tax Credits Awarded
October 2022	Development Agreement Complete
November 2022	Close on Land Acquisition & Tax Credit Financing
November 2022	Start of Construction
September 2023	Open Leasing Office/Begin Pre-Leasing
December 2023	Complete Construction
January 2024	Initial Occupancy
June 2024	Fully Leased Stabilized Property

GENERAL CAPITAL



BEERLINE B APARTMENTS

AFFORDABLE HOUSING

Affordable Housing

The partners of General Capital have been involved in the development, management and ownership of affordable multifamily housing projects since the 1980's. Our commitment to affordable housing involves development, acquisition and rehabilitation housing.

General Capital's new construction of affordable rental housing has involved the use of 9% and 4% tax credits as well as other Federal and local housing programs. General Capital has successfully developed a well-known senior housing brand, the "Berkshire". Berkshire independent senior apartments are designed to specifically meet the housing and supportive services needs to allow today's independent living elderly to comfortably age in place. Berkshire residents are a part of an active, well-rounded community that provides a sense of self, well-being and inclusion. The Berkshire's commitment to quality was recognized with a Charles Edson Tax Credit Excellence Award for the Berkshire Grafton in 2003.

General Capital is also focused on the acquisition and preservation of apartment projects currently regulated by HUD, the IRS or State Housing Agencies and non-regulated multi-family properties that are candidates for repositioning as affordable properties. The firm has extensive experience utilizing both public and private resources to preserve the affordability of housing. Transactions have involved the investment of new tax credit equity and more conventional debt and equity strategies.



General Capital Acquires, Rehabilitates and Develops Affordable Housing

THESE PRACTICES ARE THE BASIS OF GENERAL CAPITAL'S SUCCESS:

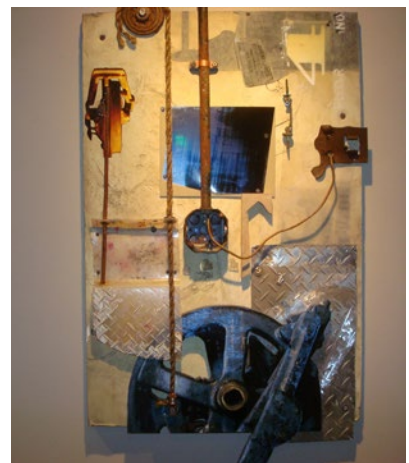
- Working with non-profit organizations
- Emphasizing community collaboration with local organizations and community business leaders
- Structuring innovative transactions with a deep understanding of property subsidy, rehabilitation and financing vehicles
- Maximizing environmental conservation through sustainable development including the redevelopment and renewal of environmentally contaminated properties
- Engaging high quality property management firms and intensive asset management
- Utilizing best practice construction methods and high quality materials that ensure quality and durability of product
- Working closely with state agencies to achieve mutual objectives



GENERAL CAPITAL

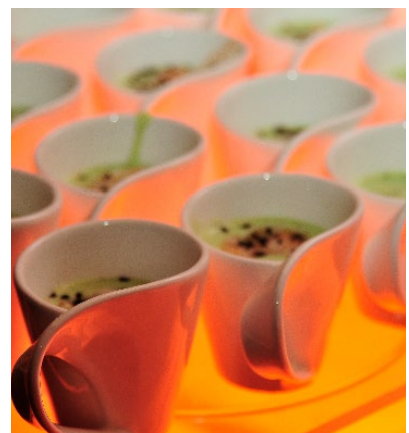
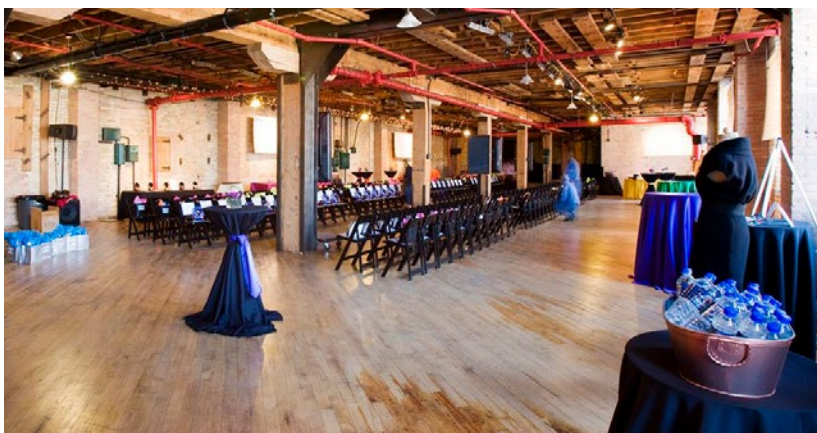


INTERIORS, COMMUNITY AND ART



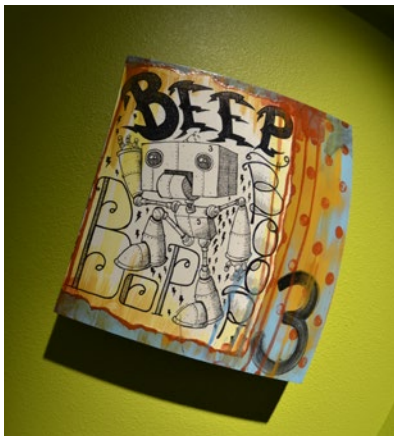
GENERALCAPITAL





GENERAL CAPITAL

INTERIORS, COMMUNITY AND ART



General Capital Team

David Weiss

CHIEF EXECUTIVE OFFICER



David is Chief Executive Officer of General Capital. He began his career in New York with Citibank's Leveraged Capital Group in the 1980s. David later became a Vice President in Citibank's Institutional Recovery Management group, where he was involved in corporate workouts, restructuring and lender litigation. In 1993, David moved to Citicorp's Real Estate Group in Chicago, where he was Vice President and team leader in the Shopping Centers Group, managing a debt portfolio in excess of \$400 million. He joined General Capital Group in 1997 as a founding Partner. David is a member of the Firm's Investment Committee and is responsible for General Capital's financial and banking relationships and risk management.

Additionally, he is head of strategic planning on a local non-profit board and has been a guest lecturer in several Marquette Real Estate courses, a mentor to business school students and active participant in various student career advancement programs.

Josh Hafron

PARTNER



Josh Hafron joined General Capital's Chicago office in 2007 with a focus on the acquisition and redevelopment of affordable/low income housing projects across the country. Josh has over 15 years of commercial real estate experience. Prior to joining General Capital, he served as assistant vice president with Urban Innovations in Chicago, where he was involved in the acquisition of affordable housing projects nationally. Josh previously held positions with First Industrial Realty Trust and First Chicago Capital Markets. Josh graduated from Tufts University and has a joint MA/MBA degree from George Washington University. He and his wife Kim live with their two children in Glencoe, IL.

Sig Strautmanis

PARTNER



Sig is responsible for coordinating General Capital's design, municipal entitlements and construction. In addition, Sig leads General Capital's environmental initiatives, including managing the firm's energy efficiency program and certifying new residential projects.

In 2004, Sig was named to the Business Journal's "40 Under 40" list for his contributions to the profession and local community. Sig joined General Capital after working for LDR International, a nationally recognized land use and urban design firm in Columbia, Maryland and for the Village of Germantown, a high growth Milwaukee suburb. In addition to his work at General Capital, Sig is currently an Adjunct Assistant Professor of Urban Planning at the University of Wisconsin – Milwaukee. He has Masters degrees in Architecture and Urban Planning.

GENERAL CAPITAL

Chelle Nennig

CHIEF OPERATING OFFICER



Chelle has over 25 years of experience in Real Estate Development and Property Management. After graduating from Carroll University with a Bachelor's of Science Degree in Accounting she worked at an international public accounting firm spending 5 years in the Audit practice. Chelle then joined a rapidly growing development and property management company where she rose to President. In 2000 Chelle further advanced her real estate career by joining General Capital Management. Presently, Chelle is responsible for the Investor Relations, Accounting, Financial Reporting, Tax Compliance and Property Management Departments. Chelle also oversees the management of the student housing operations.

Renee Adrian

ACCOUNTANT



Renee is a 1991 graduate of the University of Wisconsin, Oshkosh. After working for the State of Wisconsin with the Department of Corrections, Renee worked briefly for The Midland Group as an assistant to the Property Manager. In 1996 she left Midland to work for the newly formed General Capital Management Inc. During the past 20 years with General Capital, Renee has worked as the Property Manager, Office Manager and Accounting Administrator. In her current role as Leasing Specialist Renee coordinates tenant leasing and construction and also maintains an active role in the accounting department. Renee has been a licensed Real Estate Broker with the State of Wisconsin since 1998 and is a member of the International Council of Shopping Centers.

Carmello Maddente

DIRECTOR OF MARKETING AND TECHNOLOGIES



Carmello joined General Capital in 2010 filling a new position at the firm, Director of Marketing. Prior to General Capital Carmello worked in the marketing department at Wisconsin's largest residential real estate firm. At General Capital Carmello is responsible for all marketing and business technology initiatives. Carmello is currently working to complete his Certified Commercial Investment Member (CCIM) designation.

GENERAL CAPITAL

Jackson Lindsay

CONSTRUCTION COORDINATOR



Jackson assists with project logistics, feasibility, design, and construction. Prior to joining General Capital in 2014, Jackson worked as a design/build custom woodworker. He holds a Masters degree in Architecture from the University of Wisconsin – Milwaukee.

Jenifer Bersch

COMPLIANCE



Jenifer joined General Capital as a Paralegal in March 2019. Prior to joining General Capital, she was the Senior Paralegal at Stark Investments, an international multi-billion dollar investment company, with primary responsibilities in the corporate, securities, transactional and compliance areas. Jenifer developed extensive experience in the corporate, securities and transactional areas as Senior Paralegal at Michael, Best & Friedrich, LLP. Jenifer attended the University of Wisconsin – La Crosse and graduated from the Minnesota School of Business.

Sarah Hillenbrand

PROJECT MANAGER



With a background in commercial banking and financial analysis, Sarah is well suited to take on a variety of responsibilities. These include underwriting, financial projections, managing debt financing, and investor relations. With an eye for both financial and aesthetic details, she's equally adept weighing in on the financial side of the real estate management as she is on the design. Sarah has a BA degree in Marketing and the renowned Real Estate program at the University of Wisconsin-Madison.



Report to the Redevelopment Authority of the City of Green Bay

MEETING DATE

May 11, 2021

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # E.3

Consideration with possible action on a potential development agreement with Toonen Properties for a project at 2840 University Ave. (Parcel 21-301).

BACKGROUND

The City has been approached by both the existing developer for University Heights (TMD Properties/Devillers) and a prospective new developer (Toonen Properties) about a revised project for this site. The site is the former JBS Packing (Packerland) meat processing facility. The project site is approximately 33 acres.

The original development agreement with TMD Properties (May 2017) included the proposed construction of 322 residential apartment units in four phases over five years (2022). In addition, a 3.59 acre site was to be set aside for a commercial or mixed-use project. The project site required considerable demolition and site remediation, which has been mostly completed and reimbursed by the City through a project grant of just under \$1.5 million. TMD has constructed two initial buildings of 36 units valued at \$3.4 million on the site, but has not proceeded with additional buildings to date, and is behind the agreed upon performance schedule. The project was to be valued at \$21.9 million. Additional TIF funding was to be made available on a pay go basis up to \$4 million, using 50% of the annual tax increment to be generated by the project.

Toonen Properties has an agreement with TMD to acquire the site and complete a new project on the site contingent upon the successful transfer and update of the development agreement with the City. Toonen is proposing to construct 198 new units over a 2-3 year period, at a projected valuation of just under \$20.8 million. Including the previously constructed buildings from the original developer, the total valuation is projected to be \$24.2 million. Due to increased construction costs, including additional site work due to soil conditions, Toonen is requesting that the maximum available TIF assistance be increased from \$4 million to \$6 million using 80% of the annual increment generated.

RECOMMENDATION

Staff recommends proceeding with a formal development agreement with Toonen Properties based on the general terms presented here, subject to review by the City's Finance and Legal Departments, and being brought back to the RDA for formal review and recommendation. This will need to include either transferring the current development agreement to Toonen Properties or otherwise terminating the development agreement with TMD Properties.

FISCAL IMPACT

ATTACHMENTS

- I. JBS Devillers Development Agreement Executed



City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 17-01
JBS / PACKERLAND PACKING SITE REDEVELOPMENT

This Development Agreement is made this 16 day of MAY, 2017,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and TMD PROPERTIES, LLC a Wisconsin limited liability company ("Developer").

RECITALS

- A. Developer has acquired and proposes to develop certain real property, identified for real estate tax purposes and address as:

<u>Tax Parcel</u>	<u>Address</u>	<u>Acres</u>
21-301	2580 UNIVERSITY AVE	33.260

- B. The parcels listed above shall be referred to as the "Property." The Property comprises approximately 33.260 acres of land. A legal description of the Property is herein attached as EXHIBIT A.

- C. Developer intends to complete a Project, which involves the demolition and environmental remediation of nine (9) structures (with approximately 230,000 square feet of space) of the former JBS (a/k/a Packerland) Packing meat-processing facility, followed by the construction of approximately three hundred and twenty-two (322) residential apartment rental units, which will be constructed in four (4) phases over a period of four (4) to five (5) years:

1. Phase One (1): demolition, environmental remediation, site preparation, and infrastructure development, plus the construction of forty-eight (48) Loft-Style Units.
2. Phase Two (2): supplemental infrastructure development and the construction of eighty-six (86) Loft-Style Units.
3. Phase Three (3): supplemental infrastructure development and the construction of ninety-eight (98) Senior-Style Units.
4. Phase Four (4): supplemental infrastructure development and the construction of ninety (90) Loft-Style Units.

Developer shall reserve approximately 3.59 acres of the northwest corner of the Property, to the east of Rothe Street, for a future mixed-use or commercial development. The proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT B.

- D. As of January 1, 2016, the Property has an aggregate assessed value of \$758,800.00, which based on the assessed tax rates in effect as of January 1, 2016, the Property yields approximately:

1. \$17,064.41 in total real estate taxes annually (assessed mill rate of \$22.49);
 2. \$16,936.41 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of \$22.32); and
 3. \$6,715.38 in real estate taxes to the City of Green Bay annually (assessed mill rate of \$8.85).
- E. Upon completion of proposed Project, the City estimates the aggregate assessed property value of the Property to be \$21,896,000.00, which is anticipated to yield approximately:
1. \$492,441.04 in total real estate taxes annually (assessed mill rate of \$22.49);
 2. \$488,718.72 in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of \$22.32); and
 3. \$193,779.60 in real estate taxes to the City of Green Bay annually (assessed mill rate of \$8.85).
- F. Pursuant to the provisions of §66.1105, Wis. Stats. (the "Tax Increment Law"), the City has included the Property within Tax Increment District No. Eighteen (18) (the "TID"), which will provide part of the financing for certain costs of the Project.
- G. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to environmental remediation; demolition; clearing of land; construction of new buildings; or the construction of public works infrastructure, which will constitute Qualified Expenditures (as defined below) for which TIF assistance may be afforded Developer.
- H. The City and RDA desire to have Developer perform the Project in order to generate economic activity and tax base for the community consistent with the City Comprehensive Plan.
- I. In order to induce Developer to undertake the Project, such that Developer remediates environmental hazards, enhances the physical landscape, removes blight, expands the range of residential products, adds residents, and encourages additional investment and development, and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

I. PURPOSE

- A. Incorporation of Proceedings, Exhibits, and Recitals. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City or RDA, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement by reference, upon attachment, or upon consent by amendment if necessary if not referenced or attached at the time of execution of this Agreement.
- B. Implementation Schedule. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth and/or incorporated herein. Any material modification or deviation from an approved

schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld, conditioned, or delayed. City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project. Notwithstanding the above, this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property.

- C. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitutes the entire Agreement between the parties hereto in respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement shall be deemed to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City or RDA, granting approvals or conditions attendant with such approval, the terms of this Agreement shall be deemed controlling and the City and RDA will take the necessary action to amend any conflicting approvals or conditions.
- D. Purpose of the Agreement. In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base within the City, the City intends to provide the TIF Incentives as set forth in this Agreement. The City intends to recover its costs through the Available Tax Increment generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

Whenever in this Agreement a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand. As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

- A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.
- B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the Base Value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.
- D. "Base Value" means the aggregate assessed value of the Property as of January 1, 2017.
- E. "City" means the City of Green Bay, Brown County, Wisconsin.
- F. "Concept Plan" means the plan for the Project.
- G. "Developer" means TMD PROPERTIES, LLC, or any assignee of the same.

- H. "Loft-Style Units" means apartment units that with larger integrated living spaces, limited full-height walls, and a second-story loft or balcony.
- I. "Plans and Specifications" means the plans and specifications developed for the Project.
- J. "Public Improvements" means the public infrastructure improvements in connection with the Project including, without limitation, all road improvements, grading, engineering, landscaping, erosion control, sanitary sewer, storm sewer and potable water and wastewater mains and laterals, natural gas, high speed cable, telephone, electrical power and other public utilities.
- K. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
- L. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.
- M. "Project" means the Project as defined in the Recitals.
- N. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives, as defined in Section III. C, such as, infrastructure improvements; environmental remediation; demolition; clearing of land; and construction of new buildings.
- O. "Senior-Style Units" means single-floor apartment units with wider doorways, hallways, and corridors, and minimal changes in floor elevation.
- P. "Special Assessment" means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.
- Q. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.
- R. "Tax Increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year's equalized value of all taxable property in the TID.
- S. "TID" means Tax Increment District No. Eighteen (18) of the City of Green Bay, which has been established and is in good standing by the City of Green Bay, Wisconsin.
- T. "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.
- U. "TIF Incentive" means the financial incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. TAX INCREMENT FINANCING

- A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the "but for" test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the

satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.

B. Nature of TIF Incentive. The TIF Incentive available to Developer under this Agreement shall be composed of two parts:

1. Project Grant. The City shall provide one million five hundred thousand dollars (\$1,500,000.00) of TIF Incentive as a Project Grant upon Developer fulfilling all obligations identified in Sections IV.A., IV.B., IV.C., IV.E., IV.F., IV.G., IV.H., and IV.I., which shall be placed in an escrow account to pay certain Qualified Expenditures as identified in Sections III.C.1., III.C.2., III.C.3., and III.C.4. below after Developer provides copies of any invoice to the City and RDA evidencing that Developer has incurred such Qualified Expenditures. Within thirty (30) days of receipt of any aforementioned invoice, City shall disburse to Developer such portion of the Project Grant necessary to pay any such invoice submitted by Developer to the City and RDA.

2. PAYGo Reimbursement. The City shall provide an additional TIF Incentive as a pay-as-you-go (PAYGo) obligation of the City, which is further defined as follows:

- a) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures as identified in Section III not covered by the Project Grant TIF Incentive shall be reimbursed to Developer pursuant to this PAYGo TIF Incentive.
- b) Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the Base Value. The difference between the foregoing shall be known as the Incremental Property Value.
- c) Incremental Property Value multiplied by the assessed mill rate, less payments of real estate taxes to the State of Wisconsin, shall be known as the TIF Increment.
- d) The City shall first use the TIF Increment to cover its annual debt service obligation for the Project Grant. Should the annual debt service payment not consume all of the TIF Increment, the City shall make available not more than fifty percent (50%) of the remaining TIF Increment to the Developer.
- e) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Property for the previous year. For example, if the first occupancy permit is issued on September 1, 2018, the TIF Increment would be determined as of January 1, 2019 and the PAYGo reimbursement would first be payable in 2020.

C. Qualified Expenditures. Qualified Expenditures are expenditures of Developer for the Project that are eligible for TIF Incentives, which shall be limited to:

1. Environmental remediation and asbestos abatement; and
2. Demolition, including the grinding of concrete and asphalt; and

3. Utility removal and relocation, including sewer, electrical, and fiber-optic lines; and
4. Infrastructure development, including clearing of land, site contouring and the construction of access road(s); and
5. Architectural and aesthetic enhancements in the construction of new buildings.

D. Limitations. The TIF Incentive available to Developer for the Project is limited as follows:

1. Monetary Limitation. The PAYGo TIF Incentive in any year shall not exceed fifty percent (50%) of the Available Tax Increment for the Property.
2. Tax Incentive Cap. The City shall not be obligated to pay TIF Incentive, inclusive of both the Project Grant and PAYGo Reimbursement, in excess of the lesser of four million dollars (\$4,000,000.00) or the total amount of Qualified Expenditures incurred by Developer.
3. Tax Receipts Limitation. Only the Available Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.
4. Temporal Limitation. Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred Qualified Expenditures, the PAYGo TIF Incentive payments shall be made within thirty (30) days after Developer has paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year, provided, however, in no event shall the PAYGo TIF Incentive payments continue after the earlier of:
 - a) Calendar year 2036;
 - b) The termination date of the TID, which is currently set at 2042; or
 - c) The termination of this Agreement if before the termination of the TID.

E. No General Obligation of City. The City's obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.

IV. OBLIGATIONS OF DEVELOPER

- A. Concept Plan. Prior to December 1, 2017, Developer shall submit a Concept Plan to RDA for approval, which shall be based on, but may differ in minor respects from the Preliminary Concept Plan presented in the Term Sheet. The Concept Plan shall clearly identify:
1. Full vehicular, pedestrian, and bicycle ingress and egress to the Property from both University Avenue and Rothe Street; and

2. A paved pedestrian and bicycle multi-use path, no less than ten (10) feet wide, and designed cooperatively with the City Department of Parks, Recreation, and Forestry, from the northern boundary of the Property on University Avenue, and the western Boundary of the Property on Rothe Street, to the southern boundary of the Property adjacent to City-owned park land; and
 3. Approximately 3.59 acres of the northwest corner of the Property, to the east of Rothe Street, as reserved for a future mixed-use or commercial development.
- B. Construction Documents. Prior to December 1, 2017, and prior to commencement of construction of any phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval, which shall not be unreasonably withheld, conditioned, or delayed. The Construction Documents shall include:
1. Plans and specifications for structural, mechanical and electrical systems, materials; and
 2. Full-color elevations for all sides of all proposed structures; and
 3. Descriptions and actual samples of all exterior building materials; and
 4. Descriptions and photographic examples of interior finishes; and
 5. Other such essential items as may be determined by the RDA to be appropriate.
- C. Development Budget. Prior to December 1, 2017, Developer shall submit a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval, which shall not be unreasonably withheld, conditioned, or delayed. The Development Budget shall include:
1. Not less than twenty-two million dollars (\$22,000,000.00) in "hard" construction costs for the entire Project; and
 2. Not less than ten million dollars (\$10,000,000.00) in "hard" construction costs for Phases One (1) and Two (2) of the Project; and
 3. A line item of not less than ten percent (10%) of total Project costs for cost overruns and change orders; and
 4. Line items for each of the Qualified Expenditures for which the Developer is seeking a TIF Incentive, as identified in Section III.
- D. RDA Approvals. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the Concept Plan, Construction Documents, or Development Budget, or any revisions; provided, however, that the RDA shall approve such revised Concept Plan, Construction Documents, or Development Budget unless it determines such revisions would impair the objectives of this Agreement, impose substantial financial burdens on the City or the RDA, or materially and adversely affect the Concept Plan. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans. At any time during the implementation of the development contemplated by this Agreement, the RDA or Developer may propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the

RDA and the Developer. At any time during the implementation of the development contemplated by this Agreement, Developer may submit to the RDA proposed revisions in the approved Concept Plan, Construction Documents, or Development Budget in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan.

- E. Compliance with Planning; Zoning; Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:
1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.
 2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.
 3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.
- F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than December 1, 2017, proof of equity in the form of the value of the Property, less any mortgages thereon, not less than twenty percent (20%) equity available for injection into the Project in an amount sufficient to obtain financing for all Phase I and II Project costs. Any available Developer funds obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any third party financing is used to pay Project costs.
- G. Proof of Financing. By no later than December 1, 2017, Developer shall have delivered proof satisfactory to the City and RDA of financing, which after injection of the Developer equity into the Project, will be sufficient in the determination of the City and RDA, to complete the Project according to the plans and specifications.
- H. Acquisition of Property. Developer shall provide copies of deeds and such other closing documents as requested by the City or RDA regarding the purchase of the Property and rights of way. The Property and rights of way shall be owned in the name of the Developer.
- I. Termination or Relocation of Easements. Developer shall have agreements with all holders of easements or any other rights that may be affected by the Project, regarding the termination, modification or relocation of such easements and other rights in order to accommodate the Concept Plan.
- J. Certified Survey Map. Developer has caused or shall cause a certified survey map to be prepared, approved by the City, RDA, and any other party whose consent is required, and shall cause the certified survey map to be recorded with the Brown County Register of Deeds.
- K. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenditures as set forth in the approved Development Budget.
- L. Improvement of Property. Developer shall promptly design and complete the Project. Substantial work on the Project shall commence no later than ninety (90) days after the last to occur of

approval by the City and RDA of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, and/or issuance of a building permit and all other permits or licenses required to commence construction, which shall be no later than February 1, 2018. Phase One (1) shall be completed no later than December 1, 2018. Phase Two (2) shall be completed no later than December 1, 2019. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.

- M. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the Property, the Project, material developments in marketing, sale and leasing relating to the Project, and any other material matters pertaining to the interests of the City and the RDA in the Property or under this Agreement. Developer shall file with the RDA quarterly progress reports during the course of construction. Developer shall provide RDA with a copy of annual, audited financial statements for Developer through termination of this Agreement upon written request.
- N. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.
- O. Maintenance and Repair. Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.
- P. Transfer of Sale of Project Property.
 - 1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer. The City or RDA may deny the request for any commercially reasonable reason. Developer may assign all rights and obligations under this Agreement only to an entity controlled and affiliated with Developer to own, manage and operate the Property. This Agreement inures to the benefit and becomes the obligation of the heirs, successors and assigns of Developer. This Agreement shall run with the land and shall be binding upon all current and future owners of the Property. Owner shall not be required to provide the City or RDA with written notice of its intent to transfer in connection with the granting of any mortgage or security agreement to finance or refinance loans for the purchase of the Property or payment of costs of the Project.
 - 2. No Transfer to Exempt Entities. Prior to the closure of Tax Increment District No. Eighteen (18), the Property shall not be sold, transferred or conveyed to, leased or owned by any entity or used in any manner that would render any part of the Project Property exempt from taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement with the City and RDA in a form satisfactory to the City providing for acceptable payments to the City in lieu of taxes.
- Q. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.
- R. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of Phase One (I), Developer shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same.
2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):
 - a) Arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property; or
 - b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.
3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:
 - a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and
 - b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.
4. Survival. The provisions of this Section shall survive the conveyance to Developer of any City and/or RDA Property.
- S. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence

of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:
 - a) Bodily Injury by Accident - \$100,000 per accident;
 - b) Bodily Injury by Disease - \$100,000 per employee; and
 - c) \$500,000 policy limit.
2. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:
 - a) General Aggregate Limit - \$2,000,000; Personal and Advertising Injury Limit (per person/organization) - \$2,000,000;
 - b) Bodily Injury and Property Damage - \$2,000,000 per occurrence;
 - c) Fire Legal Liability Damage Limit - \$100,000 per occurrence; and
 - d) Medical Expense Limit - \$10,000 per person.
3. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non-owned motor vehicles. The amounts of such insurance shall be not less than the following limits:
 - a) Bodily Injury - \$250,000 per person; and
 - b) \$1,000,000 per occurrence; and Property Damage - \$250,000 per occurrence.
4. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of \$1,000,000 for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs 1 to 3 above.
5. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to

relieve Developer of its obligation to perform under this Agreement and, in the event of loss, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

6. Fire and Casualty Insurance. Developer shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount equal to the assessed value of such improvements. In the event of loss the Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

T. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:
 - a) Any breach by Developer of the terms of this Agreement;
 - b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or
 - c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.
2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA;

provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

The City's and RDA's obligations under this Agreement are conditioned upon the following:

- A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.
- B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.
- C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.
- D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.
- E. TID District. The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

The obligations of Developer under this Agreement are conditioned upon the following:

- A. TID. The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.
- B. Due Authorization. The City Council of the City shall have passed a resolution on due notice, authorizing the City to enter into this Agreement and authorizing the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

VII. REPRESENTATIONS, WARRANTIES AND COVENANTS

Developer represents and warrants to the City and RDA as follows:

- A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, and are true and correct and there has been no material change in any of the same.
- B. No Material Change in Developer Operations. There has been no material change in the business operations of Developer since the date the parties began negotiation to enter into this Agreement.

- C. Compliance with Zoning. The Property now conforms and will continue to conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.
- D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, except for liens for claims to payment that are subject to a bona fide dispute, and, in that case, such liens shall be removed by Developer posting bond or other security, paying one hundred and twenty percent (120%) of the lien claimed into court, escrowing funds or promptly taking other steps to remove the lien of record. Developer shall pay all other obligations relating to the Project, including all creditors holding liens or mortgages against the Property when and as the same become due. Developer will pay all taxes and assessments levied against the Property when and as the same become due.
- E. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City or RDA pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.
- F. Good Standing. Developer is a limited liability company organized and existing in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business.
- G. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary company action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- H. No Conflict. The execution, delivery, and performance of the obligations of Developer pursuant to this Agreement will not violate or conflict with the Articles of Organization or Operating Agreement of Developer or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of obligations of Developer pursuant to this Agreement violate or conflict with any law applicable to Developer.
- I. No Litigation. There is no litigation or proceeding pending or, to the best of Developer's knowledge, threatened against or affecting Developer or the Property that would adversely affect the Project, Developer or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.
- J. No Default. No default, or event that with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.
- K. Compliance with Laws and Codes. The Project, when completed, will conform and comply in all respects with all applicable laws, rules, regulations and ordinances, including without limitation, all building codes and ordinances of the City. Developer will comply with, and will cause the Project to be in compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances.

- L. Fees or Commissions. Neither the City nor RDA shall be liable for any broker fees or commissions incurred by Developer in connection with the Property or any transactions contemplated by this Agreement.

VIII. DEFAULT

- A. Developer Default. Each of the following shall be an Event of Default by Developer:

1. Failure to Make Payment. Developer fails to make any payment required and such failure continues for a period of ten (10) days after its due date;
2. Failure to Abide by Other Terms. Developer fails to perform any other of its obligations under this Agreement and such failure continues for a period of thirty (30) days from the date of notice from the City or RDA; provided, however, if such cure cannot reasonably be accomplished within such thirty days and the delay in cure does not materially impair the financial interests of the City or RDA, and if Developer promptly commences cure within the initial thirty days and diligently pursues cure thereafter, Developer shall have a reasonable time, not to exceed sixty (60) days after the initial thirty (30) days, for a total of ninety (90) days to cure;
3. Misrepresentation. Any representation or warranty of Developer in this Agreement or any agreement contemplated by this Agreement is untrue in any material respect;
4. Fraud and Other Illicit Behavior. Developer or any of its members is convicted of, pleads no contest to, or enters into any other agreement other than a dismissal with no conditions as to any allegation of:
 - a) Fraud; or
 - b) Indecent or illicit behavior that in the determination of the City or RDA would threaten the reputation of Developer or its ability to complete the Project according to the requirements of this Agreement;
5. Insolvency. Developer or any guarantor of the obligations of Developer hereunder is insolvent or becomes the subject of a petition in bankruptcy, a receivership, a composition or any other proceeding designed for the benefit of creditors generally that is not dismissed within sixty (60) days of the date of filing;
6. Involuntary Liens. Any lien is imposed upon the Property involuntarily due to the acts or omissions of Developer and such lien is not removed within sixty (60) days of it being imposed upon the Property.

- B. Remedies Upon Default. In the event of the occurrence of an Event of Default by Developer, the City may in its discretion:

1. Termination. Terminate this Agreement without further notice to Developer;
2. Offset and Recoupment. Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach;

3. Specific Performance. Sue for specific performance;
 4. Sue for Damages. Sue for all damages caused by the Event of Default;
 5. Other Remedies. Pursue any other remedies available to the City or RDA at law or in equity;
 6. Interest. Collect interest on all delinquent amounts at the rate of 12% percent per annum from the date such amount was due; and
 7. Costs and Attorney Fees. Collect all costs and fees, including reasonable attorney fees incurred by the City and RDA, or either of them, by virtue of the Event of Default.
- C. City or RDA Default. Developer shall have all rights and remedies available under law or equity with respect to any failure of the City and/or RDA to perform their obligations under this Agreement, but only after providing the City and RDA notice of such default and a failure by the City and/or RDA to commence attempts to cure such default within the thirty (30) day notice period. If the City and/or RDA, as appropriate, commences cure within the thirty day notice period and thereafter reasonably and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default.
- D. Limitation of Damages. The foregoing notwithstanding, none of the parties shall be liable to any other party for any incidental, consequential, indirect, punitive or exemplary damages. All claims and damages asserted against the City or RDA shall be subject to statutory protections of municipalities and their officials and employees, including the immunity and limitations set forth in §893.80 Wis. Stats.
- E. No Waiver. Any delay in instituting or prosecuting any actions or proceedings or otherwise asserting the rights granted in this Agreement, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way, nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- F. Remedies Cumulative. Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party.

IX. TERMINATION

- A. Date of Termination. This Agreement shall terminate upon the earliest of the date:
1. All Qualified Expenditures have been repaid in full by Tax Increment;
 2. The City closes and terminates the TID;
 3. The Wisconsin Department of Revenue fails to certify or revokes certification of all or any portion of the TID or the Property;
 4. This Agreement is terminated because of an Event of Default;

5. The parties agree in writing to terminate this Agreement.
- B. TIF Payments termination. In no event shall TIF Incentive payments continue after the earlier of:
1. Calendar year 2036;
 2. The termination date of the TID, which is currently set at 2042; or
 3. The termination of a Development Agreement if before the termination of the TID.
- C. Survival of Certain Provisions. Sections III.E, IV.E, IV.I, IV.K, IV.P.2, IV.Q, IV.R.2, IV.T, V.A, V.B, V.C, V.D, V.E, VII.C, VII.D, VII.E, VII.G, VII.K, VII.L, VIII.B, VIII.D, VIII.E, VIII.F, X.B, X.C, X.G, X.J, X.M, X.O, X.P, and X.R. shall survive the termination of this Agreement.

X. MISCELLANEOUS PROVISIONS

- A. Assignment. Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, which consent shall not unreasonably withheld, conditioned, or delayed.
- B. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.
- C. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.
- D. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.
- E. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.
- F. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent,

whether of the class of causes herein above enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. The foregoing notwithstanding, a force majeure event may not be used to avoid an Event of Default if the delay caused by the force majeure event exceeds ninety (90) days from the date the event occurred.

G. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.

H. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein.

I. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one (1) business day after deposit with a nationally recognized over-night commercial courier service, air bill pre-paid, or forty-eight (48) hours after deposit in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To the City: City of Green Bay
 Attn: City Clerk
 100 North Jefferson Street
 Green Bay, WI 54301

To RDA: Redevelopment Authority of the City of Green Bay
 Attention: Executive Director
 100 North Jefferson Street, Room 608
 Green Bay, WI 54301

To the Developer: TMD PROPERTIES, LLC
 Attention: Todd M. DeVillers
 677 Baeten Road
 Green Bay, Wisconsin 54304

The foregoing addresses shall be presumed to be correct until notice of a different address is given according to this paragraph.

J. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.

K. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

L. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.

M. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.

- N. Recording of Agreement. The City may record this Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.
- O. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. Owner warrants and represents that there will not be any mortgage or any other lien against the Property at the time this Agreement is recorded other than mortgages for the purchase of the Property and to finance costs of constructing the Project. This Agreement shall have precedence and shall take priority over any mortgage, lien or other encumbrance that may be recorded against the Property (or any portion thereof) after the recording of this Agreement (or Memorandum thereof).
- P. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.
- Q. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.
- R. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

[Signature pages follow]



IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed by duly authorized representatives of Developer, City and RDA as of the day and year first written above.

**DEVELOPER:
TMD PROPERTIES, LLC**

By:



Todd M. DeVillers, Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this 7th day of June 2017, the above named Todd M. DeVillers, a member of TMD PROPERTIES, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.



* Jean Semenuk

Notary Public, Brown County, Wisconsin
My Commission Expires 7/13/20

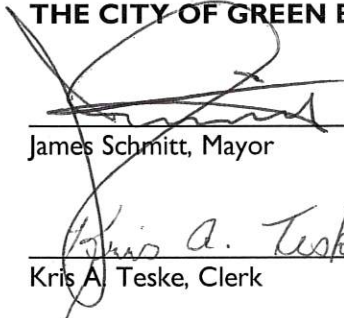


Signature page

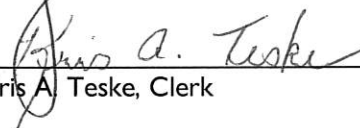
THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY,
and TMD PROPERTIES, LLC

THE CITY OF GREEN BAY

By:


James Schmitt, Mayor

By:

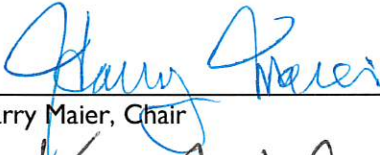

Kris A. Teske, Clerk

Signature page

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY,
and TMD PROPERTIES, LLC

**REDEVELOPMENT AUTHORITY OF THE
CITY OF GREEN BAY**

By:



Harry Maier, Chair

Attest:



Kevin J. Vonck, Executive Director

EXHIBIT A
Legal Description

Parcel 21-301

A parcel of land located in the Northwest 1/4 of the Southeast 1/4, Northeast 1/4 of the Southwest 1/4, Southeast 1/4 of the Northwest 1/4 and Government Lot 2 of Section 33, Township 24 North, Range 21 East, in the City of Green Bay, East side of Fox River, Brown County, Wisconsin, described as follows:

Commencing at the East one-quarter corner of said Section 33, thence South 89°01'02" West, 1327.76 feet to the point of beginning; thence South 0°14'24" West, 288.42 feet; thence South 89°01'02" West, 1317.20 feet; thence North 66°30' West, 115.50 feet; thence North 25°00' West, 132.00 feet; thence North 13°00' East, 123.58 feet; thence North 89°01'02" East, 108.42 feet; thence North 0°14'24" East, 1087.82 feet; thence North 85°25'24" East, 509.24 feet; thence North 3°53'07" West, 250.02 feet to a point on the Southerly right-of-way of University Avenue; thence along said right-of-way North 85°25'24" East, 50.00 feet; thence South 3°53'07" East, 250.02 feet; thence North 85°25'24" East, 409.69 feet; thence South 49°59'02" East, 467.82 feet; thence South 0°00'33" West, 841.55 feet; thence North 89°01'02" East, 15.14 feet to the point of beginning.

EXCEPTING THEREFROM that part described in Jacket 5164 Records, Image 27 described as follows:

That part of the Northeast 1/4 of the Southwest 1/4, Section 33, Township 24 North, Range 21 East, in the City of Green Bay, East side of Fox River, Brown County, Wisconsin, described as follows:

Beginning at the Northeast corner of said Northeast 1/4 of the Southwest 1/4 and running thence Southerly along the East line of said Northeast 1/4 of the Southwest 1/4 288.42 feet (4.37 chains); thence North 66°30' West 115.50 feet (1.75 chains); thence North 25°00' West 132.00 feet (2 chains); thence North 13°00' East to the North line of said Northeast 1/4 of the Southwest 1/4; thence Easterly along said North line to the point of beginning. Also, that part of the Northwest 1/4 of the Southeast 1/4 said Section 33, Township 24 North, Range 21 East, in the City of Green Bay, East side of Fox River, Brown County, Wisconsin, lying North of a line 288.40 feet South of and parallel to the North line of said Northwest 1/4 Southeast 1/4.

EXHIBIT B
Preliminary Concept Plan





Report to the
**Redevelopment Authority
of the City of Green Bay**

MEETING DATE

May 11, 2021

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # E.4

Consideration with possible recommendation to the City Council on continuing a financing guaranty with HCW, LLC for a project at 301 N. Adams Street.

BACKGROUND

In December 2005, the City entered into a Development Agreement with HCW, LLC on December 20, 2005, that included the City providing \$800,000 in TIF proceeds and an additional loan of \$3,500,000 to relocate APAC Customer Services to the Property.

In December 2015, the Developer agreed to refinance the City debt in exchange for a guaranty by the City on the private financing in the amount of \$2.5 million. Bank of Luxemburg approved a loan that would consolidate both loans and set up a new note with a 5 year balloon and 15 year amortization. The Bank's approval required a continuing guaranty from the City to mitigate the risk associated with the tenant's lease and the City's plan for the building. At this time, the City and Developer also entered into memorandum of understanding to establish additional terms and conditions related to the guaranty.

In March 2020, APAC Customer Services ceased operations at the property.

In February 2021, the Bank of Luxemburg and Developer again agreed to amend terms. The note was paid as agreed until the tenant vacated in 2020 at which time payments were adjust to interest plus escrow and then escrow only in October of 2020. The loan approval in place for HCW is to renew the existing balance through December of 2026. The current loan balance is \$3,551,001.14 February 2021. The note will be structured to allow HCW to make interest only and escrow payments through December of 2021 because of the effects COVID has had on the commercial real estate industry. The loan will then resume principal, interest, and escrow payments in January of 2022.

Upon further review of the guaranty documents, it is the opinion of the City's legal counsel that the City's obligations continue and do not require a separate approval by the City. An updated memorandum of understanding between the developer and the City remains desirable, but does not have any immediate impact on the City's obligations under the guaranty provided.

Subject to further review by the City's Finance Department and Legal Counsel as well as the Developer, Staff is recommending the following language for consideration by the Developer:

I. Developer shall regularly keep the City's Director of Community and Economic Development ("Director") informed of the status and resolution of any negotiations with tenants of the building located on the Property subject to this agreement, and will provide copies of any formal notifications, lease agreements or financial transactions related to leasing of the Property.

2. Developer and all its members shall provide annual financial disclosures to the Director in the form of tax returns or other formal deemed acceptable by the City.
3. Developer shall hold or reduce its outstanding accounts receivable on Developer's other projects unrelated to the agreement. The parties agree that the value of these receivables as of May 1, 2021 is \$_____.
4. If any Guarantor is released by the Bank of Luxemburg, Developer shall notify the City of any release and provide all relevant documentation to the Director within five (5) business days.
5. Developer shall provide the City with the Bank of Luxemburg's repayment schedule and attach it to this agreement as a condition of approval.
6. Developer shall provide the City with a defined collateral assigned to the City in the event of the Guaranty being called by the Bank.
7. If at any time the Bank calls the loan prior to the end of the approved payment schedule, and causes the City's Guaranty to be called upon, the Developer shall provide the City with a current financial statement of the real estate holding company, the personal financial statement of the Developer, and any other relevant financial documents that would be necessary to accurately convey Developer's financial situation that has caused the loan to be called. The City may pursue any and all means legally available to them in recovering any Guaranty payment made to the Bank from the Developer, including but not limited to special assessments on the subject Property.
8. As long as there is an outstanding balance on the loan and the City's guarantee is active, the City must approve any proposed sale of the property. Any arm's length sale of the property at a fair market value that is determined to be consistent with the City's adopted plans and ordinances will not be unreasonably denied.
9. The City will retain a right of first refusal on the Property for a period of five years after the obligations of the Developer and City on the Property have been met.

RECOMMENDATION

Staff recommends that the City formally acknowledge the continuance of the guaranty, that RDA recommend its approval to the City Council, and direct staff to continue to pursue an updated memorandum of understanding with the Developer for adoption by July 1, 2021.

FISCAL IMPACT

ATTACHMENTS

1. 20115 HCW Bank of Luxemburg Continuing Guaranty (Executed)
2. 2005 HCW APAC Project Development Agreement
3. MOU APAC Bld for \$2.5M City Guarantee

CONTINUING GUARANTY (LIMITED)

THIS CONTINUING GUARANTY (LIMITED) (the "Guaranty"), dated as of December 15, 2015, is given by the City of Green Bay, Wisconsin (the "Guarantor") to BANK OF LUXEMBURG (the "Lender").

RECITALS

The Guarantor acknowledges the following:

A. HCW LLC, a Wisconsin limited liability company (the "Borrower"), has requested that the Lender extend certain credit facilities to Borrower in the aggregate principal amount of up to \$4,400,000.00 (the "Loan") for purposes of refinancing the existing indebtedness owed by Borrower to (a) the Guarantor and (b) Fox Communities Credit Union.

B. The Loan will be evidenced by that certain Loan Agreement of even date herewith by and between Borrower, ("Business Loan Agreement"), and that certain Commercial Promissory Note of even date herewith in the original principal amount of \$4,400,000.00 made by Borrower in favor of Lender ("Note"), and will be secured by a Mortgage and Commercial Security Agreement on certain real estate owned by Borrower (the "Mortgage") and an Assignment of Leases and Rents (the "Assignment") with respect to the aforementioned real estate. The Business Loan Agreement, the Note, the Mortgage, and all other documents or instruments executed by the Borrower in connection with the Loan, all as amended, modified and supplemented from time to time, are referred to as the "Loan Documents".

C. The Lender is unwilling to make the Loan unless it receives this Guaranty from the Guarantor.

D. Guarantor shall benefit from Lender extending the Loan to Borrower and, therefore, is willing to execute this Guaranty.

AGREEMENTS

In consideration of the Recitals, and in order to induce the Lender to make the Loan, the Guarantor, intending to be legally bound, agrees as follows:

1. Guaranty. The Guarantor, subject to the limitations set forth in Section 2 below, absolutely, irrevocably and unconditionally guarantees payment of and performance of, and promises to pay or cause to be paid to the Lender when due whether at the maturity date, or by acceleration or otherwise or, to the extent not prohibited by law, at the time the Borrower becomes the subject of bankruptcy or other insolvency proceedings, the following (the "Obligations"): (a) the repayment by the Borrower of the Loan as evidenced by the Note and any extensions, renewals, refinancings or modifications of, or substitutes or replacements for, the Loan or the Note; (b) the amount of any payments made to the Lender or another by or on behalf of the Borrower which are recovered from the Lender by a trustee, receiver, creditor or other party pursuant to applicable federal or state law with respect to the Note; (c) the performance by Borrower of all of its obligations under the Loan Documents with respect to the Note; and (d) all costs, expenses and fees (including reasonable attorneys' fees) paid or incurred by the Lender in enforcing any of the terms,

covenants or provisions of this Guaranty or realizing upon this Guaranty or any collateral securing the Obligations ("Costs of Collection"). This is a guaranty of payment and not of collection.

2. Limitations. The amount of liability under this Guaranty is limited to \$2,500,000.00, plus Costs of Collection to the extent not prohibited by law, and the foregoing amount of limited liability under this Guaranty shall not be reduced based on a reduction in the amount of Obligations outstanding from time to time unless the amount of outstanding Obligations is less than the amount of limited liability.

3. Duration of Guaranty. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Obligations shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Release of any other guarantor or termination of any other guaranty of the Obligations shall not affect the liability of Guarantor under this Guaranty. (Shouldn't the City be covered in some way that we don't allow them to release the primary borrowers?)

4. Application of Monies. All monies available to the Lender for application in payment or reduction of the Obligations, including partial payments, may be applied by the Lender to the Obligations in such manner and in such amounts and at such time or times and in such order and priority as the Lender may elect.

5. Guarantor Not Released. The Lender may, without notice to or the consent of the Guarantor at any time and from time to time, without affecting the liability of the Guarantor hereunder (a) amend or consent to any amendment to any provision of any Loan Document, including without limitation, any change in the interest rate therein or any change in the time or manner of any payment required thereunder; (b) make or consent to any agreement for the extension, renewal, payment, compounding, compromise, discharge or release of any Obligations or any provision of any Loan Document, or for any modification of the terms thereof; (c) release or discharge the Borrower by acceptance of a deed in lieu of foreclosure or otherwise, as to all or any portion of the Obligations to the Lender; (d) release, substitute or add any one or more guarantors; (e) accept additional security or collateral for the Obligations; (f) settle or compromise the amount due or owing or claimed to be due or owing; (g) surrender, release or impair any collateral given as security for the Obligations; (h) fail to perfect its security interest in or realize upon any collateral given as security for the Obligations; and (i) fail to realize upon any of the Obligations or to proceed against the Borrower or any other guarantor. Credit may be granted or continued from time to time by the Lender to the Borrower without notice to or the consent of the Guarantor, regardless of any such Borrower's financial or other condition at the time of any such grant or continuation.

6. Default and Remedies. Failure by the Guarantor to perform any of the Obligations within thirty (30) days after written demand by the Lender shall constitute an Event of Default under this Guaranty and shall entitle the Lender to bring and prosecute a separate action or actions against the Guarantor whether or not the Borrower or any other guarantor is joined therein or a separate action or actions are brought against the Borrower or any other guarantor. The Lender may maintain successive actions for other Events of Default. Its rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until all of the Obligations to the Lender have been paid or performed in full.

The Guarantor's liability hereunder is independent of the obligations of the Borrower and any other guaranties at any time in effect with respect to the Obligations and may be enforced regardless of the existence, validity, enforcement or nonenforcement of any such other guaranties. Guarantor is jointly and severally liable with Borrower for the full and timely performance of all of the Obligations. This Guaranty may be enforced without the necessity at any time of resorting to or exhausting any other security or collateral held by or available to the Lender and without the necessity at any time of bringing action against the Borrower or having recourse to any of the property covered by any Mortgage or any other Loan Document through foreclosure proceedings or otherwise. Nothing herein contained shall at any time prevent the Lender from foreclosing any Mortgage, or from exercising any other rights available to it, and the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of the Guarantor, it being the purpose and intent of the Guarantor that its obligations hereunder shall be absolute and unconditional under any and all circumstances.

7. No Reliances. The Guarantor is fully aware of the financial condition of the Borrower and is executing and delivering this Guaranty based solely upon the Guarantor's own independent investigation of all matters pertinent hereto and is not relying in any manner upon any representation or statement of the Lender as to the collectability or enforceability of any of the Obligations or the financial condition of the Borrower. The Guarantor represents and warrants that it is in a position to obtain, and hereby assumes full responsibility for obtaining, any additional information concerning the Borrower's financial condition and any other matter pertinent hereto as the Guarantor may desire, and the Guarantor is not relying upon or expecting the Lender to furnish to the Guarantor any information now or hereafter in the Lender's possession concerning the same or any other matter. The Guarantor shall have no right to require the Lender to obtain or disclose any information with respect to the Obligations, the financial condition or character of the Borrower or the Borrower's ability to pay or perform the Obligations, the existence of any collateral or security for the Obligations, the existence or nonexistence of any other guaranties of all or any part of the Obligations, any action or inaction on the part of the Lender, the Borrower or any other person, or any other matter, fact or occurrence whatsoever. The Guarantor hereby agrees that the Lender may, with Guarantor's prior written approval in each instance, which shall not be unreasonably withheld, disclose any financial information or other data on the Guarantor that is in the Lender's possession to any participant in the Loan, any purchaser of the Loan or any successor or assignee of the Lender, provided, however, Guarantor's consent shall not be required with respect to any compliance or other regulatory review of Lender or its loan files or other books and records.

8. Representations and Warranties. The Guarantor makes the following representations and warranties which shall be deemed to be continuing representations and warranties until the Obligations have been paid or performed in full:

8.1 The Guarantor has the requisite power, authority, capacity and legal right to execute, deliver and perform this Guaranty.

8.2 This Guaranty, when executed and delivered, will constitute the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, even though any Obligation is invalid and unenforceable against the Borrower.

8.3 Neither the execution nor delivery of this Guaranty nor the consummation of the transactions contemplated hereby will, with or without notice and/or lapse of time:

8.3.1 constitute a breach of any of the terms and provisions of, or constitute a default under, any note, contract, document, instrument, agreement or undertaking, whether written or oral, to which the Guarantor is a party or to which the Guarantor's property is subject;

8.3.2 accelerate or constitute an event entitling the holder of any indebtedness of the Guarantor to accelerate the maturity of any such indebtedness;

8.3.3 conflict with or result in a breach of any writ, order, injunction or decree against the Guarantor or any court or governmental agency or instrumentality, whether national, state, local or other; or

8.3.4 conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation in effect on the date of this Guaranty.

9. Waivers. The Guarantor waives, to the full extent permitted by law:

9.1 any defense that may arise by reason of:

9.1.1 the incapacity, lack of authority, liquidation, dissolution, termination, death or disability of the Borrower, the Guarantor or any other guarantor;

9.1.2 the failure of the Lender to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of the Borrower, the Guarantor or any other guarantor;

9.1.3 the unenforceability, in whole or in part, of any or all of the Loan Documents; or

9.1.4 any action or inaction by the Lender or the Borrower, or any other event which should occur, after a bankruptcy proceeding is commenced by or against the Borrower;

9.2 presentment, demand for payment, notice, protest, diligence of collection, nonpayment or nonperformance of any Obligations, notice of discharge, notice of acceptance of this Guaranty and indulgences and notices of any other kind whatsoever;

9.3 any defense based upon an election of remedies by the Lender which destroys or otherwise impairs the subrogation rights of the Guarantor or the right of the Guarantor to proceed against the Borrower or any other guarantor for reimbursement, or both;

9.4 any defense based upon any failure to perfect any security interest in, or the taking of or failure to take any other action with respect to any collateral given to secure the Obligations;

9.5 any rights or defenses based upon an offset by the Guarantor against any obligation now or hereafter owed to the Guarantor by the Borrower;

9.6 any defense based upon any statute of limitations; or

9.7 any other defenses which the Borrower might have against the Lender.

It is the intention hereof that the Guarantor shall remain liable to the extent set forth herein until all of the Obligations have been paid or performed in full, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of the Guarantor.

10. Subordination of Borrower's Debts To Guarantor. Guarantor agrees that the Loan, and any other indebtedness owed by Borrower to Lender hereafter created and the Lender's rights under the Loan Documents, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, if Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Loan, and any other indebtedness owed by Borrower to Lender hereafter created. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Loan. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender.

11. Notices. Any notice or demand given or made under this Guaranty shall be in writing and shall be considered as properly given if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, or delivered to the intended addressee in person or delivered to an overnight courier service. Notice or demand that is mailed or given to the overnight courier service shall be effective upon its deposit in the United States mails or when given to the overnight courier service. Notice or demand given or made in any other manner shall be effective only if and when received by the addressee. For purposes of notice and demand, the addresses of the parties shall be:

Lender: Bank of Luxemburg
Attn: Garrett R. Jesko, Assistant Vice President
630 Main Street
Luxemburg, WI 54217

Guarantor: City of Green Bay, Wisconsin
Attn: City Attorney
100N. Jefferson Street
Green Bay, WI 54301

Any party shall have the right to change its address for notice or demand to any other location within the continental United States by giving 30 days' notice to the other party in the manner set forth herein for giving notices.

12. Applicable Law, Severability. This Guaranty shall be governed by and construed in accordance with the laws of the State of Wisconsin. The invalidity or unenforceability of any provision of this Guaranty shall not affect the validity or enforceability of any other provision.

13. No Waiver. No delay on the part of the Lender in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights. No notice to or demand on the Guarantor shall be deemed to be a waiver of the obligations of the Guarantor or of the right of the Lender to take further action without notice or demand as provided herein. No modification or waiver of the provisions of this Guaranty shall be effective unless in writing executed by the Lender nor shall any such waiver be applicable except in the specific instance for which given.

14. Entire Agreement. This Guaranty constitutes the entire agreement of the Guarantor and the Lender pertaining to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Guarantor and the Lender in connection herewith. This Guaranty may be amended only by a written amendment signed by the Guarantor and the Lender.

15. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of the respective successors and assigns of the Guarantor and the Lender except that the Guarantor's rights and obligations may not be assigned without the prior written consent of the Lender, which consent may be withheld in Lender's sole discretion. Lender may pledge or assign this Guaranty or any of its rights and powers hereunder without notice. As used herein, the words "successors and assigns" shall also be deemed to mean the heirs, executors, representatives and administrators of any natural person who is a guarantor.

16. Waiver of Jury Trial. THE GUARANTOR, AND THE LENDER BY ACCEPTING DELIVERY OF THIS GUARANTY, EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF THE GUARANTOR OR THE LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER'S EXTENSION OF CREDIT TO THE BORROWER.

17. Consent to Jurisdiction. The Guarantor, and the Lender by accepting delivery of this Guaranty, each agrees to submit to personal jurisdiction in the State of Wisconsin in any action or proceeding arising out of this Guaranty and, in furtherance of such agreement, the Guarantor agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Guarantor in any such action or proceeding may be obtained within or without the jurisdiction of any court located in Wisconsin and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Guarantor by registered mail to or by personal service at the last known address

of the Guarantor, whether such address be within or without the jurisdiction of any such court. The Guarantor, and the Lender by accepting delivery of this Guaranty, each consents that venue for any legal proceeding related to enforcement of this Guaranty shall be proper in the Circuit Court of Brown County, Wisconsin.

18. Headings. Headings of the sections of this Guaranty are inserted for convenience only and shall not be deemed to constitute a part hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter general shall be freely interchangeable.

19. Multiple Counterparts. This Guaranty may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original. Signatures of the parties transmitted by facsimile transmission or electronic pdf. format (via email) shall be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of December 16, 2015.

GUARANTOR:
CITY OF GREEN BAY, WISCONSIN

By: [Signature]
Name: James Schmitt
Title: Mayor

State of Wisconsin)
: SS
Brown County)

This instrument was acknowledged before me on Dec. 16, 2015 by Kris A. Teske, the Clerk of the City of Green Bay, Wisconsin.

[Seal]

By: Kris A. Teske
Name: Kris A. Teske
Notary Public, State of Wisconsin
My commission expires: May 25, 2018

**DEVELOPMENT AGREEMENT
HCW, LLC – APAC Project**

THIS AGREEMENT (this "Agreement") made as of the 20th day of December, 2005, by and between the City of Green Bay (hereinafter called the "CITY"), and HCW, LLC, a Wisconsin limited liability company (hereinafter called the "DEVELOPER").

WITNESSETH:

WHEREAS, the DEVELOPER has an accepted Commercial Offer to Purchase, dated on or about November 9, 2005, to purchase a certain part of the Baylake City Center building located on the real property at 301 North Adams Street, Green Bay, Wisconsin, known as Units 210, 220, 230, 240, 250 and 260 of the Baylake City Center Condominium, which constitutes the entire second floor of the Baylake City Center Building and legally described in Exhibit "A" attached hereto (hereinafter called "Project Site"), and

WHEREAS, the DEVELOPER is purchasing the Project Site for the purpose of relocating APAC Customer Services, Inc. (hereinafter "APAC"), an employer of more than 700 employees, to such Project Site: and

WHEREAS, the DEVELOPER has requested assistance to pay various costs related to the relocation of APAC to the Project Site, including, without limitation, acquisition costs and costs for improvements to the Project Site (hereinafter the "Project").

NOW, THEREFORE, in consideration of the promises and obligations herein set forth, it is mutually agreed between the parties as follows:

I. PROPOSED PROJECT SCOPE & CONSTRUCTION. The DEVELOPER proposes to acquire the Project Site and construct certain improvements to the Project Site at the request of APAC, including, without limitation, office type use improvements such as HVAC, electrical, telecommunications, flooring, ceilings, plumbing, interior wall construction and a sprinkler system, within approximately 70,000 gross square feet at the Project Site.

- A. The DEVELOPER will commence construction of the Project within 60 days after taking title to the Project Site and receiving all municipal approvals for the Project from the CITY and/or other governmental entities, and satisfaction of all conditions in Section III A herein (the "Commencement Date").
- B. The DEVELOPER will complete the Project (which shall be deemed achieved by the delivery of a certificate of occupancy or occupancy permit for any portion of the building constructed on the Project Site) within 6 months following Commencement Date, in accordance with site and building plans as approved by the CITY.
- C. The Project is not for speculation, but is for the sole purpose of relocating APAC to the Project Site.
- D. The CITY will cooperate and act promptly with respect to any and all permits necessary for completion of the Project. All parties agree to use their best efforts in good faith to obtain performance of the conditions of this Agreement.

- E. In the event the DEVELOPER fails to commence construction of the improvements by the Commencement Date or APAC fails to relocate to the Project Site within 9 months following the Commencement Date, the CITY may call in loans and financial assistance and request payment in full within 1 year of written notice by the CITY to call such loans or financial assistance, unless DEVELOPER obtains a written commitment for the lease or sale of part or all of the Project Site to a person or entity mutually agreeable to DEVELOPER and the CITY within such 1 year period. The parties agree that the CITY's right to call in the loans and financial assistance pursuant to this Section I(E) shall terminate upon DEVELOPER's commencement of construction of the improvements and APAC's relocation to the Project Site within the time periods set forth above.
- F. The DEVELOPER shall complete the acquisition of the Project Site by December 31, 2005. The CITY shall use the acquisition price of \$2,900,000.00 as the tax assessed value of the Project Site for January 1, 2006.

II. PARKING. The DEVELOPER will require a minimum 450 parking spaces of which such terms and conditions are described in and agreed to in Parking Agreement, attached hereto as Exhibit "B," which is incorporated herein by reference. Any amendments to the Parking Agreement shall not require any amendment to this Agreement.

III. FINANCING – TIF

- A. The DEVELOPER will obtain and provide proof of a commitment of a total financing package covering certain costs related to the Project. It is hereby acknowledged that as of the date of this Agreement said financing has been obtained by the DEVELOPER from Fox Communities Credit Union.
- B. The CITY will make available Tax Increment Financing (hereinafter "TIF") funding in the amount of \$800,000. The TIF proceeds shall be made available to the DEVELOPER by April 1, 2006. The debt shall be amortized over 13 years commencing upon execution of this Agreement.
- C. The DEVELOPER guarantees Tax Revenue depicted in Column G of the Cash Flow Proforma Analysis attached hereto as Exhibit "C". Said Tax Revenue is generated by the increased tax increment value within TIF No. 5 resulting from completion of the Project. The Cash Flow Proforma Analysis was relied upon by the parties in negotiating the terms of this Agreement and reflects an anticipated acquisition of the Project Site on or before December 31, 2005 in the amount of \$2,900,000.00 and completion of the Project prior to December 31, 2006 such that tax increment can be realized on January 1, 2006 and January 1, 2007. The DEVELOPER guarantees a tax assessed value for January 1, 2007 in an amount of at least \$5,250,000.00 and shall guarantee such value for a period of 11 additional years (i.e. January 1, 2008 to January 1, 2018) in order to assure that the TIF generated taxes from the Project will be sufficient to service the CITY's TIF debt obligation for the \$800,000.00 TIF funding made available to the DEVELOPER for the Project.
- D. The DEVELOPER will apply the \$800,000.00 TIF contribution to the following work items: Project Site acquisition, certain improvements to the Project Site, bond issuance costs, capitalized interest and any other eligible TIF cost permitted under state law.

- E. The CITY shall make available an additional loan in the amount of \$3,500,000.00 to the DEVELOPER. The proceeds related to such loan shall be made available to DEVELOPER on or before December 23, 2006. The loan will be amortized over twenty years commencing upon sale of the bonds. DEVELOPER shall make interest only payments for years one through five of the amortization period and principal and interest payments in years six through ten, with a balloon payment due at the end of year ten of the amortization period. All payments shall be due semi-annually. The cost of issuance and the interest rate on the loan for the DEVELOPER shall be the same as that received by the CITY. All lending costs/costs of issuance shall be added to the principal.
- F. Individual members of the DEVELOPER will provide personal guarantees to the CITY/RDA for the declining principal balance of the CITY/RDA's \$800,000.00 TIF funding and the \$3.5 Million loan made available to the DEVELOPER for the Project. The CITY/RDA shall have no right to recall payment of the full amount of the declining principal balance of the \$800,000 TIF funding or the \$3,500,000 loan except as otherwise provided in Section I(E) and Section IV (A) herein. Each tax year's guarantee is limited to an amount equal to the difference between the guaranteed Tax Revenue as depicted in Column G of Exhibit C and the actual tax bill for the Project Site for any given year (hereinafter "the Tax Shortfall"). In the event of a Tax Shortfall, the CITY shall invoice the DEVELOPER in the amount of that year's Tax Shortfall with payment due by March 1st immediately following the tax bill in which the Tax Shortfall was realized. Should the DEVELOPER fail to pay the invoice, the Tax Shortfall plus interest accrued at the then current rate for a 20 year borrowing at the State Trust Fund shall be applied as a special charge for the following tax year.
- G. The DEVELOPER shall execute a Mortgage as depicted in the attached Exhibit "D" as security for the \$3,500,000.00 loan. Said Mortgage shall be a second mortgage to the Mortgage to be granted by DEVELOPER to DEVELOPER's primary lender for the Project, known at this time to be the Fox Communities Credit Union.
- H. The DEVELOPER estimates that total Project cost will be no less than \$4,300,000.00, the total amount of CITY financial assistance provided. For all CITY financial assistance provided through this Agreement, the DEVELOPER shall submit to the CITY proof of Project expenditures in an amount equal or greater to the total financial assistance provided. Such documentation shall be submitted to the City within 30 days of the expenditure of the funds. In the event that the Project expenditures do not exceed \$4,300,000.00, any remaining funds shall be returned to the CITY and applied against the \$800,000.00 TIF funding.

IV. DEVELOPERS' TRANSFER RESTRICTIONS & OBLIGATIONS

- A. Sale of all or part of the Project Site will be permitted if the pro rata share of the then outstanding TIF obligations related to that part of the Project Site being sold are adequately guaranteed and secured by the remaining portion of the Project Site, subject to the approval and discretion of the RDA, which approval shall not be unreasonably withheld, or are assumed by the new buyer upon transfer subject to the approval and discretion of the RDA, which approval shall not be unreasonably withheld. No assignment of rights and obligations under this Development Agreement may occur without consent of the RDA, which consent shall not be unreasonably withheld. In the

event a transfer of all or part of the Project Site occurs without CITY/RDA consent, the CITY/RDA may recall payment of the pro rata share of the then outstanding principal balance of the TIF Funding related to that part of the Project Site sold. Upon full payment of such principal balance, the personal guarantees will be released or the amount secured by the personal guarantees will be reduced, as the case may be.

- B. Additions or changes to the ownership of the DEVELOPER or its assigns for purposes of effectuating this Agreement, and the adjustment or elimination of members' interests pursuant to an Operating Agreement are permitted only with prior written consent of the RDA, which consent shall not be unreasonably withheld or delayed. In the event of a change in membership of DEVELOPER, whereby a current member departs from DEVELOPER, RDA shall release the personal guarantee of the departing member if there is reasonable financial documentation provided to the RDA that the substituting member has equivalent or greater financial means as the departing member to support a personal guarantee.
- C. All requests requiring the CITY/RDA consent shall be submitted at least 30 days in advance of the date of the proposed action.
- D. The DEVELOPER shall be prohibited from selling or leasing the Project Site to a nonprofit organization during the term of this Agreement.
- E. Prior to the commencement of construction of any portion of the Project, the DEVELOPER shall furnish to the CITY/RDA evidence of the construction contract with respect to the development to be commenced.
- F. The DEVELOPER agrees, as a covenant running with the Project Site (and any subsequent lease or deed from DEVELOPER shall so provide), not to discriminate on the basis of race, color, religion, sex, or national origin in the sale, lease or rental or in the use or occupancy of the Project Site or any improvements located thereon, in violation of any applicable law or regulation; provided, however, that a violation of said covenant will not result (and any subsequent lease or deed shall so provide) in a reversion or forfeiture of title, but will entitle the RDA/CITY to such injunctive relief or other remedies as may be available at law.
- G. Prior to commencing the Project, the DEVELOPER shall obtain or cause to have obtained and keep in full force and effect during construction of the improvements to the Project Site, an all-risk builder's risk insurance policy for the Project Site on which construction is occurring with coverage equal to the total amount of the DEVELOPER's construction contract or contracts for all improvements being constructed. Such builder's risk insurance policy shall name the RDA/CITY as an additional insured, subordinate in its rights to such proceeds to the DEVELOPER's mortgagee. However, in such a case, DEVELOPER is not relieved of its obligation to perform under this Agreement, nor does it release DEVELOPER's TIF guarantees. The DEVELOPER shall also obtain or cause to have obtained and keep in full force and effect during construction of the improvements, for the benefit of the RDA/CITY, an owner's comprehensive protective liability insurance policy with personal injury coverage of at least \$2,000,000.00, and property damage coverage of at least \$1,000,000.00. Such policies of insurance shall be written by insurance companies authorized to do business in the state. Prior to commencement of construction, the DEVELOPER shall file with the CITY Insurance

Department a certificate of insurance setting forth that all coverage herein is in full force and effect and providing the RDA/CITY will be given ten (10) days written notice prior to termination or cancellation of such coverage.

V. OTHER RIGHTS & REMEDIES

- A. The time for performance of any term, covenant, condition, or agreement of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means any delays beyond the reasonable control of the party obligated to perform the applicable term, covenant, condition, or agreement under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to (i) adverse environmental conditions (such as contaminated soil or groundwater), (ii) adverse weather conditions, (iii) acts of God, (iv) acts of any other party in this Agreement, (v) strikes, (vi) labor disputes, (vii) governmental restrictions, (viii) court injunctions, (ix) riot, (x) civil commotion, (xi) acts of public enemy and (xii) casualty.
- B. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such defaulting party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the defaulting party.
- C. Completion of the Project in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the RDA/CITY; accordingly, the RDA/CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the RDA and the DEVELOPER may seek damages as authorized.
- D. The RDA/CITY and the DEVELOPER shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a party should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- E. Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more such remedies shall not

preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance or manner of time thereof, of any obligation of any other party or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the party making waiver with respect to the particular obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations.

- F. No official or employee of the RDA/CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official, or employee of the RDA/CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the RDA/CITY, or for any amount, which becomes due to the DEVELOPER or its successors under this Agreement.
- G. **Applicable law, Severability and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or parties thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the RDA/CITY and the DEVELOPER with respect to its subject matter, there being no terms, conditions, warranties, or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.
- H. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the parties hereto.
- I. **Third Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- J. **No Partnership Created.** This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.
- K. **Formalities and Authority.** The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience

and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.

- L. **Notices and Demands.** A notice, demand, or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

To DEVELOPER: HCW, LLC
 Attn: Paul Belschner
 3148 Mid Valley Drive
 De Pere, Wisconsin 54115
 Fax: (920) 532-3831

With a copy to: Hager, Dewick & Zuengler, S.C.
 Attn: Attorney David P. Dewick
 200 South Washington Street, Suite 401
 Green Bay, WI 54301

To CITY: City of Green Bay
 Attention: City Clerk
 100 N. Jefferson Street
 Green Bay, WI 54301

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand, or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

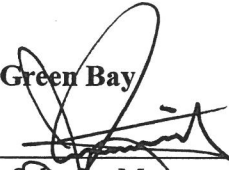
Notwithstanding anything to the contrary provided for herein, in the event that the RDA or the CITY sends a default notice to DEVELOPER, it shall also send a copy of such default notice to the following mortgagee:

Fox Communities Credit Union
Attn: Ms. Heather Vander Heyden
3401 East Calumet St.
Appleton, WI 54915

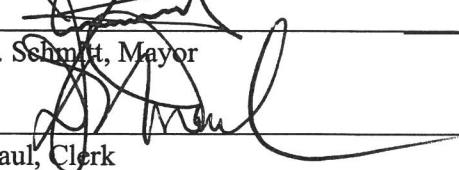
- M. **Non-merger and Survival.** Any provision in this Agreement which has not been fully performed prior to transfer of possession of the Project Site shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession of the Project Site and be in force and effect until performed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date first above written.

CITY:
City of Green Bay



James J. Schmitt, Mayor



Doug Daul, Clerk

DEVELOPER:
HCW, LLC, a Wisconsin limited liability company


By: _____
Scott R. Smet, Authorized Member

EXHIBIT A

Legal Description of Project Site

:

Units 210, 220, 230, 240, 250 and 260, Baylake City Center Condominium, a Condominium according to the Declaration of Condominium recorded as Document No. 2173811, and amendments thereto, together with said Units' appurtenant undivided interest in and to the common elements and limited common elements, if any, thereto, in the City of Green Bay, East side of Fox River, Brown County, Wisconsin.

Exhibit B

PARKING AGREEMENT

THIS AGREEMENT is made by and between the CITY OF GREEN BAY, WISCONSIN, a municipal corporation ("City"), and HCW, LLC, a limited liability company ("HCW") for the benefit of its tenant(s) located at Units 210-260 of Baylake City Center Condominium (the "Property"), including APAC Customer Services, Inc., an Illinois Corporation ("APAC"). This Agreement is made in furtherance of a Development Agreement entered into by the City and HCW dated _____, 2005. Capitalized terms used herein without definition have the meanings assigned to them in the Development Agreement.

ARTICLE I CHERRY STREET RAMP

1.1. Lease of Parking Stalls within Cherry Street Ramp and Pine Street Ramp. The City hereby agrees to lease to HCW four hundred and fifty (450) parking stalls within the parking facility known as the Cherry Street Parking Ramp located at 202 Cherry Street, Green Bay, Wisconsin. HCW or its tenant, APAC, may allocate any number of these total stalls to the Pine Street Parking Ramp located at 333 Pine Street, Green Bay, Wisconsin at any time during the term of this Agreement upon thirty (30) day notice to the City at the same rate as defined herein for parking within the Cherry Street Ramp. Any and all parking stalls to be leased hereunder by HCW shall be accessible 24 hours a day 7 days a week. Said stalls will not be reserved and are subject to use by the general public at all times, but the City shall make all reasonable efforts to assure availability of said stalls between 7:00 AM and 5:00 PM, Monday through Friday.

1.2. Options for Additional Parking Stalls. At any time during the term of this Agreement, HCW shall have a continuous option to lease additional stalls in the Pine Street Ramp at \$25 per stall plus the yearly increase incurred since the inception of this Agreement until this Option is exercised. HCW may lease such stalls on an as-needed basis. On a monthly basis, HCW may, by written notice to the City, increase or decrease the number of additional stalls (beyond guaranteed number of 450 total stalls), which it intends to use and for which it is required to pay additional rent as set forth herein. Parking stalls made available for HCW under this Section 1.2 may be located anywhere within the Pine Street Ramp, as determined within the sole discretion of HCW, including on the roof.

1.3. Rent; Minimum Rent Payments. This Agreement shall commence upon HCW's written request to the City to make parking available, which shall be no less than 30 days prior to actual use of the stalls. In the event the lease commences in 2005, for the lease period ending December 31, 2005, on or before the first day of each month, HCW shall pay to the City \$11,083.34 for 450 stalls within the Cherry Street Ramp, plus any additional rent as may be required and calculated as per Section 1.2 of this Agreement.

For the period of January 1, 2006 through December 31, 2006 and each year thereafter, the respective rates shall be adjusted to reflect increasing costs in operation and maintenance of

the City's parking system. The Parking Division will determine the annual increase and inform HCW prior to January 1st of each year. In no event shall the rate be increased more than three percent (3%) per year.

1.4. Term. This Agreement shall commence upon written request of HCW, of which the commencement date is currently anticipated to be June 1, 2006, and shall be for an initial period of 5 years. This Agreement shall automatically renew for successive periods of one (1) year each, unless HCW terminates this Agreement by providing City with written notice of such termination 30 days prior thereto. It is the intent of the parties that HCW have the right to lease the parking stalls identified herein on the terms and conditions set forth herein for as long as HCW's tenant, APAC, occupies the Property. Notwithstanding anything contained herein to the contrary, in the event the lease between HCW and APAC is terminated for any reason, the parties agree that HCW shall continue to have the right to use the parking stalls which are subject to this Agreement on the same terms and conditions of this Agreement, however, the parties shall renegotiate the rates/rent amounts and location/allocation of stalls between Pine Street and Cherry Street Ramps as set forth herein, which rates/rent amounts shall be subject to increase but shall not exceed the market rates in effect at the time of such renegotiation. In the event the parking needs of HCW, or its tenants of the Property, subsequent to the termination of the lease between HCW and APAC, are less than the number of parking stalls which are subject to this Agreement at such time, HCW has the option to reduce the number of such parking stalls and rent shall be adjusted accordingly.

1.5. Maintenance and Operating Expenses. Maintenance and operation of the Cherry Street and Pine Street Ramps shall be provided by the City at the City's sole cost and expense.

1.6. Parking Passes. At least one week prior to the date parking passes are needed due to changes in location or occupancy, HCW shall notify the City's Parking Division as to the exact number of parking ramp passes needed, the location of the parking stalls, and the date so required. Any request made for a pass after the first of the month shall be pro-rated to the nearest half month (1st or 15th day of the month).

1.7. Use. It is understood by and between the parties that all parking stalls provided hereunder shall be for the exclusive use of HCW's tenants, including, without limitation, APAC, and their employees. The parking stalls shall not be used for any purpose other than off-street parking, except by special consent of the City.

1.8. Relocation. The parties agree and acknowledge that the terms of this Agreement were agreed to further the parties' joint interests in relocating APAC to downtown Green Bay. APAC and HCW have demonstrated a willingness and positive track record of working with the City in an effort to relocate and expand APAC's business in downtown Green Bay. APAC and HCW understand that the Cherry Street Ramp was constructed to facilitate downtown growth along the waterfront. The City has plans to secure a significant development on the corner of Washington and Walnut Streets, which will require parking spots in the Cherry Street Ramp. APAC and HCW have agreed to relocate at least 150 of their parking stalls in the Cherry Street Ramp to the Pine Street Ramp once a \$20 Million development or greater is secured for this

The City shall send to APAC a copy of any notice that it sends to HCW with respect to this Agreement, including without limitation, any notice of default or breach of this Agreement.

2.2. Default. In the event that HCW shall default in the payment of any rent due hereunder and if HCW shall not cure such default within ten (10) days of the City's written notice thereof, then the City shall be entitled to terminate this Agreement as to the particular parking facility or facilities for which rent has not been paid.

In the event of any other default in or breach of this Agreement, the defaulting party shall upon written notice from the other party, proceed promptly to remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or diligently pursued, the aggrieved party shall have such remedies as are provided at law, including proceedings to compel specific performance by the party in default or breach of its obligation.

2.3. Applicable Law; Severability; Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or parties thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement), the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law. This Agreement and the Development Agreement set forth the entire understanding between the City and HCW with respect to parking for its tenant, APAC.

2.4. Amendments. This Agreement may not be changed orally, but only be agreement in writing, duly authorized and signed by the parties hereto or their respective successors and assigns.

2.5. Third Parties. Except as specifically provided herein, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.

2.6. Assignment. HCW's rights and obligations hereunder shall be freely assignable to any party or parties having an interest in Units 210-260 of the Baylake City Center Condominium located at 301 North Adams Street so long as APAC remains a tenant in such space.

2.7. No Partnership Created. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render either party liable for the debts or obligations of the other party.

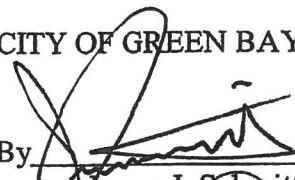
2.8. Formalities and Authority. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

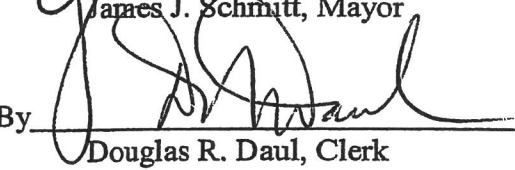
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written

Dated: Nov 23, 2005

Dated: Nov 23, 2005

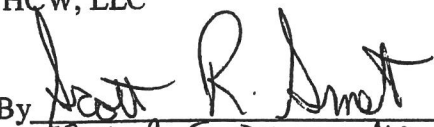
CITY OF GREEN BAY

By 
James J. Schmitt, Mayor

By 
Douglas R. Daul, Clerk

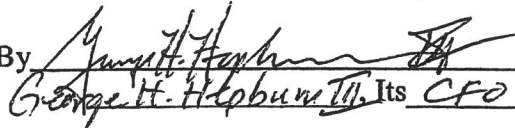
Dated: November 23, 2005

HCW, LLC

By 
Scott R. Smet, Its Member

Dated: NOVEMBER 22, 2005

APAC CUSTOMER SERVICES, INC.

By 
George H. Hilburn, Its CFO

City of Green Bay

Example Tax Increment District No. 5

Cash Flow Proforma Analysis

Assumptions		
Annual Inflation During Life of TID.....		3.00%
2004 gross tax rate (per \$1000 equal. value).....		\$21.000
Annual Gross Tax Rate Change.....		-3.00%
Investment rate for DSRF & Inv. Proceeds.....		3.00%

Background Data					
(a)	(b)	(c)	(d)	(e)	(f)
Val. Date	TIF District Valuation (January 1)	Inflation Increment	Construction Increment	TIF Increment Over Base	Tax Rate
2005	Base Value \$698,250				
2005	\$698,250	\$20,948	\$2,200,000	\$2,220,948	\$21.00
2006	\$2,919,198	\$87,576	\$2,300,000	\$4,608,523	\$21.00
2007	\$5,306,773	\$159,203		\$4,767,727	\$20.37
2008	\$5,465,977	\$163,979		\$4,931,706	\$19.76
2009	\$5,629,956	\$168,899		\$5,100,605	\$19.17
2010	\$5,798,855	\$173,966		\$5,274,570	\$18.59
2011	\$5,972,820	\$179,185		\$5,453,755	\$18.03
2012	\$6,152,005	\$184,560		\$5,638,315	\$17.49
2013	\$6,336,565	\$190,097		\$5,828,412	\$16.97
2014	\$6,526,662	\$195,800		\$6,024,212	\$16.46
2015	\$6,722,462	\$201,674		\$6,225,886	\$15.96
2016	\$6,924,136	\$207,724		\$6,433,610	\$15.49
2017	\$7,131,860	\$213,956		\$6,647,566	\$15.02
2018	\$7,345,816	\$220,374		\$6,867,940	\$14.57
2019	\$7,566,190	\$226,986		\$7,094,926	\$14.13
2020	\$7,793,176	\$233,795		\$7,328,721	\$13.71
2021	\$8,026,971	\$240,809		\$7,569,530	\$13.30
2022	\$8,267,780	\$248,033		\$7,817,563	\$12.90
2023	\$8,515,813	\$255,474		\$8,073,038	\$12.51
2024	\$8,771,288	\$263,139		\$8,336,177	\$12.14
2025	\$9,034,427	\$271,033		\$8,607,209	\$11.77
2026	\$9,305,459	\$279,164		\$8,886,373	\$11.42
2027	\$9,584,623	\$287,539		\$9,173,912	\$11.08
2000	TID Inception			\$4,673,912	\$4,500,000

2000 TID Inception

2023 Final Year to Incur TIF related costs.

2027 Maximum legal life of TID with extensions (27 Years)

Revenues					
(g)	(h)	(i)	Expenditures		
Tax Revenue	Investment Proceeds	Total Revenues	Principal (4/1)	Interest (4/1 & 10/1)	Debt Service
\$0	\$0	\$0			
\$0	\$0	\$0			
\$46,640	\$0	\$46,640			\$64,195
\$93,876	\$0	\$93,876			\$64,195
\$94,205	\$364	\$94,569			\$64,195
\$94,522	\$1,275	\$95,797			\$64,195
\$94,826	\$2,223	\$97,049			\$64,195
\$95,119	\$3,209	\$98,327			\$64,195
\$95,399	\$4,233	\$99,632			\$64,195
\$95,669	\$5,296	\$100,965			\$64,195
\$95,928	\$6,399	\$102,326			\$64,195
\$96,176	\$7,543	\$103,718			\$64,195
\$96,413	\$8,728	\$105,142			\$64,195
\$96,641	\$9,957	\$106,598			\$64,195
\$96,860	\$11,229	\$108,089			\$64,195
\$97,069	\$12,546	\$109,614			\$64,195
\$97,268	\$13,908	\$111,177			\$64,195
\$97,459	\$15,318	\$112,777			\$64,195
\$97,642	\$16,775	\$114,417			\$64,195
\$97,816	\$18,282	\$116,098			\$64,195
\$97,982	\$19,839	\$117,821			\$64,195
\$98,141	\$21,448	\$119,589			\$64,195
\$98,292	\$23,110	\$121,401			\$64,195
\$1,973,941	\$201,680	\$2,175,622			\$1,283,900

(1) Increment per 10/17/05 e-mail from city.

TID Status		
(m)	(n)	(o)
Annual Balance	Year End Cumulative Balance (December 31)	Cost Recovery
\$0	\$0	
\$0	\$0	
(\$17,555)	(\$17,555)	
\$29,681	\$12,126	
\$30,374	\$42,499	
\$31,602	\$74,101	
\$32,854	\$106,955	
\$34,132	\$141,087	
\$35,437	\$176,524	
\$36,770	\$213,294	
\$38,131	\$251,425	
\$39,523	\$290,949	
\$40,947	\$331,896	
\$42,403	\$374,299	
\$43,894	\$418,192	
\$45,419	\$463,612	Expenditures Recovered
\$46,982	\$510,593	Expenditures Recovered
\$48,582	\$559,176	Expenditures Recovered
\$50,222	\$609,398	Expenditures Recovered
\$51,903	\$661,301	Expenditures Recovered
\$53,626	\$714,927	Expenditures Recovered
\$55,394	\$770,320	Expenditures Recovered
\$121,401	\$891,722	Expenditures Recovered

MORTGAGE

Notary Public, State of Wisconsin
My Commission:

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made as of December 18, 2015 by and between the City of Green Bay ("City") and HCW, LLC ("Developer").

RECITALS:

- A. WHEREAS, the RDA, City and Developer entered into a Development Agreement ("Agreement") dated as of December 20, 2005; and,
- B. WHEREAS, Developer has made payments to the City pursuant to the terms and conditions of that Agreement; and,
- C. WHEREAS, Developer is re-financing certain debt as described in the Agreement and in return the City is providing a Guaranty to the Bank of Luxemburg; and
- D. WHEREAS, City and Developer desire to further supplement that Agreement and Guaranty with terms and conditions related to certain financial matters pursuant to this MOU.

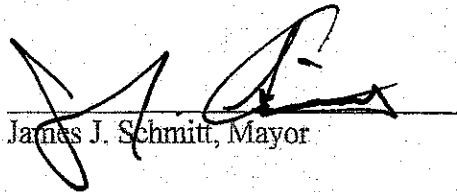
NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein and other good and valuable consideration, the parties agree as follows:

- 1. Developer shall notify and keep a representative of the City reasonably informed of the status and resolution of any negotiations with its tenants of the building located on the Property subject to the Agreement.
- 2. Developer and all of its members shall provide annual financial disclosures to the City's Finance Director.
- 3. Developer shall hold or reduce its outstanding accounts receivable on Developer's other projects unrelated to the Agreement. The Parties agree that the value of these receivables is \$296,203.00 as of September 30, 2015.
- 4. If any Guarantor is released by the Bank of Luxemburg, Developer shall notify the City of any release and provide all relevant documentation to a representative of the City within five (5) business days.
- 5. Developer shall provide the City with the Bank of Luxemburg's repayment schedule within thirty (30) days of the execution of this MOU.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the parties have executed this MOU as of the date first above written.

CITY OF GREEN BAY


James J. Schmitt, Mayor

HCW, LLC


Scott R. Smet, Authorized Member



Report to the
**Redevelopment Authority
of the City of Green Bay**

MEETING DATE

May 11, 2021

PREPARED BY

Krista Cisneroz, Staff

AGENDA ITEM # E.5

Consideration with possible action on a substantial amendment to the 2020 Annual Action Plan for the reallocation of \$200,000.00 in CDBG funding from Affordable Housing Reconstruction Project to Infrastructure & Park Improvements in CDBG Eligible Areas.

BACKGROUND

As part of the City of Green Bay's 2020 Annual Action Plan under the Community Development Block Grant Program (CDBG) the City allocated \$200,000.00 to Affordable Housing Reconstruction projects. The Department of Community and Economic Development staff had an employee who was going to oversee and manage the construction of these housing units. That staff person has resigned and the department is lacking the staffing to complete these types of projects.

To ensure the CDBG funds are spent in a timely manner in the community, current staff has meet with the Department of Public Works to identify some infrastructure improvement activities (alley resurfacing, repaving a portion of street including watermain and sewer, and the placement of 31 pedestrian ramps) in the Shipyard Neighborhood. We would like to recommend that the Redevelopment Authority authorize the transfer of \$200,000.00 in CDBG funding from Affordable Housing Reconstruction Project to Infrastructure & Park Improvements in CDBG Eligible Areas, to compete these activities.

RECOMMENDATION

To approve the substantial amendment to the 2020 Annual Action Plan for the reallocation of \$200,000.00 in CDBG funding from Affordable Housing Reconstruction Project to Infrastructure & Park Improvements in CDBG Eligible Areas.

FISCAL IMPACT

ATTACHMENTS

- I. 2020 RDA Funding Amended

2020 Community Development Block Grant Allocations

Potential Projects	Staff Recommendations	Program Income	TOTAL
Public Service Programs			
Fair Housing Services	\$20,000.00	\$0.00	\$20,000.00
Community Gardens	\$12,000.00	\$0.00	\$12,000.00
Arts Coordinator	\$46,500.00	\$0.00	\$46,500.00
Homelessness Prevention	\$70,000.00	\$0.00	\$70,000.00
Subtotal for Public Service	\$148,500.00	\$0.00	\$148,500.00
Housing Acquisition and Demolition	\$111,337.00	\$75,000.00	\$186,337.00
Emergency Housing Rehabilitation	\$50,000.00	\$0.00	\$50,000.00
Affordable Housing Reconstruction	\$200,000.00	\$0.00	\$200,000.00
Infrastructure and Park Improvements in CDBG Eligible Areas	\$75,000.00	\$0.00	\$75,000.00
Beautification/Art Projects in CDBG Eligible Areas	\$25,000.00	\$0.00	\$25,000.00
Economic Development Façade/Demo	\$50,000.00	\$0.00	\$50,000.00
Economic Development Revolving Loan	\$150,000.00	\$100,000.00	\$250,000.00
* CDBG Administration	\$202,211.00	\$15,000.00	\$217,211.00
TOTALS	\$1,012,048.00	\$190,000.00	\$1,202,048.00

2020 CDBG Allocation - \$1,012,287.00

2020 Estimated Program Income \$300,000 (\$200,000 is restricted to Economic Revolving Loan fund)

Public Services-limited to a max of 15% total Entitlement + prior year PI

*** CDBG Administration amount is limited to a maximum of 20% total Entitlement plus Program Income**

2020 HOME Allocations

Potential Projects	Staff Recommendations	Program Income	TOTAL
Single Family Rehabilitation Loans	\$100,000.00	\$90,000.00	\$190,000.00
Housing Development Advancement Projects	\$312,206.00	\$0.00	\$312,206.00
Community Housing Development Organizations (CHDO) Set Aside	\$85,000.00	\$0.00	\$85,000.00
*HOME Administration	\$55,111.00	\$10,000.00	\$65,111.00
TOTALS	\$552,317.00	\$100,000.00	\$652,317.00

2020 HOME Allocation \$552,451.00

2020 Estimated Program Income \$100,000

* HOME Administration amount is limited to a maximum of 10% total Entitlement plus Program Income

CHDO set-aside must be a minimum of 15% (\$) of total Entitlement amount; Eligible activities include:

- Acquisition and/or rehabilitation of housing
- New construction of housing



Report to the
**Redevelopment Authority
of the City of Green Bay**

MEETING DATE

May 11, 2021

PREPARED BY

Ronda Bitney

AGENDA ITEM # E.6

Consideration with possible action to approve a one year lease with On Broadway to utilize 325 N. Broadway (Parcels 5-586 and 5-587) as a pocket park for the purpose of promoting outdoor activity and community gathering.

BACKGROUND

The RDA had issued a one year lease in April 2019, expiring April 2020.

Staff has received a request for a new lease with a one year term and a one year extension option. The intent is to utilize the space with different activities and possibly add some temporary infrastructure improvements similar to the pocket park that was created in 2019 to allow for outdoor dining and other public uses. The lease provides staff the opportunity to give a 30-day notice if there would be an opportunity to develop the site.

RECOMMENDATION

To approve a one year lease with On Broadway to utilize 325 N. Broadway (Parcels 5-586 and 5-587) as a pocket park for the purpose of promoting outdoor activity and community gathering.

FISCAL IMPACT

ATTACHMENTS

1. On Broadway - Property Lease
2. Pocket Park

**PROPERTY LEASE AGREEMENT BETWEEN
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY
AND ON BROADWAY, INC.
FOR
325 N. BROADWAY**

THIS PROPERTY LEASE AGREEMENT (the "Agreement"), entered into this 11th day of May 2021, between the Redevelopment Authority of the City of Green Bay, ("Lessor") and On Broadway Inc. ("Lessee"), collectively referred to as the Parties, is to evidence the following agreements and understandings:

WHEREAS, Lessor owns real property located at 325 N. Broadway, Green Bay, Wisconsin, Parcels 5-586 and 5-587, ("Property"); and

WHEREAS, Lessee wishes to lease and utilize the Property as a pocket park for the purpose of promoting outdoor activity and community gathering; and

WHEREAS, Lessor acknowledges that use of the Property as proposed by Lessee would be a benefit to the surrounding community to create a safe, active and inviting public space; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

- I. **Term and Termination.** This Agreement shall commence on May 11th, 2021 ("Effective Date") and shall terminate on May 30, 2022 ("Initial Term"). Upon the expiration of the initial term, the Lessee shall have an option to renew for additional one (1) year term(s) upon written mutual agreement of the Parties (each shall be generically referred to herein as "Additional Term(s)") (the Initial Term and Additional Term(s) shall be jointly referred to as "Term"). Either Party may terminate this Agreement for any reason upon a thirty (30) day written notice to the other Party.
- II. **Maintenance and Utilities.** Lessor shall be responsible for any and all repairs and maintenance to the Property including but not limited to lawn maintenance and snow removal. The Lessee covenants and agrees that it will, throughout the term of this Agreement, or any renewals or extensions thereof, be responsible for the payment of all utilities applicable to the operation of the Property by the Lessee, and the Lessee shall be responsible for the maintenance of all improvements on the Property.
- III. **Property Leased to Lessee.** The Lessor hereby grants to Lessee an exclusive lease of the Property for the purpose of operating a pocket park for the purpose of promoting outdoor activity and community gathering. The Lease Premises are outlined and identified in Exhibit A. The Property consists of real property Parcels 5-586 and 5-587. During the Term of the Lease, the Lessee is required to maintain the Property in the same condition, reasonable wear and tear excluded, as the Property is in at the date of the commencement of this Agreement, at the Lessee's cost. Failure to adequately maintain the Property will

be a material breach of this Agreement and may lead to Lessor's termination of this Agreement, subject to notice of such breach and a reasonable period of time to cure such breach.

- IV. **Rent.** Lessee shall pay rent to Lessor in exchange for exclusive use of the Property. The rental rate shall be \$1 per term. Payment is due upon execution of the Agreement. Upon expiration of the Agreement, if the Parties wish to renew for additional terms the Lessor reserves the right of increasing the rental amount at a percentage rate for such additional terms. Rent is due the first (1st) day of January for any additional terms.
- V. **Subletting and Assignment.** Lessee may not assign its rights or delegate its obligations under this Agreement without the prior written consent of the Lessor. This Lease and/or any interest herein shall not be mortgaged, pledged, encumbered, assigned, or otherwise transferred in any manner by Lessee, voluntarily or involuntarily, by operation of law or otherwise, or the Property or any part thereof, sublet or occupied for the conduct of any business by any third person, firm, or corporation or for any other purpose than as herein authorized without the prior written consent of Lessor.
- VI. **Improvements.** Lessee may make improvements to the Property during the term of this Agreement. Any such improvements shall be at the sole expense of the Lessee unless otherwise agreed to by the Lessor. The Lessor shall retain ownership of any improvements physically attached to the Property. The Lessee shall be responsible for the maintenance of any and all such improvements to the Property.
- VII. **Indemnification.** Lessee hereby agrees to indemnify, defend and hold harmless the Lessor and the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Lessee or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on the Lessor and or the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the Lessor and or the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the Lessor and or the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers.
 - a. Lessee shall reimburse the Lessor and or the City of Green Bay, its elected and appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

- b. In the event that Lessee employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Lessee's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the Lessor and the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.
- c. This indemnity provision shall survive the termination or expiration of this Agreement.

VIII. **Insurance.** Lessee agrees that it shall provide to the City of Green Bay and to the Lessor, at its own costs and expense, a Certificate of Insurance with a company or companies authorized to do business in the State of Wisconsin with coverage and minimum policy limits as follows:

- a. General Liability - \$1,000,000.00 per occurrence, \$2,000,000.00 annual aggregate for bodily injury, personal injury and property damage.
- b. Business Automobile Coverage
 - i. Minimum Limits - \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident.
 - ii. Must cover liability for "Any Auto" – including Owned, Non-Owned and Hired Automobile Liability.
- c. Workers Compensation and Employers Liability
- d. Must carry coverage for Statutory Workers Compensation and Employers Liability minimum limit of:
 - i. \$100,000 Each Accident
 - ii. \$500,000 Disease Policy Limit
 - iii. \$100,000 Disease – Each Employee
- e. Waiver of Workers Compensation Subrogation – The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy that arises from the work performed by the named insured for or on behalf of the City of Green Bay.
- f. The City of Green Bay and the Redevelopment Authority of the City of Green Bay, its officials, employees, and agents shall be named as "Additional Insureds" on the General Liability Policies. This coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage is primary,

contributing or excess. This contract shall include an endorsement stating the following:

- i. Written Notice of Cancellation or Non-Renewal shall be sent to the City of Green Bay no less than thirty (30) days prior to such cancellation or non-renewal at the following address:

City of Green Bay
Attn: Risk Management
100 North Jefferson Street
Green Bay, Wisconsin 54301

- ii. Said Certificate of Insurance shall be attached hereto and incorporated herein by reference.

IX. **Default and Termination.** In the event the Lessee shall default in any of the amounts due to the Lessor as set forth in this Agreement or in the observance of any of the covenants, agreements, commitments or conditions herein contained or any such default shall continue un-remedied for a period of 30 days after written notice thereof to Lessee, or (a) Lessee shall make an assignment of its property for the benefit of creditors, or (b) Lessee shall petition a court to be adjudged a bankrupt, or (c) if a petition in bankruptcy shall be filed in any court against Lessee for more than 30 days, or (d) if Lessee shall be judicially determined to be insolvent, or (e) Lessee shall be adjudged a bankrupt, or (f) if a receiver or other officer shall be appointed to take charge of the whole or any part of Lessee's property or to wind up or liquidate its affairs, or (g) if Lessee shall seek a reorganization under any of the terms of the National Bankruptcy Act, as amended, or under any other insolvency law, or (h) Lessee shall admit in writing its inability to pay its debts as they become due, or (i) if any final period of 30 days from the date on which it becomes final, or (j) if Lessee shall abandon the Property, the Lessor may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Lessee, including expressly the specific enforcement hereof, forthwith have the cumulative rights to immediately terminate this Agreement and all rights of the Lessee hereunder. Further, in the event of lapse of insurance policies or coverage and protection as required by this Agreement, the Lessor may, with a 15-day notice to the Lessee, declare this Agreement terminated. Lessee shall have no access rights to or use of the Property unless all insurance policies required by this Agreement are in full force and effect.

- a. In the event of termination of this Agreement for default, Lessee may make no claim for compensation for improvements and the Lessor shall retain title and ownership of said Property, together with all buildings and improvements thereon, without any payment whatsoever to Lessee. No improvements, buildings or fixtures shall be removed from the Property during the term of this lease or any renewal period of this lease without the written consent of the Lessor, except any equipment or trade fixtures of Lessee which Lessee lawfully removes prior to the termination of this lease.

- X. **Disclosure and Acknowledgement.** With full and complete knowledge, Lessee accepts the Property, and any improvements made thereto during the course of this Agreement, in an “as is” condition.
- XI. **Non-Discrimination.** During the performance of this Agreement, the Lessee shall not discriminate against any patron or employee or applicant for employment on the basis of race, religion, disability, sex, sexual orientation, national origin, color, creed, marital status, age or public assistance status.
- XII. **No Partnership.** The Parties hereto agree that they are acting as independent contractors and that nothing in this Agreement is intended to create, nor shall anything herein be construed or interpreted as creating a partnership, joint venture of any such mutual relationship between the Parties. Each Party shall be responsible for its own separate debts and obligations.
- XIII. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
- XIV. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement.
- XV. **Notices.** Any and all notices which either Party may give hereunder shall be in writing and delivered by registered or certified mail, return receipt requested, or by personal delivery, or by first class mail postage prepaid. In the case of first class mail, postage prepaid, delivery shall be deemed to have been accomplished two (2) days after deposit of the notice in the mail. Until written notice is delivered to the other party of a change in address, the addresses set forth below shall be presumed to be current:
- a. If to Lessor: Neil Stechschulte, Director
Redevelopment Authority of the City of Green Bay
100 North Jefferson Street, Room 608
Green Bay, WI 54301
- b. If to Lessee: On Broadway, Inc.
340 N Broadway, Ste 165
Green Bay, WI 54303
- XVI. **Severability.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

XVII. **Waiver.** No delay or omission by any Party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a Party of any of the obligations of the other Party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

XVIII. **Execution of Agreement.** This Agreement may be signed in counterparts, and when each Party hereto has delivered one such counterpart or copy thereof, each counterpart of copy shall be deemed an original and, when taken together with the other signed counterparts or copies, shall constitute one integrated contract, which shall be binding upon and effective as to all Parties hereto. Facsimile and email signatures of the Parties hereto shall have the same effect as original signatures.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date first written above.

Redevelopment Authority of the City of Green Bay

Gary J. Delveaux, Chairman

Neil Stechschulte, Executive Director and Secretary

On Broadway, Inc:

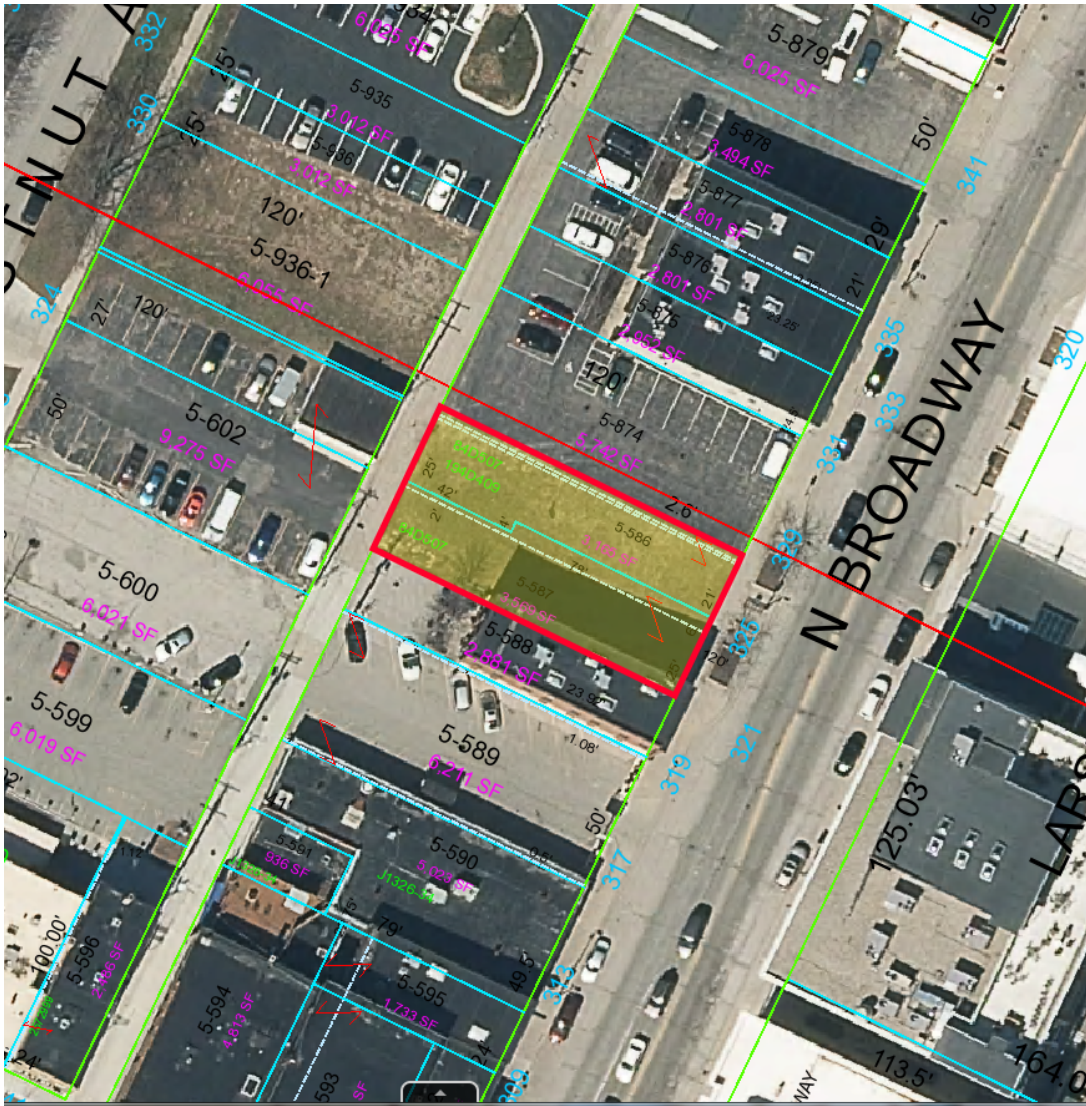
Brian Johnson, Executive Director

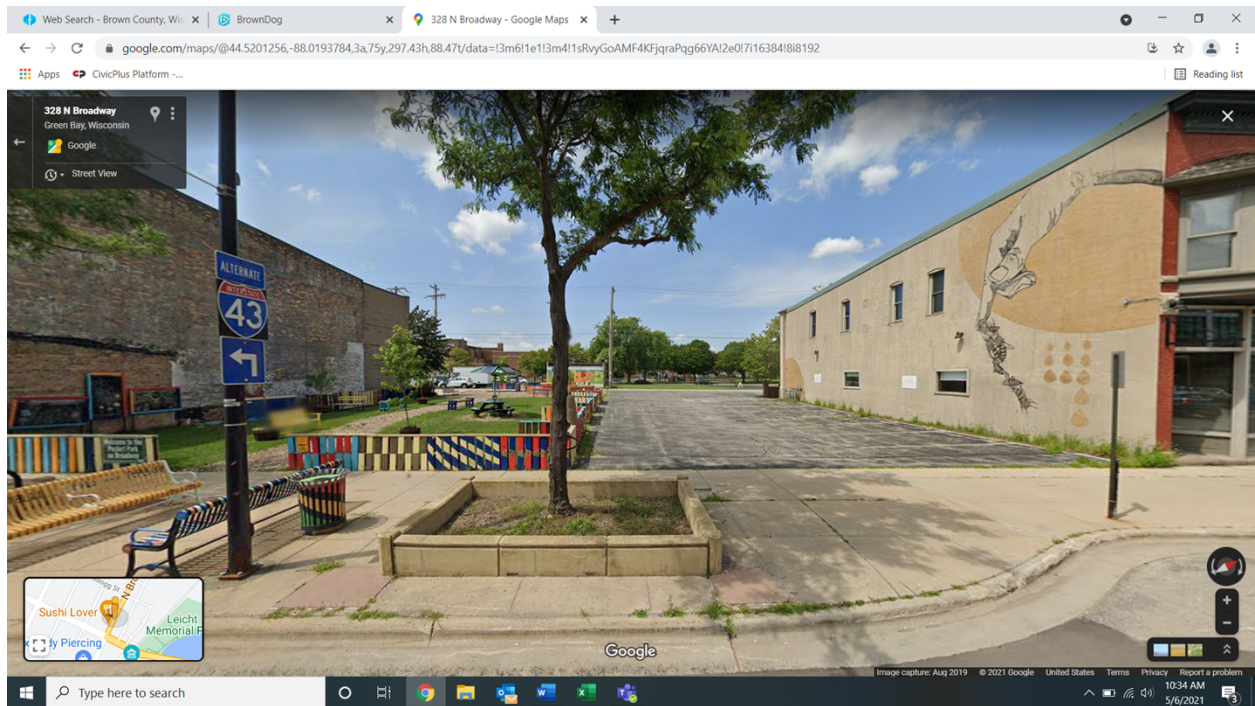
THIS INSTRUMENT WAS DRAFTED BY

Ronda Bitney

Redevelopment Authority of the City of Green Bay

EXHIBIT A
Redevelopment Authority Property





City of Green Bay RDA
Check Register
4/30/2021

CHECK #	CHECK DATE	VENDOR NAME	AMOUNT
21430	04/28/2021	BROWN COUNTY TREASURER	3,000.00
21431	04/28/2021	CITY OF GREEN BAY	23,351.00
21432	04/28/2021	WISCONSIN MEDIA	72.75
21433	04/28/2021	BROWN COUNTY REGISTER OF DEEDS	150.00
21434	04/28/2021	WISCONSIN PUBLIC SERVICE CORPORATION	112.09
21435	04/28/2021	NEIGHBOR-WORKS GREEN BAY	60,070.00
21436	04/28/2021	GATHER ON BROADWAY LLC	5,000.00
21437	04/28/2021	ANDERSEN BASEMENT REPAIR INC	1,180.00
21438	04/28/2021	ADAM KOCH	7,200.00
21439	04/28/2021	NEWCAP, INC.	20,163.38
21440	04/28/2021	ST. JOHN THE EVANGELIST HOMELESS SHELTER, INC.	197,313.41
21441	04/28/2021	LISA OSLUND	5,000.00
21442	04/28/2021	JALISCO MEXICAN RESTAURANT LLC	5,000.00
21443	04/28/2021	SYNIKA KIRK	5,000.00
21444	04/28/2021	AMANDA NETTEKOVEN	5,000.00
21445	04/28/2021	DUNG H. NGUYEN	5,000.00
21446	04/28/2021	ANN BYRD	5,000.00
21447	04/28/2021	MEE CHANG	5,000.00
			352,612.63

Redevelopment Authority
Financial Report
CDBG
4/30/2021

CDBG Entitlement Funds	2021 Budget	2020 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Park Improvements	-	48,166.08	-	-	-	48,166.08
Public Works Improvements	-	19,729.29	-	-	-	19,729.29
Public Service	-	132,171.35	-	28,255.10	33,916.25	70,000.00
Fair Housing	-	26,820.00	-	6,820.00	-	20,000.00
CDBG Eligible Areas	-	506,180.68	55,997.66	-	-	562,178.34
CDBG Eligible Areas-Beautificatio/Art	-	40,894.00	-	-	-	40,894.00
Economic Development	-	516,918.54	53,940.77	17,593.83	-	553,265.48
ED Façade & Demo Loans	-	93,567.12	-	-	55,837.00	37,730.12
Administration	-	185,019.22	-	69,459.10	-	115,560.12
\$	-	\$ 1,569,466.28	\$ 109,938.43	\$ 122,128.03	\$ 89,753.25	\$ 1,467,523.43

CARES CDBG-CV Funds	2021 Budget	2020 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Administration	-	53,418.68	-	11,865.20	-	41,553.48
Businesss Improvement Districts	-	115,000.00	-	28,750.00	28,750.00	57,500.00
Homlessness Assistance Programs	-	216,000.00	-	85,066.45	-	130,933.55
Economic Development Business Relief	-	150,000.00	-	75,000.00	30,000.00	45,000.00
Essential Frontline Employyee Relief Program	-	100,000.00	-	52,223.84	-	47,776.16
Homelessness Assistance Shelters	-	275,000.00	-	275,000.00	-	-
Rental/Mortgage Assistance Program LMI	-	191,729.00	-	-	-	191,729.00
Urgent Need-business Relief and Rental.Mortgage	-	50,000.00	-	-	-	50,000.00
\$	-	\$ 1,151,147.68	\$ -	\$ 527,905.49	\$ 58,750.00	\$ 564,492.19

Redevelopment Authority
Financial Report
HOME
4/30/2021

	2021 Budget	2020 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Single Family Rehab Loan Program	-	296,541.09	42,164.10	28,762.00	7,912.00	302,031.19
Housing Development Projects	-	519,135.96	-	-	260,000.00	259,135.96
CHDO Projects	-	199,824.72	-	58,500.00	6,500.00	134,824.72
Downpayment Closing Cost Assistance	-	100,000.00	-	-	-	100,000.00
Administration	-	41,117.31	4,684.90	6,573.70	-	39,228.51
	\$ -	\$ 1,156,619.08	\$ 46,849.00	\$ 93,835.70	\$ 274,412.00	\$ 835,220.38



City of Green Bay
Department of Community and Economic Development

Director's Report – May 11, 2021 Redevelopment Authority Meeting

- TID 2021 creation updates – Staff is proceeding with preparing to formally begin the TID creation process for the Main and Monroe area, and the South Adams Street Area. These two districts have specific projects that will be driving the schedule for these TID creations:
 - Gorman Project (Monroe Street) – Mixed-use project continues to move forward with both their design and development agreement. Both Gorman and the City continue to work with a prospective commercial tenant to help them secure financing. This project could come forward as early as the June RDA meeting.
 - One Astor – Staff is working to prepare a CSM that will address the relocation of the Fox River Trail, and is coordinating an easement for the relocation on the adjacent parcel. Preliminary schedule has the trail being installed in 2021, and the multi-family project moving forward in 2022. The development agreement will need to be updated with current timelines, and that agreement will most likely be coming back to the RDA in the next 30-60 days.
- Fort at the Railyard – TWG continues to work on revising their funding strategy. As a part of this effort, they are proposing to adjust the units on Kellogg Street to Live-Work units or other common use space for the development. Planning staff is working with TWG to maintain an appropriate amount of commercial uses in the project. There is no immediate timeline on these discussions, but staff is assuming that the developer would be interested in proceeding in 2021.

- Legacy Hotel – Staff is reviewing the previously submitted plans with the developer and attempting to work through some minor code design issues regarding the project's façade on Tony Canadeo Run. This development agreement will need to be updated for timelines as well, and will likely be coming back to the RDA in the next 30-60 days.
- JBS Update – Staff is meeting with the Village Board in the Village of Bellevue to discuss potential land uses for the site, as well as what the RFP process might look like. Ideally, staff would like to have an RFP out by July 1, 2021.
- KICC Lighting & AV Bids – Bids for lighting and Audio-Visual improvements for the KI Convention Center were opened on April 27th, and came in significantly over budget. Staff met with KI staff and determined that these improvements can be held off for a several months, and it was determined that the project should be re-bid at that time to see if more competitive pricing would be available.