



AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

THURSDAY, JANUARY 27, 2022, 1:30 PM
Virtual Meeting. Public may join via Zoom.

A. Zoom Meeting Information.

1. This item contains Zoom information, instructions, and a link to the Virtual Comment Form.

B. Roll Call.

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

C. Approval of the Agenda.

1. Approval of the agenda for the January 27, 2022, meeting of the Redevelopment Authority.

D. Regular Business.

1. Consideration with possible action on a request to assign TID increment for the Legacy Hotel project at 1004 Brett Favre Pass.
2. Consideration with possible action regarding a request for a planning option by On Broadway Inc. on RDA-owned properties on Chestnut Avenue including parcels 4-91, 4-91A, 4-79, 4-77, 4-78, 4-161, and 4-160.

E. Informational.

1. Director's report and project updates.
2. Next Regular Meeting: February 8, 2022 at 1:30 PM

F. 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

Passcode: 084117

One tap mobile

+13017158592,,83188044732# US (Washington DC)

+13126266799,,83188044732# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+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

Passcode: 084117

Find your local number: <https://us02web.zoom.us/j/kc4U7kFumh>

Public Comments

If you wish to speak at this public meeting or leave a comment, please fill out the online [Comment Form](#) prior to the meeting.

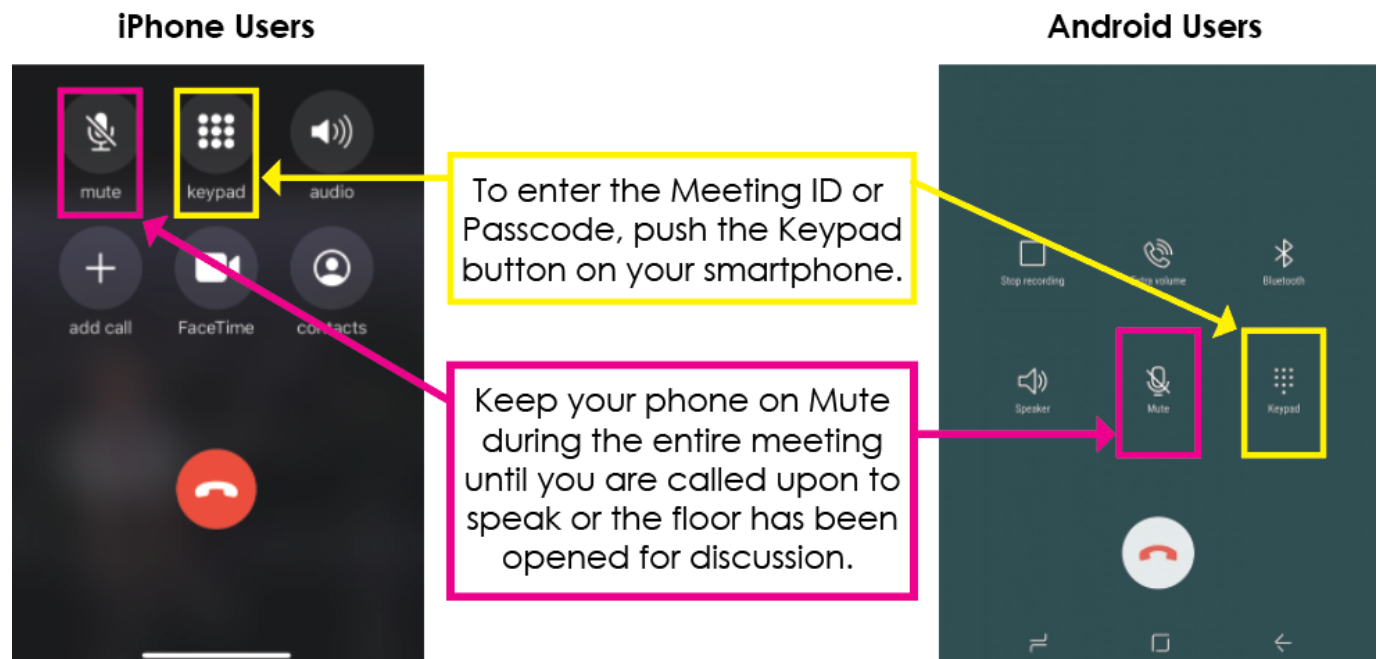
Additional Information

1. Wisconsin Open Meetings Law still applies
 - a. Persons interested in speaking to an item must state their name and address for the minutes.
 - b. Committee/Commission/Board members will still follow *Roberts Rules of Order Newly Revised 12th edition*.
2. Please log into the Zoom meeting at least 10 minutes before the meeting begins to ensure a proper connection and that your technology is working.
 - a. If you are a Board Member, please log into [CivicClerk](#) with a computer, laptop, or tablet device.
3. Once you are in the meeting please mute yourself.
 - a. You may unmute yourself when you are called upon to speak.
4. Waiting room
 - a. When you call in or connect via web or Zoom app, you will be placed in a “waiting room.”
 - b. The meeting host will then admit you to the meeting, and mute you upon entrance (you will still be able to hear and or otherwise observe the meeting).
5. 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 be tied to an email.
6. Raising your hand
 - a. Committee/Commission/Board members—you can either use CivicClerk and request to speak or you can also utilize the “raise your hand” tool in the Zoom platform (you'd need to use a computer or tablet) to let the host know you would like to speak. You can also un-mute yourself and start speaking.
 - b. Persons with items on the agenda or other interested parties—you can also utilize the “raise your hand” tool on the Zoom platform via computer or mobile device. You will be allowed to speak once the committee, commission, or board has moved to “open the floor for interested parties to speak.” Once discussion on your agenda item has concluded, the host will mute you, unless the committee opens the floor again.
7. What devices should I use?
 - a. Smart phone (please see more detailed instructions on page 3)
 - b. Land line
 - c. Tablet—in advance of the meeting, please download the Zoom Meeting app by using either the Apple Store or the Play Store. You will be asked to input your name, to identify you for the meeting.
 - d. Computer—you can access the meeting through a web browser by clicking on the meeting link, or through the Zoom Meeting app. If using the app, please download it in advance of the meeting. You will be asked to input your name, to identify yourself for the meeting.
 - e. For tablet and computer users--if you download the app you may be asked to verify your email.

8. Zoom etiquette
 - a. Muting yourself when you're not speaking 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 state your name and address before you speak. Zoom meeting hosts can see only your telephone number and will ask you to identify yourself.
9. Closed session
 - a. Persons in the Zoom meeting will be put into a waiting room while the committee/commission/board meets in Closed Session. Participants will be admitted back into the Zoom meeting once the committee reconvenes in Open Session.
 - b. Persons watching a Common Council meeting live on YouTube will see a gray screen with the City logo during closed session.
10. Persons interested in attending anonymously or listening to the meeting may call in by dialing *67 followed by the phone number in the Zoom Meeting Information box.

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





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

MEETING DATE

January 27, 2022

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # D.1

Consideration with possible action on a request to assign TID increment for the Legacy Hotel project at 1004 Brett Favre Pass.

BACKGROUND

The current development agreement with the Developer allows for the assignment of the obligations and benefits of the agreement upon the approval of the RDA. The Developer is formally requesting RDA approval of the assignment of annual pay-go TIF payments to their Lender. The Developer remains responsible for the obligations defined in the development agreement.

In addition, the Developer is requesting that language guaranteeing a minimum property tax payment based on a guaranteed assessed valuation of \$21 million be added to the agreement. This language has been reviewed by the Development Director, the Finance Director, and the City Attorney with no objections.

The collateral assignment document and the revisions to the development agreement have been reviewed by the City Attorney.

RECOMMENDATION

Approval of the collateral assignment of TIF payment rights as requested by the Developer, and the addition of guaranteed minimum payment language to Section III of the development agreement as presented.

FISCAL IMPACT

No change in fiscal impact from the original development agreement.

ATTACHMENTS

1. (Modified Document) Collateral Assignment of TIF Development Agreement and Proceeds (Legacy-Green Bay) 4893-2398-3113 v5
2. Legacy Hotel Development Agreement-Revised with City Comments-01.21.21 RDA Version

COLLATERAL ASSIGNMENT OF TIF PAYMENT RIGHTS AND PROVISIONS OF THE DEVELOPMENT AGREEMENT RELATED THERETO

THIS COLLATERAL ASSIGNMENT OF TIF PAYMENT RIGHTS AND PROVISIONS OF THE DEVELOPMENT AGREEMENT RELATED THERETO (this “**Assignment**”) is made as of January [___], 2022, by **The Legacy Green Bay, LLC**, a Wisconsin limited liability company (“**Borrower**”), in favor of **NORTHWEST BANK & TRUST COMPANY**, an Iowa corporation (“**Lender**”).

RECITALS

A. Pursuant to the terms of that certain Business Loan Agreement between Borrower and Lender of even date herewith (as may be amended, modified, supplemented restated or replaced from time to time, the “**Loan Agreement**”), Lender has agreed to make a loan to Borrower in the original principal amount of up to Three Million Two Hundred and Forty-Nine Thousand and no/100 Dollars (\$3,249,000.00) (the “**Loan**”) evidenced by that certain Promissory Note, dated as of the date of the Agreement, executed by Borrower in favor of Lender in the original principal amount of the Loan (as may be amended, modified, supplemented restated or replaced from time to time, the “**Note**”).

B. Borrower is the owner of the real property and improvements described on the attached Exhibit A (the “**Property**”). Borrower proposes to construct a 6-story hotel at the Property.

C. In connection with the development of the Property, Borrower and the city of Green Bay, Wisconsin (the “**City**”) have entered into that certain Development Agreement [21-05] Legacy Hotel by and between the City, the Redevelopment Authority of the City of Green Bay (the “**RDA**”), and Borrower, dated as of [DATE] (the “**Development Agreement**”). Capitalized terms not defined herein shall have such meaning as set forth in the Development Agreement.

D. Pursuant to Section III of the Development Agreement, the City has committed to grant the TIF Incentive for Qualified Expenditures to Borrower, based on 80% of the incremental taxes generated, a Guaranteed Minimum Payment, and/or a Payment in Lieu payable in annual installments (the “**Project Expenditures**”), in accordance with the City’s obligations set forth by the City.

E. Lender requires Borrower to execute and deliver this Assignment as collateral for the Loan, and to secure the Consent of City and RDA.

F. Lender would not make the Loan to Borrower unless the City and RDA provide the attached Consent of City and RDA.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrower, Borrower hereby agrees as follows:

1. Assignment. In order to secure the payment and performance of all debts, liabilities and obligations (together, “**Obligations**”) of the Borrower to the Lender under the Note, the Loan Agreement, and all other documents evidencing or securing the Loan (collectively the “**Loan Documents**”), Borrower hereby assigns to Lender, and grants to Lender a continuing first priority security interest in, all now or hereafter existing rights, title, and interest of the Borrower in and to the reimbursement to Borrower of Project Expenditures under Section III of the Development Agreement (the “**TIF Reimbursement**”), and all of Borrower’s rights under the Development Agreement related to the TIF Reimbursement, including all of Borrower’s rights to receive the Project Expenditures thereunder, and all rights of the Borrower to enforce the City’s obligations with respect to the TIF Reimbursement, and, if the City issues a municipal revenue obligation, or similar document evidencing the City’s obligations with respect to the TIF Reimbursement (“**MRO**”), all rights under such an MRO are also assigned herein. This is intended to be a present assignment of the Borrower’s rights to Lender, it being understood and agreed that, if and when the City’s and RDA’s obligations under the Development Agreement are satisfied in full, then Lender shall execute a termination of this Assignment, and return any MRO, if issued.

2. Remittance of Project Expenditures Directly to Lender. Borrower has executed the Assignment and Direction for Direct Payment, which is attached hereto as Exhibit C, directing that all TIF Reimbursement payable by the City, shall be paid by the City directly to Lender, for application to the outstanding Obligations on the Loan, until the City’s obligations under the Development Agreement have been satisfied. Borrower covenants and agrees to take any and all actions requested by the Lender or the City to facilitate direct payment of such amounts by the City to Lender. In the event Borrower shall receive any TIF Reimbursement directly, Borrower shall immediately remit such payment to Lender, provided that the Obligations remain outstanding at the time of such TIF Reimbursement.

3. Performance of Borrower. Borrower shall faithfully abide by, perform and discharge each of Borrower’s obligations, covenants and agreements under the Development Agreement, so as to assure the continued payment by the City of the TIF Reimbursement, and shall pay all real estate and personal property taxes on the Property when they are due. Without the prior written consent of Lender, Borrower shall not (a) modify or in any way alter the terms of the Development Agreement, (b) pledge or assign the Development Agreement or the right to the TIF Reimbursement, (c) waive any of its rights under the Development Agreement, (d) terminate or surrender the Development Agreement, (e) make an application for any part of the Property to be exempt from real estate taxes, or allow any user of the Property to do so; (f) file a claim or appeal or in any other way attempt to lower the real estate tax assessment on the Property; or (g) sell any portion of the Property without Lender’s prior written consent. Borrower shall notify Lender each time any of the tax parcel numbers for the Property are changed or divided.

4. Protect Security. At Borrower’s sole cost and expense, Borrower shall appear and defend any action or proceeding arising under, during, out of or in any manner connected with the Development Agreement or the obligations, duties or liabilities of Borrower under the Development Agreement, and shall pay any reasonable costs and expenses of Lender, including reasonable attorneys’ fees, in any such action or proceeding in which Lender decides, in its sole discretion, to appear.

5. Representations and Covenants. Borrower represents and warrants that (a) Borrower is the fee simple owner of the Property and that the tax parcel numbers on Exhibit A are the current correct tax parcel numbers; (b) Borrower has the full right to assign its right to the TIF Reimbursement and the Development Agreement as it relates to the reimbursement of Project Expenditures (subject to the City's and RDA's consent attached hereto); (c) the Development Agreement is valid, is in full force and effect, is binding on the City, RDA and Borrower, and has not been modified or amended, nor have any new development or other agreements been entered into between Borrower, RDA and City which would impact the Development Agreement; (d) Lender shall have a first priority lien and security interest in and to the TIF Reimbursement and to the rights under the Development Agreement related to the reimbursement of Project Expenditures, there are no outstanding assignments or pledges of the Project Expenditures or the Development Agreement provisions related thereto, and Borrower shall not make any further assignments or pledges of the right to the TIF Reimbursement or the provisions of the Development Agreement related thereto, until all Obligations under the Loan are paid in full; and (e) there are no existing defaults, rights of setoff, or claims for additional payments under the Development Agreement.

6. Authorization. Upon an Event of Default under any of the Loan Documents, Borrower irrevocably constitutes and appoints Lender its true and lawful attorney-in-fact in Borrower's name or in Lender's name, or otherwise, to enforce all rights of Borrower under the Development Agreement as they relate to the TIF Reimbursement, and such power, being coupled with an interest, is irrevocable.

7. Borrower Holds Lender Harmless. Borrower shall indemnify and hold Lender harmless of and from (a) any and all liability, loss or damage which it incurs under the Development Agreement or by reason of this Assignment; and (b) any and all claims and demands which are asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Development Agreement. The amount of all such liabilities, losses, damages, claims and demands, and the cost of defending against them, including costs, expenses and reasonable attorneys' fees, are secured by this Assignment and constitute part of the Obligations. Borrower shall reimburse Lender for such amounts immediately upon demand.

8. Security Interest in Agreements. In addition, Borrower hereby grants to Lender a security interest in Borrower's right, title, and interest of its right to the TIF Reimbursement and the provisions of the Development Agreement related thereto, if and to the extent that a security interest may be granted therein under the Wisconsin Uniform Commercial Code, and Borrower acknowledges that Lender shall have all of the rights and remedies with respect thereto provided for by the Wisconsin Uniform Commercial Code, in addition to the other rights and remedies herein granted to Lender, in the event of the occurrence of an Event of Default.

9. Successors and Assigns. This Assignment shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender, its successors and assigns. Borrower shall not further assign its obligations or interests under the Project Expenditures or the provisions of the Development Agreement related thereto, or under this Assignment, or further encumber those interests, without Lender's prior written consent. Further, Borrower shall not sell or transfer the ownership of any part of the Property to another person or entity without Lender's

prior written consent, which may be withheld or conditioned upon such purchaser or assignee also making the covenants herein directly to Lender and signing a payment in lieu of taxes or similar agreement to insure the continued payment of the Project Expenditures.

10. Governing Law. This Assignment shall be governed by the laws of the State of Wisconsin, without reference to its conflicts of laws principles.

11. Validity Clause. This Assignment shall confer to Lender the rights and benefits described in this Assignment to the full extent allowable by law. The unenforceability or invalidity of any of the provisions of this Assignment shall not render any other provision or provisions unenforceable or invalid. Any provision found to be unenforceable shall be severable from this Assignment without invalidating the remainder of such provision or the remaining provisions of this Assignment.

12. Notices and Approvals. Any notice that either party may desire or may be required to give to any other party shall be in writing and shall be delivered as required under the Loan Documents.

13. Counterparts. This Assignment may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one instrument.

14. City and RDA Consent. Lender shall not make the Loan until the City and RDA execute and deliver to Lender the Consent attached hereto as Exhibit B.

15. Shortfall Payment Provisions. Borrower acknowledges that the Loan Agreement contains terms which can limit the Loan amount to less than the amount stated above, and provisions for “Shortfall Payments” if the income stream of Project Expenditures is less than, or is reasonably anticipated to be less than, the anticipated Project Expenditures shown on the Schedules to the Loan Agreement.

16. Lender’s Rights Upon Default. If a default occurs under the Loan Documents beyond any applicable notice and cure period (an “**Event of Default**”), then Lender may, at its option upon written notice to Borrower, the RDA and the City, but without any obligation to do so, elect to assume Borrower’s rights under the Development Agreement. Prior to any affirmative assumption of Borrower’s obligations under the Development Agreement, nothing in this Agreement shall be construed as an assumption by Lender of any liability or obligation of Borrower under the Development Agreement. Lender shall not be obligated to perform or discharge and does not by this Assignment undertake to perform or discharge any obligation, duty or liability under the Development Agreement.

17. Notice of Completion. Borrower shall send Lender written notice of completed construction within 30 days after completion of the Project but in no event later than August 1, 2023.

[Signatures on the following page.]

**SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF
TIF PAYMENT RIGHTS AND PROVISIONS OF DEVELOPMENT AGREEMENT
RELATED THERETO**

Dated as of the date first set forth above.

BORROWER:

The Legacy Green Bay, LLC,
a Wisconsin limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION

136,125 SQ FT LOT 2 OF 37 CSM 99 BNG PRT OF LOT 9 MORRIS & BROMLEYS SUBD OF S1/2 OF
PC 13 WSFR & BNG PRT OF PC 14 & 15 WSFR

EXHIBIT A-1

DRAWING OF THE PROPERTY

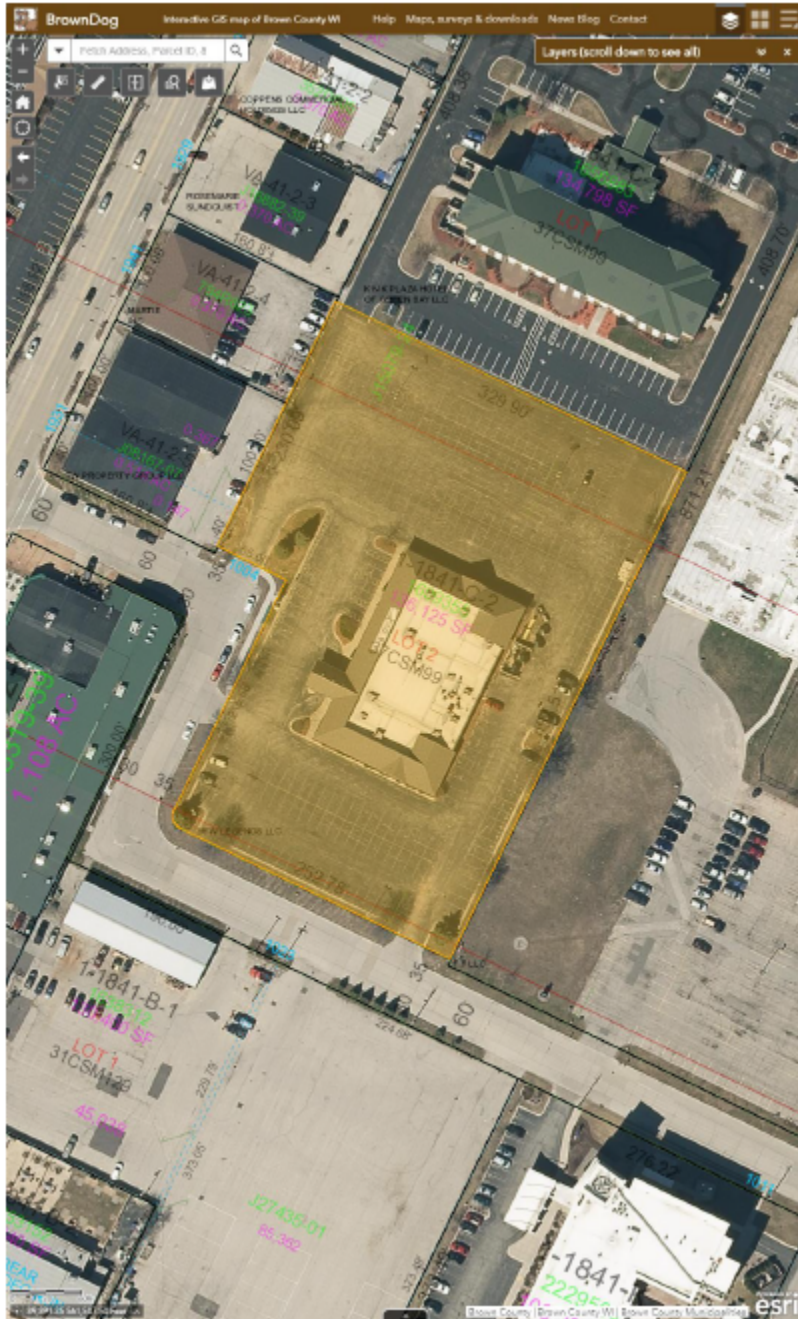


Exhibit A-1

EXHIBIT B

CONSENT OF THE RDA AND CITY

THIS CONSENT OF THE CITY is made by the city of Green Bay, Wisconsin (the “**City**”), and the Redevelopment Authority of the City of Green Bay (the “**RDA**”) by and between and for the benefit of Northwest Bank & Trust Company (“**Lender**”) with respect to that certain Development Agreement [21-05] Legacy Hotel by and between the City of Green Bay, Wisconsin, the Redevelopment Authority of the City of Green Bay, and The Legacy Green Bay, LLC, a Wisconsin limited liability company (“**Borrower**”) dated as of [DATE] (the “**Development Agreement**”), in consideration of the Lender making the Loan (defined below), which is necessary for the funding of the development identified in the Development Agreement.

1. Borrower Assignment. The City and RDA acknowledge that it has received the Assignment and Direction of Direct Payment from Borrower to Lender, pertaining to all rights to the reimbursement of Qualified Expenditures (the “**TIF Reimbursement**”) and the provisions of the Development Agreement related thereto (“**Assignment**”), in connection with a Loan between Borrower and Lender in the principal amount of up to Three Million Two Hundred and Forty-Nine Thousand and no/100 Dollars (\$3,249,000.00) (“**Loan**”, which is represented by certain “**Loan Documents**” by and between Borrower and Lender).

2. Payment Direction. The City agrees to make all TIF Reimbursement payments due to Borrower pursuant to Section III of the Development Agreement directly to Lender at the following address (or such other address provided to the City by Lender in writing): Northwest Bank & Trust Company, 100 East Kimberly Road, Davenport, Iowa, 52806, Attn: Emily Blaylock, and Lender hereby agrees to the receipt such TIF Reimbursement payments, until Lender notifies the City that all Obligations under the Loan have been paid in full and the Assignment is terminated. The City shall have no responsibility to independently verify anything regarding the Loan and shall be entitled to rely on this Assignment until it receives this Lender notice that the Assignment has been terminated or otherwise satisfied and released.

3. Consent to Assignment. The City and RDA hereby consent to the foregoing Assignment. In further, the City agrees to make the TIF Reimbursement directly to Lender at the address stated above, and agrees that the City shall continue to perform its obligations under the terms of the Development Agreement, to the extent they relate to the TIF Reimbursement, in the manner specified in the Development Agreement as if Lender were the recipient of the right to the TIF Reimbursement.

4. No Release. Nothing in the foregoing Assignment constitutes a release by the City and/or the RDA of Borrower from its obligations under the Development Agreement. Borrower remains responsible to the City and the RDA for all of its obligations under the Development Agreement.

5. Notice and Cure Rights. The City and/or RDA shall provide Lender with copies of any notices given to Borrower under the Development Agreement, whether or not they are related to the TIF Reimbursement, and any notices of default thereunder, in the same manner and at the

same time as required under the Development Agreement to be given to Borrower, including for notices for any party initiating or threatening a formal process, the result of which would result in reducing any payment under the Development Agreement, including, but not limited to: (a) attempts to lower the assessed valuation of the Property, (b) seeking property tax exemption status for the Property, or (c) invalidating the eligibility of any of the TIF Reimbursement. The City and RDA expressly acknowledge and agree that Lender is an intended beneficiary for purposes of this Consent and for the rights to the TIF Reimbursement under the Assignment, Loan, and Loan Documents. Notices to Lender shall be made to the address set forth above, or such other address as is provided by Lender from time to time. The City agrees that Lender shall have the right, but not the obligation, to cure any default by Borrower under the TIF Reimbursement, and provisions of the Development Agreement related thereto, and the City agrees to accept any cure of such a default under the Development Agreement by Lender if such cure satisfies the default as determined by the City. Notices to Lender shall be provided in writing and deemed given upon personal delivery, or when sent by U.S. mail, certified or registered, postage prepaid, return receipt requested, by overnight courier service such as Federal Express with tracking information, or other overnight mail with tracking information, and addressed to:

Northwest Bank & Trust Company
100 East Kimberly Road
Davenport, IA 52806
Attn: President

6. Estoppel. The City and RDA understand that Lender's Loan is an integral part of the financing for the development identified in the Development Agreement, and making the Loan provides sufficient consideration to City and RDA for the representations and obligations contained herein. The City and RDA represent and warrant to Lender that, in consideration of Lender providing financing to the project described in the Development Agreement, as of the date hereof: (i) the Development Agreement is and remains in full force and effect and has not been amended or modified, nor has any other agreement been entered into between the City, RDA and Borrower, or any affiliate of Borrower, that would affect the TIF Reimbursement and the provisions of the Development Agreement related thereto; (ii) no default currently exists under the Development Agreement and no condition exists which, with the passage of time, would constitute a default under the Development Agreement; (iii) Borrower has not previously assigned the TIF Reimbursement, or the provisions of the Development Agreement related thereto; (iv) other than the failure of Borrower to complete construction of the improvements on the Property, and to pay the real estate taxes on the Property, no default under the Development Agreement may hinder, delay, have superiority over, or prevent the payment of the TIF Reimbursement to Borrower, in the manner identified in the Development Agreement; (v) the City warrants that the TIF Reimbursement have first priority for payment from the tax increment generated from the Property, and no other person or entity is entitled to payment from the taxes paid for the Property; (vi) in consideration of Lender lending money to the project to facilitate further development, the City and RDA covenant with Lender not to modify or amend the Development Agreement in a manner which would affect the TIF Reimbursement, without Lender's prior consent; and (vii) the City and RDA represent that Borrower has satisfied, to the City's and RDA's satisfaction, the following Sections of the Development Agreement as of the date hereof and/or is not in default: Section 4.

7. No Other Obligations or Liability. The City and RDA shall have no other obligations or liability to the Lender beyond those expressly specified in this Consent.

8. Waiver of Setoff. The City specifically waives any and all rights of setoff against Borrower as it pertains to the TIF Reimbursement due to Lender under the Assignment, Loan, or Loan Documents.

9. Payment of Real Estate Taxes and Special Assessments. The City acknowledges and agrees that the payment of real estate taxes shall be the responsibility of Borrower, but Lender reserves the right to directly pay on Borrower's behalf such taxes and assessments and, provided that such taxes and assessments are paid in full by Borrower, Lender, or any other lender, the City will continue to make the TIF Reimbursement in accordance with the Assignment.

10. No Waiver; Cumulative Remedies. No act, delay, or omission of Lender, or its designated agent, shall be deemed to be a waiver of any rights granted hereunder, and no waiver shall be valid unless in writing, signed by Lender, and then only to the extent therein set forth. A waiver of any right or remedy hereunder on anyone occasion shall not be construed as a bar to any right or remedy which Lender would otherwise have on any future occasion. No failure to exercise, nor any delay in exercising, on the part of Lender, or its designated agent, with respect to any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other right, power, or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.

11. No Amendment. The City and RDA agree that it shall not, without the prior written consent of the Lender, amend or modify or consent to any modification or amendment of the Development Agreement. Lender may assign Lender's rights and obligations in whole or in part under the Assignment, Loan, and Loan Documents without consent of the City, provided Lender will provide notice to City of such assignment.

CITY OF GREEN BAY, WISCONSIN

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

NORTHWEST BANK & TRUST COMPANY

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

EXHIBIT C

ASSIGNMENT AND DIRECTION FOR DIRECT PAYMENT

[Letter from Borrower to the City informing them that the Project Expenditures have been assigned, and directing the City to pay the Lender directly]



City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 21-05
LEGACY HOTEL

This Development Agreement is made this 7th day of December, 2021,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and THE LEGACY GREEN BAY, LLC a Wisconsin limited liability company ("Developer").

RECITALS

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

Tax Parcel	Address	Acres	Assessed Value
I-1841-C-2	1004 Brett Favre Pass	3.125	\$1,889,900.00

- B. The parcel listed above, shall be referred to as the "Property." The Property comprises approximately three and one hundred twenty five thousandths (3.125) acres 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.
- C. Developer intends to complete a Project, which involves construction of a six (6)-story boutique, 100-unit, all-suites hotel of approximately one-hundred thousand (100,000) square feet, along with parking, landscaping, lighting and other related improvements. The Proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT C.
- D. As of January 1, 2019, the Property has an aggregate assessed value of one million, eight hundred and eighty nine thousand, nine hundred dollars (\$1,889,900.00), which based on the assessed tax rates in effect as of January 1, 2019, the Property yields approximately:
1. \$44,185.00 in total real estate taxes annually (assessed mill rate of \$23.38);
 2. \$44,185.00 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 \$23.38); and
 3. \$17,292.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of \$9.15).
- E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to increase by sixteen million dollars (\$16,000,000.00) above the base value, which is anticipated to yield approximately:
1. \$393,979.38 in total real estate taxes annually (assessed mill rate of \$24.62);

2. \$393,979.38 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. \$155,520.00 in real estate taxes to the City of Green Bay annually (assessed mill rate of \$9.72).

The City Assessor or his/her designee may not use this Agreement or any provisions herein as the sole basis to determine the value of the Project.

- F. Pursuant to the provisions of §66.1105, Wis. Stats. (the “Tax Increment Law”), the RDA, the City and the Joint Review Board (JRB) created a new conservation and rehabilitation or blight Tax Increment District (“TID 23” or the “TID”), effective January 1, 2019, which includes the Property, and may also include adjacent property, and 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, remodeling, repair or reconstruction of existing buildings; 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 reduce transportation hazards; 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; is located in places easy to reach on foot, bicycle, or transit; strengthen and/or expand non-motorized transportation networks; generate job opportunities for individuals of all ages, abilities, and incomes; expand our range of real estate products; are designed and built with options for conversion to alternative uses in the future; 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.
- J. The Developer, City and RDA, previously entered into an agreement “Development Agreement 19-02” dated August, 5, 2019. Due to the COVID-19 pandemic, the Developer experienced delays in obtaining financing, which led to expiration of certain applicable zoning codes, accordingly a new agreement is needed for the Project.
- K. The Developer, City and RDA now desire to terminate Development Agreement 19—02 and to execute 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. Termination of Development Agreement 19-02. Development Agreement 19-02 is hereby terminated in accordance with Section IX. (A)(5) by mutual agreement of the parties in writing.
- B. 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.

- C. 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. 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.
- D. 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.
- E. 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 when the TID was created, which shall be one million, eight hundred and eighty nine thousand, nine hundred dollars (\$1,889,900.00).
- E. "City" means the City of Green Bay, Brown County, Wisconsin.
- F. "Concept Plan" means the plan for the Project.
- G. "Developer" means NEW LEGENDS, LLC, or any assignee of the same.
- H. "Guaranteed Minimum" has the meaning set forth in Section III(F).
- I. "Lender" means any lender providing financing for the development of the Project.
- J. "Payment in Lieu" has the meaning set forth in Section III(F).
- K. ~~H.~~ "Plans and Specifications" means the plans and specifications developed for the Project.
- L. ~~I.~~ "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT C 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. ~~J.~~ "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.
- N. ~~K.~~ "Project" means the Project as defined in the Recitals.
- O. ~~L.~~ "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. any related engineering, grading, erosion control, and landscaping.
- P. ~~M.~~ "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section III. B. 3.
- Q. ~~N.~~ "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.
- R. ~~O.~~ "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.
- S. ~~P.~~ "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.
- T. ~~Q.~~ "TID" means Tax Increment District Number Twenty-Three ("TID 23" or the "TID"), of the City of Green Bay. Pursuant to the provisions of §66.1105, Wis. Stats. (the "Tax Increment Law"), the RDA the City and the Joint Review Board (JRB) created a new conservation and rehabilitation or blight TaxIncrement District ("TID 23" or the "TID"), effective January 1, 2019. ").
- U. ~~R.~~ "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax

Increment Financing relating to the TID.

- V. ~~S.~~ “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~~ has demonstrated to the satisfaction of City and RDA a need for TIF, with such determination ~~to be having been~~ 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 defined as the following:
- I. 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 shall be reimbursed to Developer.
 - 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 ~~assessed value of the Property as of January 1 of the year in which construction commenced~~ Base Value. The difference in assessed values 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 Available TIF Increment.
 - d) The City shall make available eighty percent (80%) of the ~~Annual~~ annual Available TIF Increment to the Developer beginning with payment year 2025 and continuing through the end of year 2041.
 - e) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the Available 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 July 1, 2023, the TIF Increment would be determined as of January 1, 2024 and the PAYGo reimbursement would first be payable in 2025.
 2. 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 or Payment In Lieu (defined below) to the party with whom the City has an agreement. ~~The City and the RDA hereby consent to the collateral assignment to Lender of Developer’s right to receive payments of the TIF Incentive and/or the Payment In Lieu. The City shall disburse the TIF Incentive and/or Payment in Lieu directly to Lender in accordance with any assignment documentation between Developer and Lender.~~ 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.

3. Qualified Expenditures. The TIF Incentive shall only fund, in order of priority:
 - a) Public Improvements, as defined in Section II. L.; then
 - b) "Private Improvements", including:
 - (I) Environmental remediation, and asbestos abatement as required by State and Federal law;
 - (II) Building demolition and site clearing; and
 - (III) Stormwater management facilities and related improvements; and
 - (IV) Building foundations, paving, landscaping and related site improvements; and
 - (V) Building superstructure, including core and shell.
 - c) Any other activity specifically approved by the City or RDA.
4. Public Improvements. Prior to November 1, 2022, the City and/or RDA shall at their expense, construct appropriate paving, landscape, lighting, and other improvements required to ensure safe, comfortable, and contiguous pedestrian accommodations within the public right of way along the north side of Brett Favre Pass and Tony Canadeo Run, between the City boundary to the west and Bart Starr Drive to the east, in compliance with current industry standards.

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 eighty percent (80%) of the Available Tax Increment for the Property.
2. Tax Incentive Cap. The City shall not be obligated to pay TIF Incentive in excess of 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, ~~an~~ 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:
 - a) Tax year 2041;
 - b) The termination date of the TID; or
 - c) 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.
- A. Guaranteed Minimum Payment; Payment in Lieu. Notwithstanding anything to the contrary herein, in the event that the TIF Incentive payable to Developer in any given tax year shall fall below \$393,000.00 for the tax year 2024, and increasing at a rate of 2% each year thereafter (the "Guaranteed Minimum") during the statutory life of the TID District (the "PILOT Term"), then the Developer or any successor owner of the Project shall make (or cause to be made) during the PILOT Term annual payments in lieu of taxes in an amount sufficient to meet the Guaranteed Minimum (as determined by the assessor) (the "Payment in Lieu"). The Guaranteed Minimum and/or Payment in Lieu shall be available to Developer for reimbursement of Developer's Qualified Expenditures, provided Developer qualifies for the TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred and paid for Qualified Expenditures. Such Payment in Lieu shall be due and payable at the same time and in the same manner as the ad valorem taxes are due and payable for such year. If the Developer or any successor owner fails to make the Payment in Lieu when due, the City may, in addition to all other remedies available to it, levy a special assessment against the Project in the amount of the difference between the actual TIF Incentive available for reimbursement to Developer and the Guaranteed Minimum. Any and all notice and hearing requirements which may be required under the law for such special assessment are hereby waived by Developer. Notwithstanding the levying of such special assessment, the payment obligation under this Section shall be the personal obligation of the person or entity that is the owner of the Project at the time that the TIF Incentive falls below the Guaranteed Minimum. The covenants contained in this Article shall be deemed to be covenants running with the land and shall be binding upon all owners of any portion of the Project for the duration of the PILOT Term. The City is hereby expressly declared to be a beneficiary of such covenants and is entitled to enforce the same against all successor owners of the Project.

IV. OBLIGATIONS OF DEVELOPER

- A. Concept Plan. Prior to January 1, 2022, 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 location of a potential Legends District gateway sign and/or artwork, as approved by the Developer.
 2. A potential future building footprint on the southern portion of the Property.
- B. Construction Documents. Prior to March 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 photographic examples of interior finishes; and
 4. Other such essential items as may be reasonably determined by the RDA to be appropriate.

- C. Development Budget. Prior to March 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 (\$20,000,000.00) 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. 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 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.
- F. Proof of Equity. By no later than March 1, 2022, Developer shall have in place and shall provide the Executive Director of the RDA 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 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 March 1, 2022, Developer shall have in place and shall provide Executive Director of the RDA proof 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. By no later than March 1, 2022, Developer shall have obtained land control for all of the parcels comprising the Property and all of the necessary rights of way required for the Project. 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. If required as part of compliance with Section IV. E., Developer 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 Expenses 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 April 1, 2022. Construction shall be completed no later than July 1, 2023. 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. Upon request of the Executive Director of the RDA, Developer shall provide information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement, including progress reports during the course of construction and/or annual financial statements for Developer.
- N. 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.
- 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 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 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 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.

Q. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of the First Phase, 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.
- 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, 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 - \$100,000.00 per accident;
 - b) Bodily Injury by Disease - \$100,000.00 per employee; and
 - c) \$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 - \$2,000,000.00; Personal and Advertising Injury Limit (per person/organization) - \$2,000,000.00;
 - b) Bodily Injury and Property Damage - \$2,000,000.00 per occurrence;
 - c) Fire Legal Liability Damage Limit - \$100,000.00 per occurrence; and
 - d) Medical Expense Limit - \$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 - \$250,000.00 per person; and
 - b) \$1,000,000.00 per occurrence; and Property Damage - \$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 \$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, 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. Upon request, 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 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.

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 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 (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 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 twelve percent (12%) 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 (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;
 5. The parties agree in writing to terminate this Agreement.
- B. TIF Payments termination. TIF payments shall terminate at the end of tax year ~~2040~~2041.
- C. Survival of Certain Provisions. Sections III. D., IV. E., IV. I., IV. K., IV. O. 2., IV. P., IV. Q. 2., IV. S., 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, until the obligations of the Developer under Section III hereof are fully performed and satisfied. 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 or anything to the contrary herein, the City and RDA consent to Developer's assignment of the payment obligations set forth herein to Lender.
- 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:
1. Upon receipt if sent via electronic mail (e-mail) or facsimile; or
 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: City of Green Bay
Attn: City Clerk
100 North Jefferson Street
Green Bay, WI 54301
e-mail: celestine.jeffreys@greenbaywi.gov

To ~~RDA:~~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:~~Developer: THE LEGACY GREEN BAY, LLC
Attention: Vicky Fabry
999 Lombardi Avenue
Green Bay, WI 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 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.

- 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 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).
- 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.
- S. Adjacent Public Improvements. The RDA and/or City shall make a good faith effort to work with the Village of Ashwaubenon and owners of real property adjacent to Brett Favre Pass to provide a safe, comfortable and contiguous pedestrian connection for the Legends District to Holmgren Way.

[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:
THE LEGACY GREEN BAY, LLC**

By: _____

Print Name and Title

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _____ day of _____ 2021, the above named _____, a member of THE LEGACY GREEN BAY, LLC, a Wisconsin 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
THE LEGACY GREEN BAY, 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
THE LEGACY GREEN BAY, 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 _____ 2021, 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

136,125 SQ FT LOT 2 OF 37 CSM 99 BNG PRT OF LOT 9 MORRIS & BROMLEYS SUBD OF S1/2 OF
PC 13 WSFR & BNG PRT OF PC 14 & 15 WSFR

Preliminary Concept Plan

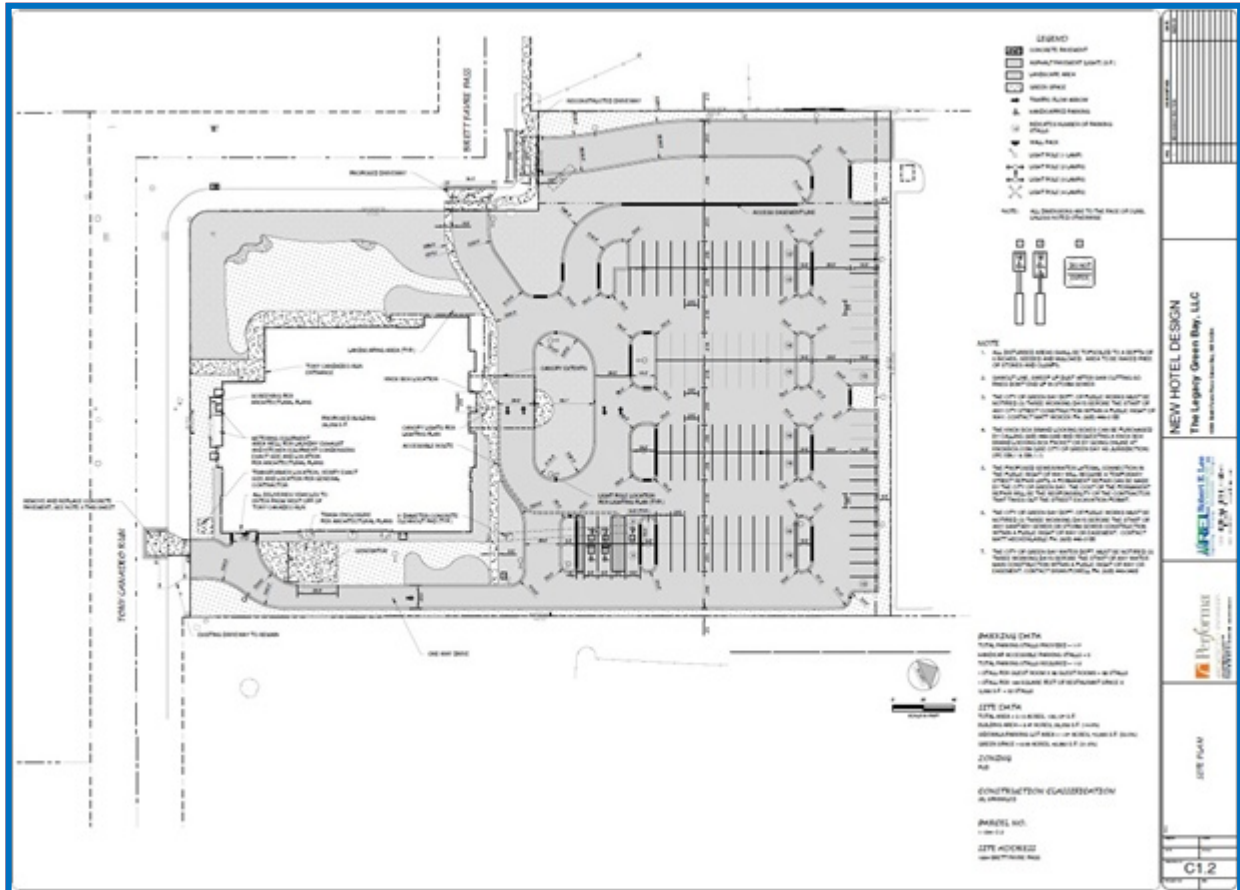


EXHIBIT C-2
Preliminary Concept Plan

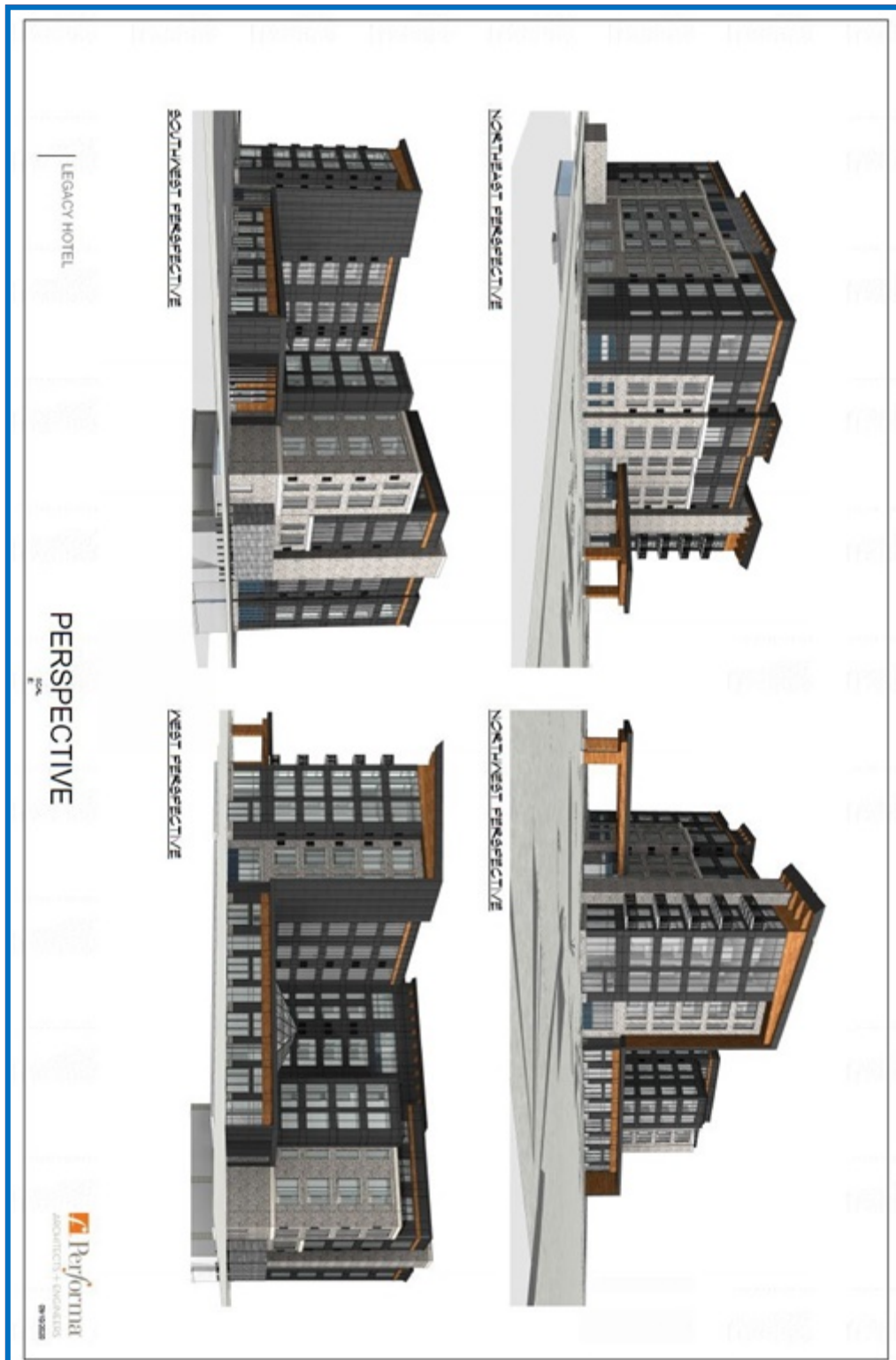
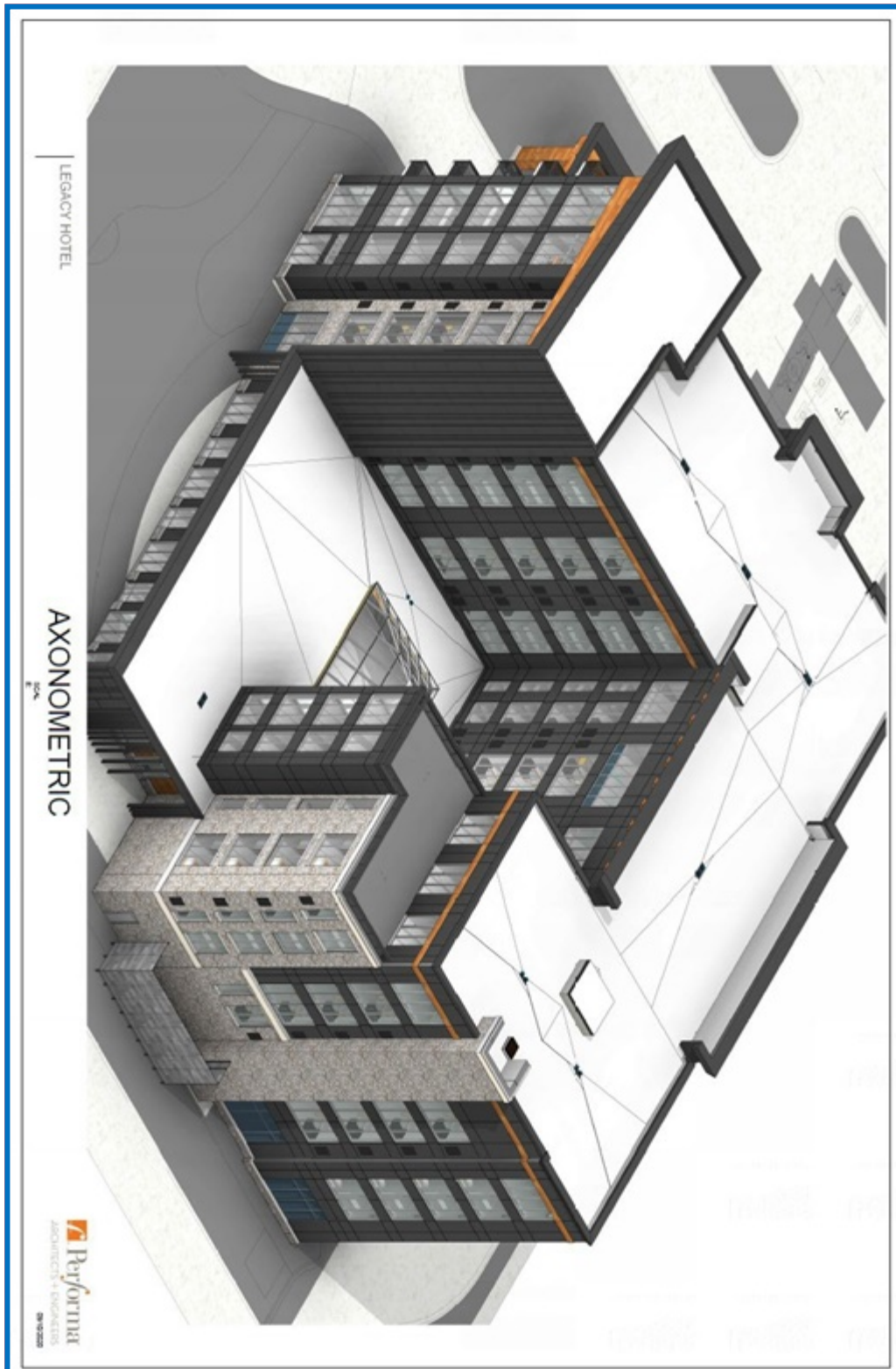


EXHIBIT C-3
Preliminary Concept Plan



Summary Report	
Title	compareDocs Comparison Results
Date & Time	12/6/2021 11:46:46 AM
Comparison Time	5.26 seconds
compareDocs version	v5.0.104.1

Sources	
Original Document	[#4888-4760-5765] [v1] Legacy Hotel Development Agreement 2021 FINAL FOR COUNCIL PACKET - word.docx
Modified Document	[#4863-9104-4101] [v1] Legacy Hotel Development Agreement 2021 FINAL FOR COUNCIL PACKET - HB comments.docx

Comparison Statistics	
Insertions	15
Deletions	8
Changes	21
Moves	0
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Paragraph Style Changes	0
Character Style Changes	0
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Deletions	
<u>Moves</u> / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	Redline
Character Level	Word	False
Include Comments	Word	True
Include Field Codes	Word	True
Flatten Field Codes	Word	False
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print



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

MEETING DATE

January 27, 2022

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # D.2

Consideration with possible action regarding a request for a planning option by On Broadway Inc. on RDA-owned properties on Chestnut Avenue including parcels 4-91, 4-91A, 4-79, 4-77, 4-78, 4-161, and 4-160.

BACKGROUND

On Broadway is currently working on plans for a significant redevelopment in the area of the 200 block of N. Broadway. The RDA and the City of Green Bay own several parcels in this area that could potentially be a part of the planned redevelopment project.

The proposed redevelopment concept being considered includes both public and private development components, and is thought to potentially have a substantial positive economic impact to the Broadway District and Downtown as a whole--estimated to be in the range of \$10-20 million.

The parcels in question are currently used as parking for surrounding businesses and residential uses. Any development proposal brought forward would need to address the replacement of parking areas.

The duration of the proposed option is one year to allow adequate time to address this issue as well as evaluate the feasibility of any other infrastructure improvements that may be needed to facilitate the redevelopment of this area.

If determined to be viable prior to the end of the planning option, a formal development agreement subject to the review of the RDA and Common Council will be required as a part of any proposed transfer of property.

The attached planning option has been reviewed by the City Attorney.

RECOMMENDATION

Approval of a one-year planning option to On Broadway, Inc. for parcels 4-91, 4-91A, 4-79, 4-77, 4-78, 4-161, and 4-160 as presented.

FISCAL IMPACT

No immediate fiscal impact. Any transfer of these properties would need to be evaluated for fiscal impact prior to transfer of ownership.

ATTACHMENTS

- I. OBI Planning Option for RDA Properties on Chestnut Ave RDA Draft

PLANNING OPTION AGREEMENT BETWEEN
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY
AND ON BROADWAY, INC.
FOR PARCELS 4-91, 4-91A, 4-79, 4-77,4-78, 4-161, 4-160

THIS AGREEMENT is made by and between the Redevelopment Authority of the City of Green Bay (hereinafter called "RDA"), and On Broadway, Inc. (hereinafter called "DEVELOPER") on January 27, 2022;

WHEREAS, the Properties at 201 N. Chestnut Ave., 204 N. Chestnut Ave., 158 N. Chestnut Ave., 154 N. Chestnut Ave., 152 N. Chestnut Ave., and 148 N. Chestnut Ave., legally described in Exhibit "A" (hereinafter called the "RDA Site"), were acquired by the RDA for the purpose of blight mitigation and for inducing private enterprise to construct new development, and adding to the tax base of the City of Green Bay; and

WHEREAS, the DEVELOPER is planning for the redevelopment of the Old Fort Square site and is requesting permission to plan for the redevelopment of adjacent properties (hereinafter the "Project") on the RDA Site; and

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

EXECUTION OF AGREEMENT. The DEVELOPER shall, upon execution of the Agreement, tender to the RDA the sum of \$500 (Five hundred dollars and 00/ 1 00 cents) for the granting of planning rights as set forth herein and effective as of the date first written above to February 1, 2023. The sum tendered to the RDA shall be deposited into an RDA bank account. DEVELOPER may request a reasonable extension of this planning option prior to its expiration. However, any extension must be reviewed by the RDA, and approved at their sole discretion.

DUE DILIGENCE. The RDA, during the period of the Agreement, or any extension thereof, shall provide that the RDA Site shall not be conveyed to any other legal entity. The RDA agrees to grant to the DEVELOPER exclusive rights for the purpose of performing due diligence which shall include securing financing, obtaining contractors, finalizing design plans and acquiring any other necessary research for the Project during the applicable planning period set out above.

DEVELOPMENT AGREEMENT. That in the event the RDA and the DEVELOPER enter into a development agreement for the site, all fees paid to the RDA by the DEVELOPER, as set out herein, shall be credited to the DEVELOPER.

OBLIGATIONS. That the RDA shall coordinate public agency participation in planning, obtaining data from public records as may be available, and reviewing and commenting on aspects of the proposed development in a timely manner. DEVELOPER shall commence inspections of the RDA Site as DEVELOPER deems necessary and shall perform its due diligence in order to confirm the feasibility of the RDA Site for DEVELOPER's intended use.

OWNERSHIP. That throughout the period of the planning option, the RDA shall maintain complete ownership of the property.

CURRENT USE. The RDA and DEVELOPER hereby acknowledge the certain portions of the RDA Site are currently used for parking purposes. RDA shall retain the right to continue said use of the RDA Site throughout the period of the planning option and or during any extensions thereof.

MISCELLANEOUS PROVISIONS.

- A. DEVELOPER agrees not to discriminate on the basis of actual or perceived sex, race, religion, creed, color, national origin, ancestry, age, disability, lawful source of income, marital status, familial status, sexual orientation, gender identity, gender expression, gender non-conformity, transgender status, past or present military service, or status as a victim of domestic abuse, sexual assault, or stalking in the sale or occupancy of the property 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 to such injunctive relief or other remedies as may be available at law.
- B. 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 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 acts of God, any other party in this Agreement, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty.
- C. The RDA and 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 is 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. No waiver in fact made with respect to any specific default, shall 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.
- D. 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 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 and 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.

- E. ASSIGNMENT. DEVELOPER may not assign this Agreement or sell to a third party without the prior consent of the RDA. In the event that DEVELOPER violates this section, DEVELOPER shall pay to the RDA \$10,000 as damages for their action.
- F. AMENDMENTS TO AGREEMENT. This Agreement may not be changed orally, but only by agreement in writing and signed by the parties hereto.
- G. 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 or 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.
- H. 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.
- I. ENVIRONMENTAL ASSESSMENT. The RDA and City of Green Bay will disclose to DEVELOPER any reports, analysis, studies, or other documents that would identify any known contaminants on the premises. Under the supervision, direction and approval of the City, the DEVELOPER may inspect the premises and to perform any tests or analysis desired by DEVELOPER as to the condition of the premises.
- J. 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.
- K. 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:

Brian H. Johnson, Executive Director
On Broadway, Inc.
340 N Broadway, Ste 165
Green Bay, WI 54303
Main: (920) 437-2531
Email: brian@onbroadway.org

To RDA:

Neil Stechschulte, Development Director
Community & Economic Development Department
City of Green Bay, Wisconsin, USA
100 N. Jefferson St.
Green Bay, WI 54301
Phone: (920) 448-3395
Email: neil.stechschulte@greenbaywi.gov

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.

NONMERGER AND SURVIVAL. Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

SIGNATURE PAGE TO FOLLOW

N 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

Neil Stechschulte, Secretary

Date

On Broadway, Inc.

Brian Johnson, Executive Director

Date

EXHIBIT A – Legal Description by Parcel

Parcel 4-91 - 6,307 SQ FT

DOUSMANS ADDN ALL OF LOTS 94,95,96 & 97 EX 955 R 431 & EX N 31 FT OF LOT 94 & ALSO PRT VAC ST ADJ ELY DESC IN 1773129 & THAT PRT OF W1/2 OF VAC RD ADJ & DESC IN 1501269

Parcel 4-91A - 13,288 SQ FT

DOUSMANS ADDITION SLY 80 FT OF LOTS 95-96 & 97 & THAT PRT OF W1/2 VAC RD ADJ & DESC IN 1501269

Parcel 4-79 - 12,364 SQ FT

DOUSMANS ADD LOTS 67 & 68 EXC THE NORTHERLY 44 FT & N1/2 OF VAC RD ADJ DESC IN 1501268 & THAT PRT OF E1/2 OF VAC RD ADJ & DESC IN 1501269

Parcel 4-77 - 7,537 SQ FT

DOUSMANS ADDN N 1/2 OF LOTS 65 & 66 EX THE WLY 18 FT THEREOF & S1/2 OF VAC RD DESC IN 1501268

Parcel 4-78 - 5,169 SQ FT

DOUSMANS ADD S 1/2 OF LOTS 65 & 66 EX THE WLY 18 FT THEREOF

Parcel 4-161 - 4,684 SQ FT

DESNOYERS ADD LOT 15 BLK C EX WLY 18 FT

Parcel 4-160 - 4,648 SQ FT

DESNOYERS ADD LOT 14 BLK C EX WLY 18 FT & EX PRT DES IN J 5276-12