



AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

**TUESDAY, SEPTEMBER 13, 2022, 1:30 PM
CITY HALL, ROOM 604 - THE HARRY MAIER ROOM**

A. Roll Call.

1. Members: Gary Delveaux, Chair; Matt Schueller, Vice-Chair; Ald. Randy Scannell, Deby Dehn, Kathy Hinkfuss, Melanie Parma, and Jessica Ganther.

Liaisons: Jeff Mirkes, Leah Weycker, and Brooke Hafs.

B. Approval of the Agenda.

1. Approval of the agenda for the September 13, 2022, meeting of the Redevelopment Authority.

C. Approval of Minutes.

1. Approval of the minutes from the August 9 and August 23, 2022, meetings of the Redevelopment Authority.

D. Regular Business.

1. Consideration with possible action to approve a three-month extension to the planning option for The Really Good Idea Co, LLC and the redevelopment of the building located at 109 N Adams Street and the Alley at 101 N Adams Street.
2. Consideration with possible action to approve a three-month planning option request by Sherrelle Schmidt for a house move project at 1308 E Walnut Street (Parcel 14-244).
3. Consideration with possible action on an amendment to Development Agreement 22-01, 216-222 Cherry Street Redevelopment, related to the project description and the overall project schedule.
4. Consideration with possible action on a development agreement with 30KFT, LLC for TIF assistance for the expansion of a veterinarian clinic.

E. Informational.

1. Financial report and check register.
2. Director's report and project updates.
3. Next Regular Meeting: October 11, 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.



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

MEETING DATE

September 13, 2022

PREPARED BY

Ronda Bitney

AGENDA ITEM # D.1

Consideration with possible action to approve a three-month extension to the planning option for The Really Good Idea Co, LLC and the redevelopment of the building located at 109 N Adams Street and the Alley at 101 N Adams Street.

BACKGROUND

On March 24, 2022, the RDA awarded a six-month planning option to The Really Good Idea Co, LLC for the redevelopment of the sites located at 101 N and 109 N Adams Street, also known as the former Schauer & Schumacher building. The RDA then received a three-month update on the status of the current project.

The developers have met with staff regarding available funding, including Historic Tax Credits and potential TID financing. They have spent time meeting with financial institutions and private investors to complete a portfolio package. During this time, they also met with several contractors, engineers and architects. A few of the items that came to their attention have increased their original estimates more than originally expected.

The developer is requesting a three-month extension to evaluate and research more funding options to continue to breathe new life into this project. The developer remains passionate and is still committed to making this project happen.

Staff recommends approval of the three-month extension to the original planning option so that The Really Good Idea Co, LLC can continue their search for additional funding sources.

RECOMMENDATION

To approve a three-month extension to the planning option for The Really Good Idea Co, LLC for the development of the sites located at 101 N and 109 N Adams Street.

FISCAL IMPACT**ATTACHMENTS**

- I. 109 N Adams three-month extension

The Really Good Idea Company

130 E Walnut St.

Suite #802

Green Bay, WI 54301

T: 920.639.5425

09/08/2022

To Whom it may concern:

The Really Good Idea Company has spent the last 6 months exploring renovation of the historic 109 N Adams St building in the heart of downtown. We have talked and brought in several contractors, bankers, engineers and architects over the last 6 months.

We have a few items that drove our original estimates higher than expected but we aren't giving up on the project, we remain passionate and want to leave no stone unturned.

We are asking for another 3 months to evaluate and research more funding options to breathe new life in this beautiful building.

Thank you for the consideration,

-Joe Zeitler



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

MEETING DATE

September 13, 2022

PREPARED BY

Ronda Bitney

AGENDA ITEM # D.2

Consideration with possible action to approve a three-month planning option request by Sherrelle Schmidt for a house move project at 1308 E Walnut Street (Parcel 14-244).

BACKGROUND

The vacant lot located at 1308 E Walnut Street (Parcel 14-244) was purchased in September 2015 with the help of federal funds for the purpose of developing single-family, owner-occupied housing.

Recently, staff received a proposal for a single-family, owner-occupied home to be moved to this site at the owner's expense. They are currently working with DeVoght Movers on the relocation of the home and garage located at 1020 Chicago Street to 1308 E Walnut Street. The owner is offering to purchase the lot at the price of \$14,100, which is our current asking price with no additional funds required. They are requesting a three-month planning option so that they may complete the needed items to ensure a successful and safe move of the home and garage. We have asked for a detailed plan for moving the house and a timeline for completion before the transfer of the property would take place.

Staff recommends approval of a three-month planning option to Sherrelle Schmidt.

RECOMMENDATION

To approve a three-month planning option to Sherrelle Schmidt for a house move project at 1308 E Walnut Street.

FISCAL IMPACT

ATTACHMENTS

- I. 1308 E Walnut Proposal Package

RDA Proposal
1308 E. Walnut St.
Green Bay, WI

Purchaser: Sherrelle Schmidt
1216 Crooks St.
Green Bay, WI 54301
(715)216-2706

Purchase Price: \$14,100.00 (Current asking price)

Site Plan: Enclosed

Movers: DeVooght Movers
David DeVooght-Owner
13003 US-151
Valders, WI 54245
844-203-9912

Moving Plan: Moving house structure from 1020 Chicago St. to 1308 E. Walnut St.
- Right onto Webster, Left on Walnut St. to 1308 E. Walnut St.

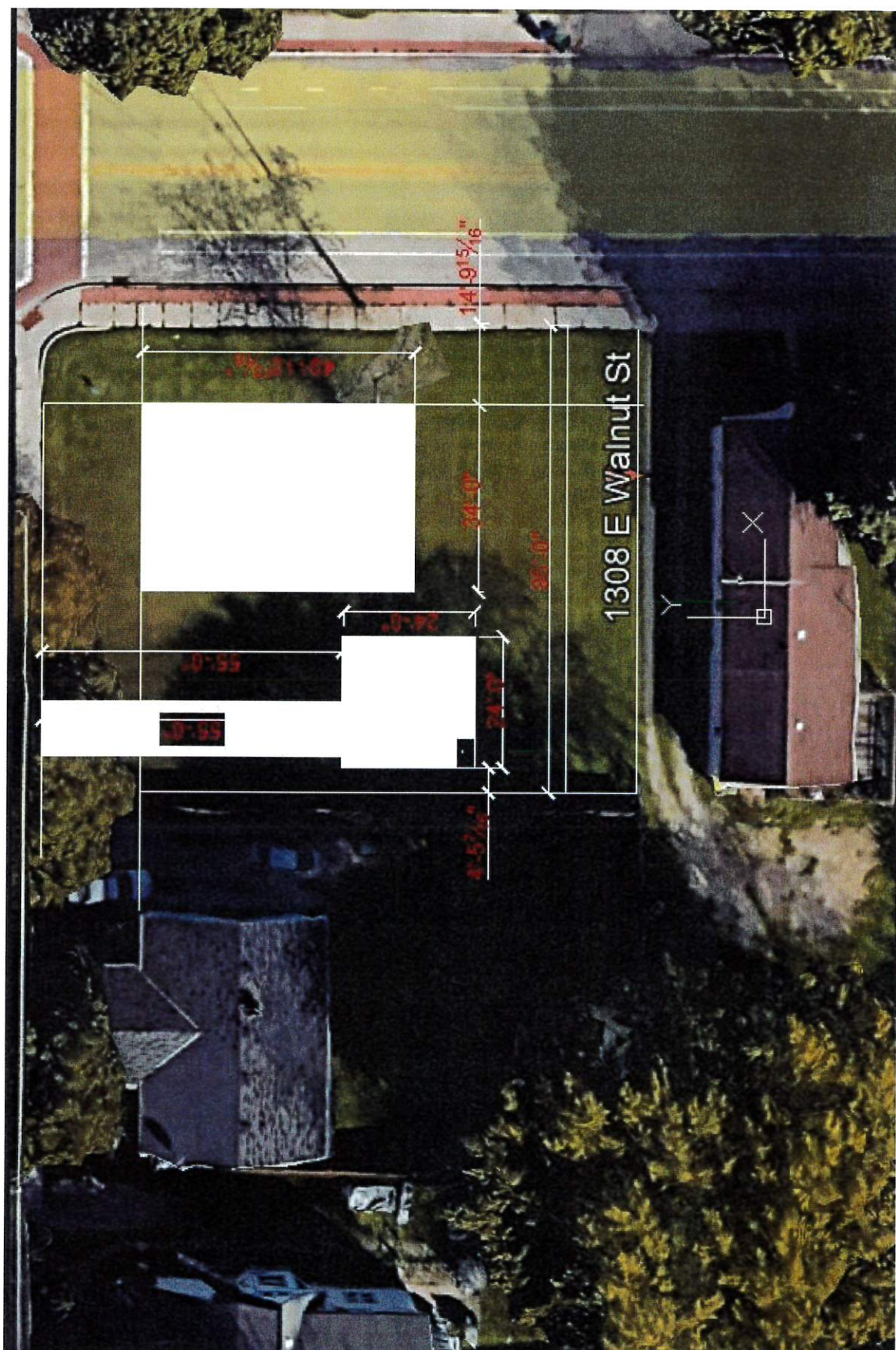
Pictures of home: Enclosed

Timeline from beginning to completion: 1 year from Development agreement, once
it is established after the 90 day planning option
has expired or prior.

Financial plan: No additional funds required.

Planning option: Requesting a 90 planning option, with agreed upon purchase price
between the parties. (Purchase price listed above.)







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

MEETING DATE

September 13, 2022

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # D.3

Consideration with possible action on an amendment to Development Agreement 22-01, 216-222 Cherry Street Redevelopment, related to the project description and the overall project schedule.

BACKGROUND

The developer has requested updates related to the project description and the overall project schedule in the currently adopted development agreement. No other changes are being proposed at this time. Staff will provide an overview of the changes at the RDA meeting, as well as an updated development agreement document.

Both the Developer and staff are requesting the following changes to the Development Agreement:

- Update of the project description to reflect the current project, which will likely include the demolition of the first story of the building. It was previously thought to be able to be saved and built upon, but further engineering analysis has indicated that is not recommended.
- Update of the overall valuation from \$13 million down to \$8 million, based on information provided by the City Assessor. Staff has updated the projected taxes from the project using this new number.
- Removal of the “right of first refusal” language. This was a leftover from another agreement.
- Update of several key dates to match the construction schedule. Construction is scheduled to begin by January 2023, and be completed by March 1, 2025.
- Addition of “withholding TIF Payment” language to the default remedy section.

RECOMMENDATION

Approval of the amended development agreement as presented, subject to final approval of the City Attorney.

FISCAL IMPACT

Proposed amendments do not primarily change financial impact of the project.

ATTACHMENTS

- I. 091222 Cherry Street Development Agreement Amendment RDA FINAL DRAFT



City of Green Bay
Department of Community and Economic Development

DRAFT

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT 22-01

216 - 222 CHERRY STREET REDEVELOPMENT

This Development Agreement is made this ~~10th~~ day of ~~September~~ May, 2022,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and 222 CHERRY STREET, LLC], a Wisconsin limited liability company ("Developer").

RECITALS

A. This amended agreement is meant to fully replace the original development agreement 22-01 previously approved by the Common Council on May 10th 2022.

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

<u>Tax Parcel</u>	<u>Address</u>	<u>Acres</u>	<u>Assessed Value</u>
12-114	216-222 Cherry St.	0.364	775,600

B.C. The parcel listed above shall be referred to as the "Property." The Property comprises approximately zero and three hundred sixty-four thousandths (0.364) 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.D. Developer intends to complete a Project, which includes the following:

Constructing a six (6) story multi-use building, including approximately fifty-seven (57) market rate multi-family apartment units on floors two through six, approximately 10,000 square feet of commercial retail/office space on the first floor, Adding five (5) stories with fifty-seven (57) market rate multi-family apartment units to the existing 10,000 s.f single story commercial retail/office building, and a connecting skywalk to the Cherry Street Parking Ramp to the residential portion of the building project.

The Proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT C.

D.E. As of January 1, 2022, the Property has an aggregate assessed value of Seven Hundred Seventy-Five Thousand Six Hundred Dollars (\$775,600) which based on the assessed tax rates in effect as of January 1, 2022, the Property yields approximately:

1. Twenty-Thousand and Ten dollars (\$20,010.48) in total gross real estate taxes annually (assessed mill rate of \$25.80);
2. Twenty-Thousand and Ten dollars (\$20,010.48) 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 \$25.80); and

3. Seven Thousand Nine Hundred Four Dollars (\$7,904.05) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$10.19).

E.F. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be at least Eight approximately Thirteen Million Dollars (~~\$13,000,000~~ \$8,000,000), which is anticipated to yield approximately:

1. ~~Two Three Hundred Six~~ Thirty Five Thousand Four Hundred and Seventy Dollars (\$335,206,400) One Hundred Eighty-Six Thousand Three Hundred and Eighty-Nine Dollars (\$186,389) in total gross real estate taxes annually (assessed mill rate of \$25.80);
2. One Hundred Eighty-Six Thousand Three Hundred and Eighty-Nine Dollars (\$186,389) ~~Two Three Hundred Six~~ Thirty Five Thousand Four Hundred and Seventy Dollars (\$335,206,400) 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 \$25.80); and
3. ~~Eighty One Hundred Thirty Two Thousand Four Five Hundred and Twenty-Seven Dollars (\$132,40081,520)~~ Seventy-Three Thousand Six Hundred and Sixteen Dollars (\$73,616) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$10.19).

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.G. The RDA and the City will ask the Joint Review Board (JRB) to create a new Tax Increment District (the TID), effective January 1, 2022, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the "TID."

G.H. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to; demolition, remodeling, repair or reconstruction of existing buildings; 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.I. 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.J. In order to induce Developer to undertake the Project, such that it will build new structures for individuals of all ages and abilities; be located in a place easy to reach on foot, bicycle, or transit; generate job opportunities for individuals of all ages, abilities, and incomes; 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; enhance the physical (soil, water, air) landscape; expand our range of residential and commercial real estate products; be 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.

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

I. PURPOSE

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

II. DEFINITIONS; EXHIBITS

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

- A. “Agreement” means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.
- B. “Annual Assessed Value” means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- C. “Available Tax Increment” means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other

obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.

- D. “Base Value” means the aggregate assessed value of the Property when the TID was created, which shall be determined as of 1/1/2022.
- E. “City” means the City of Green Bay, Brown County, Wisconsin.
- F. “Concept Plan” means the plan for the Project.
- G. “Developer” means 222 Cherry Street, LLC or any assignee of the same.
- H. “Exhibits” means the supplementary reference information attached to this development agreement that shall include the following:
 - 1. Exhibit A – Map of the Property
 - 2. Exhibit B – Legal Description of the Property
 - 3. Exhibit C – Preliminary Concept Plan
- I. “Future Project” means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement.
- J. “Plans and Specifications” means the plans and specifications developed for the Project.
- K. “Preliminary Concept Plan” means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
- L. “Private Improvements” means the improvements to be constructed on the Property that are not Public Improvements.
- M. “Project” means the Project as defined in the Recitals.
- N. “Public Art” means art that shall be accessible to the public, and includes all forms of original creations of visual art, conceived in any medium, material, or combination thereof, including paintings, drawings, stained glass, and murals in any media; statues, bas relief, mobile, kinetic, electronic, neon, or other sculptures; environmental artworks; fountains, arches or other structures intended for ornament; integrated and functional architectural elements of a structure; video and other media-based works; inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints; crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials; artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself.
- O. “Public Improvements” means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:
 - 1. road, pedestrian, and bicycle improvements; and
 - 2. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and

3. telephone, high-speed cable, and related technology infrastructure; and
 4. natural gas, electrical power, and other public utilities; and
 5. any related engineering, grading, erosion control, and landscaping; and
 6. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.
- P. “Qualified Expenditures” means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section IV. C. 4.
- Q. “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. “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. “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. “TID” means the future Tax Increment District to be created in 2022 by the City of Green Bay, The RDA and the City will ask the Joint Review Board (JRB) to create a Tax Increment District (the ‘TID), effective January 1, 2022, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the “TID.”
- U. “TIF” means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.
- V. “TIF Incentive” means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. TAX INCREMENT FINANCING

- A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the “but for” test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer’s qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.
- B. Nature of TIF Incentive. The TIF Incentive available to Developer under this Agreement shall be defined as the following:
- I. Certified Survey Map.
 - a) The Developer shall prepare and obtain approvals for a CSM, for which desired parcel boundaries are herein attached on the Preliminary Concept Plan (EXHIBIT C),

including any easements or other dedications required to accommodate the proposed skywalk connection to the Cherry Street Parking Ramp.

- b) Upon recording of such CSM with the Brown County Register of Deeds, all references to Property shall include all such new parcels created through the actions of this Section III. B. I.
2. PAYGo Reimbursement. The City shall provide an additional TIF Incentive as a pay-as-you-go (PAYGo) obligation of the City, which is further defined as follows:
- a) The Developer guarantees that the Property shall have a minimum aggregate assessed value of ~~Thirteen-Eight~~ Million ~~Seven-Hundred-and-Seventy-Five-Thousand-and-Six-Hundred~~ Dollars (~~\$13,775,6008,000,000~~) on or before January 1, 2025.
 - b) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures shall be reimbursed to Developer.
 - c) Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property as of January 1 of the year in which construction commenced. The difference in assessed values shall be known as the Incremental Property Value.
 - d) Incremental Property Value multiplied by the assessed mill rate, less payments of real estate taxes to the State of Wisconsin, shall be known as the Available TIF Increment.
 - e) Developer shall not be entitled to any TIF Increment unless the aggregate assessed Property value meets or exceeds the guaranteed value of ~~Eight-Thirteen~~ Million ~~Seven-Hundred-and-Seventy-Five-Thousand-and-Six-Hundred~~ Dollars (~~\$13,775,6008,000,000~~). Upon reaching this threshold, Available TIF Increment shall be distributed as follows:
 - (I) Provided the aggregate assessed Property value ~~is at least meets or exceeds~~ ~~Eight-Thirteen~~ Million ~~Seven-Hundred-and-Seventy-Five-Thousand-and-Six-Hundred~~ Dollars (~~\$13,775,6008,000,000~~) on or before January 1, 2025, the City shall make available eighty percent (80%) of the annual TIF Increment to the Developer until all Qualified Expenditures have been repaid or the incentive period expires. After all qualified expenditures have been paid, or the incentive period expires, these funds will be applied to public infrastructure, public improvements, or other eligible costs within the TID.
 - (II) The City shall utilize ten percent (10%) of the annual TIF increment for public infrastructure and improvements within the new TID until all Qualified Expenditures have been repaid or the incentive period expires.
 - (III) The City shall utilize ten percent (10%) of the annual TIF increment to cover administrative costs incurred by the TID through the full life of the TID.
 - f) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special

charges against the Real Estate for the previous year. For example, if the first occupancy permit is issued on September 1, 202~~3~~⁴, the TIF Increment would be determined as of January 1, 202~~4~~⁵ and the PAYGo reimbursement would first be payable in 202~~5~~⁶.

3. Qualified Expenditures. Project Grant(s) shall be disbursed in the following priority, and only fund:
 - a) Public Improvements, if applicable, as defined in Section II. N., and environmental remediation, and asbestos abatement as required by State and Federal law; then
 - b) "Private Improvements" specifically approved by the City or RDA as stated in Section IV. C.; then
 - c) Any other activity specifically approved by the City or RDA.
4. Assignment. Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property upon approval of the RDA, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has an agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value and guaranteed aggregate assessed value generated by any third party purchaser and/or developer of any part of the Property.

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

1. Monetary Limitation. The TIF Incentive in any year shall not exceed seventy-eighty percent (~~78~~0%) 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, and provided Developer and all transferees have paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year by July 31, TIF Incentive payments shall be made on or before September 1 of each year; provided, however, in no event shall TIF Incentive payments continue after the earlier of the termination date of the TID or the termination of this Agreement if before the termination of the TID.
5. Maximum Life of the TID. Payments shall not be made beyond the maximum life of the proposed TID, which is anticipated to be 20 years.

- D. No General Obligation of City. The City's obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be

paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.

- E. Other Grants and Credits. The City and RDA, as appropriate and in its sole discretion, may also apply for such other grants and credits in regard to the Project as they shall deem appropriate for the benefit of the Project and as may be required to achieve necessary financing for the Project, provided, however, the City and RDA make no representations or warranties about the availability of such grants and credits or whether any such grants or credits that may be available will be awarded.

IV. OBLIGATIONS OF DEVELOPER

- A. Concept Plan. Prior to ~~July-December~~ I, 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 this agreement. The Concept Plan shall clearly identify:

1. Any proposed changes in boundaries of the Property
2. The approximate location of any proposed structures and/or projects to be built on the Property
3. A preliminary rendering or other illustration of scale of proposed structures and buildings

- B. Construction Documents. Prior to ~~January-August~~ I, ~~2022~~2023, and prior to commencement of construction of any Phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval. The Construction Documents shall include:

1. Plans and specifications for structural, mechanical and electrical systems, materials; and
2. Full-color elevations for all sides of all proposed structures; and
3. Descriptions and actual samples of all exterior building materials; and
4. Descriptions and photographic examples of interior finishes; and
5. Plans and specifications for any skywalk connection to the Cherry Street Parking Ramp, including the proposed method and timing of construction which shall subject to the approval of the Department of Public Works and the RDA.
6. Other such essential items as may be reasonably determined by the RDA to be appropriate.

- C. Development Budget. Prior to ~~January-August~~ I, ~~2022~~2023, 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 Eight Million Dollars (\$8,000,000) in "hard" construction costs for the entire Project; and
2. A line item of not less than five percent (5%) of total Project costs for cost overruns and change orders; and
3. A line item of not less than one percent (1%) of the estimated aggregate assessed value of the Property, which shall be specifically dedicated towards
 - a) Public Art on the Property; or
 - b) Public Art within one-half (1/2) mile of the Property; or

- c) A separate Public Art project(s) approved by the RDA and GBPAC; or
 - d) Funds for design and maintenance of Public Art, or any combination of the alternatives herein; and
- 4. Line items for each of the Qualified Expenditures for which the Developer is seeking a TIF Incentive, specifically including:
 - a) Utility relocation costs.
 - b) Improvements or other assistance related to attracting or retaining approved commercial retail tenants consistent with the goals and objectives of this agreement, or otherwise consistent with the goals and objectives of the City of Green Bay and/or the Green Bay Redevelopment Authority.
 - c) Enhanced building design, architecture, or materials beyond basic code requirements as approved by the RDA.
 - d) Enhanced landscaping beyond basic code requirements as approved by the RDA.
 - e) Structured parking costs allowing for better building design and improving the overall function of the site including a “skywalk” connection to the Cherry Street Parking Ramp.
 - f) Enhanced stormwater management costs allowing for better building design and improving the overall function of the site.
 - g) Costs related to the installation of environmentally sustainable infrastructure and practices in the project.
 - h) Site improvements related to providing access to public transit or alternative transportation options.
 - i) Enhanced pedestrian, bicycle, and streetscape improvements beyond basic code requirements as approved by the RDA.
 - j) Excessive construction costs related to unusual supply and demand factors related to current economic conditions that prevent the project from being financially feasible as approved by the RDA.
- 5. A negotiated and approved lease for use of parking stalls after normal business hours in the Cherry Street Ramp with the Department of Public Works.
- 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.
 - 3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.
- F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than ~~January 1, 2023~~August 1, 2022, proof of equity in the form of the value of the Property, less any mortgages thereon, not less than twenty percent (20%) equity available for injection into the Project in an amount sufficient to obtain financing for all 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 ~~January 1, 2023~~August 1, 2022, Developer shall have delivered proof satisfactory to the City and RDA of financing, which after injection of the Developer equity into the Project, will be sufficient in the determination of the City and RDA, to complete the Project according to the plans and specifications.
- H. Acquisition of Property. By August 1, 2022, Developer shall have closed on the purchase of 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. Promptly after the Property has been acquired by Developer, 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 ~~August-January 1, 2022~~2023. Construction shall be completed no later than March 1, ~~2024~~2025. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.
- M. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA, Developer shall submit a copy of annual, audited financial statements for Developer through termination of this Agreement.
- N. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.
- O. Maintenance and Repair. Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.
- P. Transfer 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.
 - ~~3. Right of First Refusal. Developer shall not sell, trade, grant, or encumber the Property, except as specifically provided herein. Should Developer not complete elements of the Project as defined herein, Developer shall provide City and/or RDA the exclusive right, for a period not to exceed ninety (90) days, to purchase an undeveloped or underdeveloped portion of the Property. The purchase price shall be equivalent to the Assessed Value of the land, as determined by the City Assessor. This Right of First Refusal shall run with the land, and shall survive the termination or expiration of this Agreement, and shall remain in place until such~~

~~time as the aggregate assessed Property value meets or exceeds Thirteen Million Seven Hundred and Seventy-Five Thousand and Six Hundred Dollars (\$13,775,600)~~

- Q. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.
- R. Environmental.
1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of 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.
- S. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:
 1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:
 - a) Bodily Injury by Accident – one hundred thousand dollars (\$100,000.00) per accident;
 - b) Bodily Injury by Disease – one hundred thousand dollars (\$100,000.00) per employee; and
 - c) Five hundred thousand dollars (\$500,000.00) policy limit.
 2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.
 3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:
 - a) General Aggregate Limit – two million dollars (\$2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars (\$2,000,000.00);
 - b) Bodily Injury and Property Damage – two million dollars (\$2,000,000.00) per occurrence;
 - c) Fire Legal Liability Damage Limit – one hundred thousand dollars (\$100,000.00) per occurrence; and
 - d) Medical Expense Limit – ten thousand dollars (\$10,000.00) per person.

4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:
 - a) Bodily Injury – two hundred fifty thousand dollars (\$250,000.00) per person; and
 - b) One million dollars (\$1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars (\$250,000.00) per occurrence.
5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars (\$1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.
6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, 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.

T. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:
 - a) Any breach by Developer of the terms of this Agreement;
 - b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or
 - c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.
2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not

eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

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

- A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.
- B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.
- C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.
- D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.
- E. TID District. The RDA and City intend to create a new TID effective January 1, 2022, and once created shall be in effect and in good standing with and 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 RDA and City intend to create a new TID effective January 1, 2022, and once created shall be in effect and in good standing with and 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.
- M. No Objection to Property Assessment. Prior to termination of this Agreement, Developer shall not file an objection to real or personal property assessment as provided under §70.47(7)(a), Wis. Stats.

VIII. DEFAULT

- A. Developer Default. Each of the following shall be an Event of Default by Developer:
 - 1. Failure to Make Payment. Developer fails to make any payment required and such failure continues for a period of 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, including withholding of PayGo payments to the Developer until temporary defaults are remedied to the satisfaction of the City. ~~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; or
 - 5. The parties agree in writing to terminate this Agreement.
- B. TIF Payments termination. TIF payments shall only continue for a period of no longer than twenty-two (22) years after the date of execution of this Agreement and therefore shall terminate at the end of tax year 2044.
- C. Survival of Certain Provisions. Sections III. B. 2. d), III. D., IV. E., IV. I., IV. K., IV. P. 2., IV.P.3., IV. Q., IV. R. 2., IV. T., V. A., V. B., V. C., V. D., V. E., VII. C., VII. D., VII. E., VII. G., VII. K., VII. L., VIII. B., VIII. D., VIII. E., VIII. F., X. B., X. C., X. G., X. J., X. M., X. O., X. P., and X. R. shall survive the termination of this Agreement.

X. MISCELLANEOUS PROVISIONS

- A. No Effect Until Executed. The terms of this Agreement shall have no force and effect unless and until this Agreement is executed by all Parties.
- B. Assignment. 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.
- C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic

protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

- D. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.
- E. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.
- F. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.
- G. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, 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.
- H. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.
- I. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein. In the event this Agreement is not executed by both Parties prior to ~~January July 1, 2022-2023~~ any and all approvals granted pursuant hereto or in conjunction herein by the City which are contemplated as part of this Agreement shall automatically expire.
- J. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given:
 - 1. Upon receipt if sent via electronic mail (e-mail) 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 of Green Bay
Attn: City Clerk
100 North Jefferson Street
Green Bay, WI 54301
e-mail: celestine.jefferys@greenbaywi.gov
facsimile: 920-448-3010

To RDA: Redevelopment Authority of the City of Green Bay
Attention: Executive Director
100 North Jefferson Street, Room 608
Green Bay, WI 54301
e-mail: neil.stechsulte@greenbayi.gov
facsimile: 920-448-3426

To the Developer: 222 Cherry Street, LLC
Peter Nugent
1121 Highview Lane
Green Bay, WI 54304
e-mail: peter@peternugent.com
phone: 920-227-8532

with a copy to: Tim Polack

Czachor, Polack, & Borchardt, LLP
107 N. Broadway, Suite 2
Green Bay, WI 54303
email: tim@libertytitlegb.com
phone: 920-435-7300

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

- K. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.
- L. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- M. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.
- N. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other

case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.

- O. Recording of Agreement. The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.
- P. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. 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).
- Q. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.
- R. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.
- S. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

~~[Signature pages follow]~~[Signature pages follow]

Signature page 2 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and
DEVELOPER NAME

THE CITY OF GREEN BAY

By: _____
Eric Genrich, Mayor

By: Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

[illegible]

Personally came before me this _____ day of _____ 2024², 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
GORMAN AND COMPANY

**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 _____ 20212, 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 _____

DRAFT



DRAFT

EXHIBT B
Legal Description

15,892 SQ FT PLAT OF NAVARINO LOT 49 & N 1/2 OF LOT 50



PROJECT METRICS

BUILDING DATA:
Height: 70-75'
-Proposed link to parking ramp at 4th floor.

FIRST FLOOR: ~11,000 GSF Comm/Retail
FLOORS 2-6: ~13,275 GSF Residential

Unit Mix:
1 Bedroom: 6 Units
1+ Bedroom: 20 Units
2 Bedroom: 25 Units
2+ Bedroom: 4 Units
3 Bedroom: 2 Units
TOTAL: 57 UNITS

EXHIBIT C
Preliminary Concept Plan

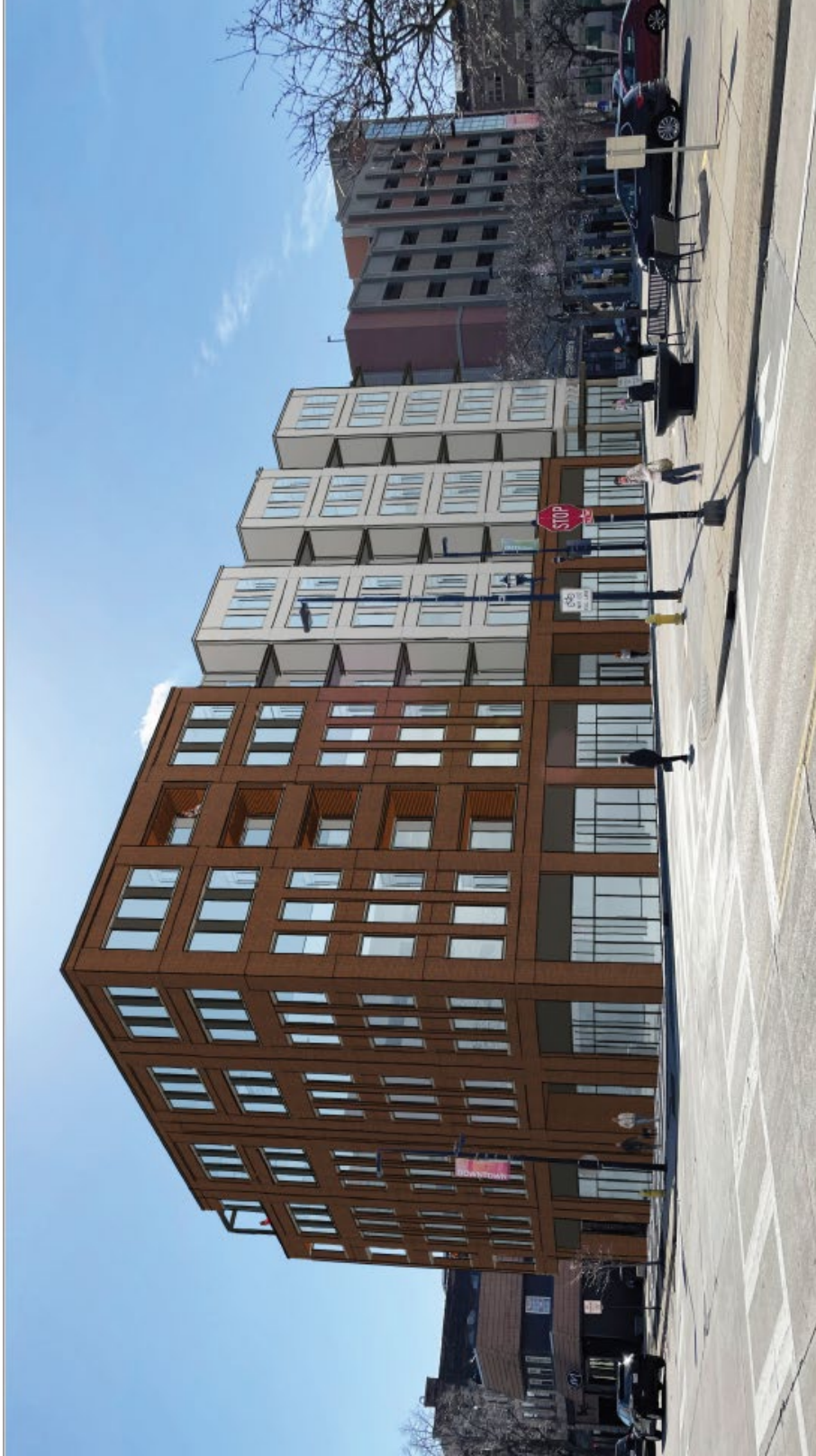
PROJECT METRICS

222 CHERRY ST | CONCEPTUAL DESIGN

#00-22322
04.25.2022
03



DRAFT



CHERRY STREET & NORTH ADAMS

#00-22232
04.25.2022
02

222 CHERRY ST | CONCEPTUAL DESIGN



DRAFT



TYPICAL FLOOR PLAN - LOWER LEVELS

DRAFT



TYPICAL FLOOR PLAN - UPPER LEVELS



222 CHERRY ST | CONCEPTUAL DESIGN

#00-22222
04.23.2022
04

DRAFT



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

MEETING DATE

September 13, 2022

PREPARED BY

Neil Stechschulte, Director

AGENDA ITEM # D.4

Consideration with possible action on a development agreement with 30KFT, LLC for TIF assistance for the expansion of a veterinarian clinic.

BACKGROUND

Gentle Vet Clinic is proposing an approximate 7,500 s.f., \$3.6 million expansion of their clinic operations at 2560 University Avenue. The developer is requesting assistance with costs related to soil corrections (excavation, haul away, backfill, geofabric), storm water management (piping, inlets, curb, and gutter), retention pond, and related civil engineering costs not to exceed \$338,520 or through 2038, whichever happens first. The developer is guaranteeing a \$1.5 million increase in valuation in order to qualify for TIF assistance. The assistance is to be on a Pay Go basis, with 65% of the increment going to the developer for qualified expenditures. Construction is to begin no later than April 1, 2023, and be completed by December 31, 2023.

RECOMMENDATION

Approval of the development agreement as presented, subject to final approval by the City Attorney, and forward to the City Council for their consideration.

FISCAL IMPACT

TIF assistance is on Pay Go basis.

ATTACHMENTS

- I. Gentle Vet Expansion Development Agreement RDA Draft 090822



City of Green Bay
Department of Community and Economic Development

DRAFT

DEVELOPMENT AGREEMENT 22-__

30KFT, LLC dba GENTLE VET EXPANSION (UNIVERSITY AVE.)

This Development Agreement is made this _____ day of _____, 2022,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and 30KFT, 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:

<u>Tax Parcel</u>	<u>Address</u>	<u>Acres</u>	<u>Assessed Value</u>
21-1249-1-1	2560 University Ave.	2.30	\$173,300

- B. The parcels listed above shall be referred to as the "Property." The Property comprises approximately two and three hundred and five thousandths (2.305) 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 includes the following:

Construction of an expanded veterinary hospital of approximately seven thousand five hundred (7,500) square feet.

The Proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT C.

- D. As of January 1, 2022, the Property has an aggregate assessed value of one hundred and seventy-three thousand three hundred dollars (\$173,300), which based on the assessed tax rates in effect as of January 1, 2021, the Property yields approximately:
1. Four thousand two hundred ninety-seven dollars (\$4,297) in total net real estate taxes annually (assessed mill rate of \$24.80);
 2. Four thousand two hundred ninety-seven dollars (\$4,297) in net 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 \$24.80); and
 3. One thousand seven hundred and sixty-five dollars (\$1,765) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$10.19).
- E. Upon completion of Proposed Project, the City estimates the addition of one million five hundred thousand dollars (\$1,500,000) in new valuation above the base value resulting in an aggregate assessed property value of the Property to be approximately one million six hundred seventy-three thousand and three hundred dollars (\$1,673,300).which is anticipated to annually approximately:

1. Forty-one thousand four hundred and ninety-seven dollars (\$41,497) in total real estate taxes annually (assessed mill rate of \$24.80); and
2. Forty-one thousand four hundred and ninety-seven dollars (\$41,497) 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 \$24.80); and
3. Seventeen thousand and fifty dollars (\$17,050) in real estate taxes to the City of Green Bay annually (assessed mill rate of \$10.19).

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 Property is within Tax Increment District Number 18 ("TID 18" or the "TID") which will provide part of the financing for certain costs of the project.
- G. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to, the remodeling, repair or reconstruction of existing buildings;
- 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 it will generate job opportunities; build new structures with high-performance designs, systems, and finishes; create a significantly higher per acre property value; generate property taxes greater than the cost of providing infrastructure and services;; expand our range of commercial real estate products; and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

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

I. PURPOSE

- A. Incorporation of Proceedings, Exhibits, and Recitals. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City or RDA, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement by reference, upon attachment, or upon consent by amendment if necessary if not referenced or attached at the time of execution of this Agreement.
- B. Implementation Schedule. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth and/or incorporated herein. Any material modification or deviation from an approved schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld. City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project. Notwithstanding the above, this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property.

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

II. DEFINITIONS; EXHIBITS

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

- A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.
- B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.
- D. "Base Value" means the aggregate assessed value of the Property prior to the construction of the project established as of January 1, 2022 at one hundred seventy three thousand three hundred (\$173,300).
- E. "City" means the City of Green Bay, Brown County, Wisconsin.
- F. "Concept Plan" means the plan for the Project.
- G. "Developer" means 30KFT, LLC or any assignee of the same.
- H. "Exhibits" means the supplementary reference information attached to this development agreement that shall include the following:
1. Exhibit A – Map of the Property
 2. Exhibit B – Legal Description of the Property

3. Exhibit C – Preliminary Concept Plan

- I. “Future Project” means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement.
- J. “Plans and Specifications” means the plans and specifications developed for the Project.
- K. “Preliminary Concept Plan” means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
- L. “Private Improvements” means the improvements to be constructed on the Property that are not Public Improvements.
- M. “Project” means the Project as defined in the Recitals.
- N. “Public Art” means art that shall be accessible to the public, and includes all forms of original creations of visual art, conceived in any medium, material, or combination thereof, including paintings, drawings, stained glass, and murals in any media; statues, bas relief, mobile, kinetic, electronic, neon, or other sculptures; environmental artworks; fountains, arches or other structures intended for ornament; integrated and functional architectural elements of a structure; video and other media-based works; inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints; crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials; artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself.
- O. “Public Improvements” means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:
 - 1. road, pedestrian, and bicycle improvements; and
 - 2. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and
 - 3. telephone, high-speed cable, and related technology infrastructure; and
 - 4. natural gas, electrical power, and other public utilities; and
 - 5. any related engineering, grading, erosion control, and landscaping; and
 - 6. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.
- P. “Qualified Expenditures” means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section IV. C. 4.
- Q. “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. “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. “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. “TID” means Tax Increment District Number Eighteen (“TID 18” or the “TID”), of the City of Green Bay, which has been established and is in good standing by the City of Green Bay, Wisconsin. The City created TID 18 in 2016; TID 18 terminates in 2043.
- U. “TIF” means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.
- V. “TIF Incentive” means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. TAX INCREMENT FINANCING

- A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the “but for” test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer’s qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.
- 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) The Developer guarantees that the Property shall have a minimum aggregate assessed value of one million six hundred seventy-three thousand and three hundred dollars (\$1,673,300) on or before January 1, 2024.
 - b) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures shall be reimbursed to Developer.
 - c) Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property as of January 1 of the year in which construction commenced. The difference in assessed values shall be known as the Incremental Property Value.
 - d) Incremental Property Value multiplied by the assessed mill rate, less payments of real estate taxes to the State of Wisconsin, shall be known as the Available TIF Increment.
 - e) Developer shall not be entitled to any TIF Increment unless the aggregate assessed Property value meets or exceeds the guaranteed value of one million six hundred seventy-three thousand and three hundred dollars (\$1,673,300). Upon reaching this threshold, Available TIF Increment shall be distributed as follows:

- (I) Provided the aggregate assessed Property value meets or exceeds one million six hundred seventy-three thousand and three hundred dollars (\$1,673,300) on or before January 1, 2025, the City shall make available sixty-five percent (65%) of the annual TIF Increment to the Developer until all Qualified Expenditures have been repaid or the incentive period expires by December 31, 2038. After all qualified expenditures have been paid, or the incentive period expires, these funds will be applied to public infrastructure, public improvements, or other eligible costs within the TID.
 - (II) The City shall utilize twenty-five percent (25%) of the annual TIF increment for public infrastructure and improvements within the new TID until all Qualified Expenditures have been repaid or the incentive period expires.
 - (III) The City shall utilize ten percent (10%) of the annual TIF increment to cover administrative costs incurred by the TID through the full life of the TID.
- f) PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, if the first occupancy permit is issued on September 1, 2023, the TIF Increment would be determined as of January 1, 2024 and the PAYGo reimbursement would first be payable in 2025.
- 2. Qualified Expenditures. Project Grant(s) shall be disbursed in the following priority, and only fund:
 - a) "Private Improvements" specifically approved by the City or RDA as stated in Section IV. C.; then
 - b) Any other activity specifically approved by the City or RDA through amendment of this agreement.
- 3. Assignment. Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property upon approval of the RDA, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has an agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value and guaranteed aggregate assessed value generated by any third party purchaser and/or developer of any part of the Property.
- C. Limitations. The TIF Incentive available to Developer for the Project is limited as follows:
 - I. Monetary Limitation. The TIF Incentive shall not exceed three hundred thirty-eight five hundred twenty dollars (\$338,520).
- D. No General Obligation of City. The City's obligation to make TIF Incentive payments shall be a special and limited obligation only and shall not be considered a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be

paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.

- E. Other Grants and Credits. The City and RDA, as appropriate and in its sole discretion, may also apply for such other grants and credits in regard to the Project as they shall deem appropriate for the benefit of the Project and as may be required to achieve necessary financing for the Project, provided, however, the City and RDA make no representations or warranties about the availability of such grants and credits or whether any such grants or credits that may be available will be awarded.

IV. OBLIGATIONS OF DEVELOPER

- A. Concept Plan. Prior to October 31, 2022, Developer shall submit a Concept Plan and/or formal site plan as necessary to the RDA, Plan Commission and City Council for approval, which shall be based on, but may differ in minor respects from the Preliminary Concept Plan presented in this agreement. The Concept Plan shall clearly identify:
1. Any proposed changes in boundaries of the Property, specifically the proposed boundaries of the in-lots.
 2. The approximate location of any proposed structures and/or projects to be built on the Property
 3. A preliminary rendering or other illustration of scale of proposed structures and buildings
- B. Construction Documents. Prior to December 31, 2023, and prior to commencement of construction of any Phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval. The Construction Documents shall include:
1. Plans and specifications for structural, mechanical and electrical systems, materials; and
 2. Full-color elevations for all sides of all proposed structures; and
 3. Descriptions and actual samples of all exterior building materials; and
 4. Descriptions and photographic examples of interior finishes; and
 5. Other such essential items as may be reasonably determined by the RDA to be appropriate.
- C. Development Budget. Prior to October 31, 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 one million five hundred thousand dollars (\$1,500,00.00) in in "hard" construction costs for the façade improvements, and four million (\$4,000,000) in "hard" construction costs for both of the in-lot projects; and
 2. A line item of not less than five percent (5%) of total Project costs for cost overruns and change orders; and
 3. A line item of not less than one percent (1%) of the estimated aggregate assessed value of the Property, which shall be specifically dedicated towards
 - a) Public Art on the Property as approved by the RDA to be installed before December 31, 2026; or

- b) Public Art within one-half (1/2) mile of the Property; or
 - c) A separate Public Art project(s) approved by the RDA and GBPAC; or
 - d) Funds for design and maintenance of Public Art, or any combination of the alternatives herein; and
4. Line items for each of the Qualified Expenditures for which the Developer is seeking a TIF Incentive, specifically including:
- a) Soil corrections (excavation, haul away, backfill, geofabric) \$171,250
 - b) Storm Water Management (piping, inlets, curb, and gutter) \$109,400
 - c) Civil Engineering \$6,500
 - d) Retention pond \$45,000
- 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.
 - 3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project if determined to be necessary by the City.
 - 4. Developer shall divide the land in such a manner to meet all subdivision and zoning ordinances, including the City's Floor Area Ratio standards prior to site plan approval and issuance of building permits.

- F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than December 31, 2022, proof of equity in the form of the value of the Property, less any mortgages thereon, not less than twenty percent (20%) equity available for injection into the Project in an amount sufficient to obtain financing for all Project costs. Any available Developer funds obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any third party financing is used to pay Project costs.
- G. Proof of Financing. By no later than December 31, 2022, Developer shall have delivered proof satisfactory to the City and RDA of financing, which after injection of the Developer equity into the Project, will be sufficient in the determination of the City and RDA, to complete the Project according to the plans and specifications.
- H. 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.
- I. Certified Survey Map. Promptly after the Property has been acquired by Developer, 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.
- J. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenses as set forth in the approved Development Budget.
- K. Improvement of Property. Developer shall promptly design and complete 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, 2023. Construction shall be completed no later than December 31, 2023. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.
- L. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA, Developer shall submit a copy of annual, audited financial statements for Developer through termination of this Agreement.
- M. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.
- 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.
- I. 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 within ten (10) days upon formal request by the City in writing.
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 – one hundred thousand dollars (\$100,000.00) per accident;
 - b) Bodily Injury by Disease – one hundred thousand dollars (\$100,000.00) per employee; and
 - c) Five hundred thousand dollars (\$500,000.00) policy limit.
- 2. Waiver of Workers Compensation Subrogation. The workers’ compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.
- 3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:

- a) General Aggregate Limit – two million dollars (\$2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars (\$2,000,000.00);
 - b) Bodily Injury and Property Damage – two million dollars (\$2,000,000.00) per occurrence;
 - c) Fire Legal Liability Damage Limit – one hundred thousand dollars (\$100,000.00) per occurrence; and
 - d) Medical Expense Limit – ten thousand dollars (\$10,000.00) per person.
4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:
- a) Bodily Injury – two hundred fifty thousand dollars (\$250,000.00) per person; and
 - b) One million dollars (\$1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars (\$250,000.00) per occurrence.
5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars (\$1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.
6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, 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.
- I. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:
 - a) Any breach by Developer of the terms of this Agreement;

- b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or
 - c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.
2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

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

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

- D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.
- E. TID District. The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

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

- A. TID. TID 18 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.
- M. No Objection to Property Assessment. Prior to termination of this Agreement, Developer shall not file an objection to real or personal property assessment as provided under §70.47(7)(a), Wis. Stats.

VIII. DEFAULT

- A. Developer Default. Each of the following shall be an Event of Default by Developer:
1. Failure to Make Payment. Developer fails to make any payment required and such failure continues for a period of 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, including withholding of PayGo payments to the Developer until temporary defaults are remedied to the satisfaction of the City.
 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; or
 - 5. The parties agree in writing to terminate this Agreement.
- B. Survival of Certain Provisions. Sections III. B. I. d), III. D., IV. E., IV. I., IV. K., IV. P. 2., IV.P.3., IV. Q., IV. R. 2., IV. T., V. A., V. B., V. C., V. D., V. E., VII. C., VII. D., VII. E., VII. G., VII. K., VII. L., VIII. B., VIII. D., VIII. E., VIII. F., X. B., X. C., X. G., X. J., X. M., X. O., X. P., and X. R. shall survive the termination of this Agreement.

X. MISCELLANEOUS PROVISIONS

- A. No Effect Until Executed. The terms of this Agreement shall have no force and effect unless and until this Agreement is executed by all Parties.
- B. Assignment. 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.
- C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression,

sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

- D. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.
- E. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.
- F. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.
- G. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, 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.
- H. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.
- I. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein. In the event this Agreement is not executed by both Parties prior December 31, 2022, any and all approvals granted pursuant hereto or in conjunction herein by the City which are contemplated as part of this Agreement shall automatically expire.
- J. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given:
 - 1. Upon receipt if sent via electronic mail (e-mail) 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 of Green Bay
Attn: City Clerk
100 North Jefferson Street
Green Bay, WI 54301
e-mail: celestine.jeffreys@greenbaywi.gov

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

To the Developer: 30KFT, LLC
Attention: Dr. Daniel Gray
1476 University Avenue
Green Bay, WI 54302
e-mail: gvahccc@gmail.com

with a copy to: **[Insert Attorney?]**

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

- K. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.
- L. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- M. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.
- N. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.
- O. Recording of Agreement. The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.
- P. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all

future owners of the Property shall be subject to all of the obligations stated herein. 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).

- Q. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.
- R. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.
- S. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

[Signature pages follow]

DRAFT

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:
30KFT, LLC

By: _____

Dr. Daniel Gray, Principal

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _____ day of _____ 2022, the above named _____, a member of 30KFT, 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 _____

DRAFT

Signature page 2 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and
DEVELOPER NAME

THE CITY OF GREEN BAY

By: Eric Genrich, Mayor

By: Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

[illegible]

Personally came before me this _____ day of _____ 2022, 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 _____

DRAFT

Signature page 3 of 3

THE CITY OF GREEN BAY, THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY, and
GORMAN AND COMPANY

**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 _____ 2022, 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 _____

DRAFT

EXHIBIT A
Property Map



DRAFT

EXHIBIT B

Legal Description

Parcel# 21-1249-1-1 (2560 UNIVERSITY AVE, CITY OF GREEN BAY)

LOT 2 OF 33 CSM 272 MAP 5146 IN 1492295 BNG PRT OF GOVT LOT 2 SEC 33 T24N R21E

DRAFT

EXHIBIT C Preliminary Concept Plan





Report to the
Redevelopment Authority
of the City of Green Bay

MEETING DATE

September 13, 2022

PREPARED BY

Krista Cisneroz, Staff

AGENDA ITEM # E.1

Financial report and check register.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

1. Check Report
2. RDA Financial Report 2022

City of Green Bay RDA
Check Register
August 31, 2022

CHECK #	CHECK DATE	VENDOR NAME	AMOUNT
21614	08/11/2022	CITY OF GREEN BAY	1,064.06
21615	08/11/2022	GREATER GREEN BAY HABITAT FOR	23,500.00
21616	08/11/2022	METROPOLITAN MILWAUKEE FAIR F	3,070.00
21617	08/11/2022	NEIGHBORHOOD HOUSING SERVICE	24,425.00
21618	08/11/2022	SARAH ELIZABETH COOPER	5,102.00
21619	08/30/2022	CITY OF GREEN BAY	24,561.79
21620	08/30/2022	NEIGHBORHOOD HOUSING SERVICE	44,197.00
			<u>\$ 125,919.85</u>

Redevelopment Authority
Financial Report
CDBG
08/31/2022

CDBG Entitlement Funds	2022 Budget	2021 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Public Works Improvements	-	14,471.86	-	-	-	14,471.86
Fair Housing	-	29,695.00	-	12,825.00	-	16,870.00
Public Services	-	156,243.67	-	41,630.59	-	114,613.08
CDBG Eligible Areas HILP Program	-	89,973.00	-	53,225.00	-	36,748.00
CDBG Eligible Areas Public Facilities and Infrastructure	-	407,736.98	11,422.74	-	-	419,159.72
CDBG Eligible Areas-Beautificatio/Art	-	87,054.77	-	-	-	87,054.77
Economic Development	-	438,819.12	170,769.67	250,000.00	-	359,588.79
ED Façade & Demo Loans	-	134,123.12	-	55,347.20	-	78,775.92
Administration	-	169,086.79	-	128,926.17	-	40,160.62
\$	-	\$ 1,527,204.31	\$ 182,192.41	\$ 541,953.96	\$ -	\$ 1,167,442.76

CARES CDBG-CV Funds	2022 Budget	2021 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Administration	-	16,270.14	-	16,270.14	-	-
Businesss Improvement Districts	-	29,750.00	-	-	-	29,750.00
Homlessness Assistance Programs	-	70,276.51	-	-	-	70,276.51
Economic Development Business Relief	-	16,500.00	-	10,000.00	-	6,500.00
Essential Frontline Employyee Relief Program	-	44,391.65	-	-	-	44,391.65
Rental/Mortgage Assistance Program LMI	-	155,518.06	-	77,068.14	-	78,449.92
Urgent Need-Business Relief and Rental.Mortgage	-	50,000.00	-	5,000.00	-	45,000.00
\$	-	\$ 382,706.36	\$ -	\$ 108,338.28	\$ -	\$ 274,368.08

Redevelopment Authority
Financial Report
HOME
08/31/2022

	2022 Budget	2021 Carry Over	Program Income	Expenses	Obligated	Remaining Balance
Single Family Rehab Loan Program	-	657,323.60	171,168.02	51,960.00	69,594.00	706,937.62
CHDO Projects	-	201,000.00	-	-	-	201,000.00
Downpayment Closing Cost Assistance	-	53,500.00	-	30,000.00	-	23,500.00
Housing Development Projects	-	758,943.03	-	-	-	758,943.03
Administration	-	88,234.97	19,018.67	23,687.94		83,565.70
HOME-ARP Admin	-	97,410.80	-	-	-	97,410.80
	\$ -	\$ 1,856,412.40	\$ 190,186.69	\$ 105,647.94	\$ 69,594.00	\$ 1,871,357.15