AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

THURSDAY, JUNE 22, 2023, 1:30 PM
City Hall, Room 604 - The Harry Maier Room.
Virtual attendance is also available via Zoom.

A. Zoom Meeting Information.

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

B. Roll Call.

1. Members: Gary Delveaux, Chair; Matt Schueller, Vice-Chair; Ald. Randy Scannell, Deby Dehn, Kathy Hinkfuss, Melanie Parma, and Jessica Ganther.
   Liaisons: Jeff Mirkes, Leah Weycker, and Brooke Hafs.

C. Approval of the Agenda.

1. Approval of the agenda for the June 22, 2023, special meeting of the Redevelopment Authority.

D. Regular Business.

1. Consideration with possible action on a development agreement with Bay City Lofts, LLC for financial assistance on the redevelopment of 0 University Avenue (Parcel 21-1249-1-3).
2. Consideration with possible action on a development agreement with City East Apartments, LLC for the redevelopment of 1165 East Walnut Street (Parcel 14-198).
3. Consideration with possible action on the request by City East Apartments, LLC to transfer recipient of the TIDAH and HOME Grants to their development partner, Crown Court Properties, LLC.
4. Consideration with possible action on the approval of the ARPA(SLFR) loan documents.

E. Informational.

1. Overview of Possible Redevelopment in Mason Street/Hinkle Street area (Garritt Bader).

2. Director's Report

F. Adjournment.

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

Virtual Meeting Instructions

Redevelopment Authority

Zoom Meeting Information

Join Zoom Meeting
https://us02web.zoom.us/j/83188044732?pwd=YUducEM2VUZWOGVYZzMyNTA0c1FJQT09

Meeting ID: 831 8804 4732
Passcode: 084117

One tap mobile
+13017158592,,83188044732# US (Washington DC)
+13126266799,,83188044732# US (Chicago)

Dial by your location
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
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+1 346 248 7799 US (Houston)
+1 408 638 0968 US (San Jose)
+1 669 900 6833 US (San Jose)
Meeting ID: 831 8804 4732
Passcode: 084117
Find your local number: https://us02web.zoom.us/u/kc4U7kFumh

Public Comments

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

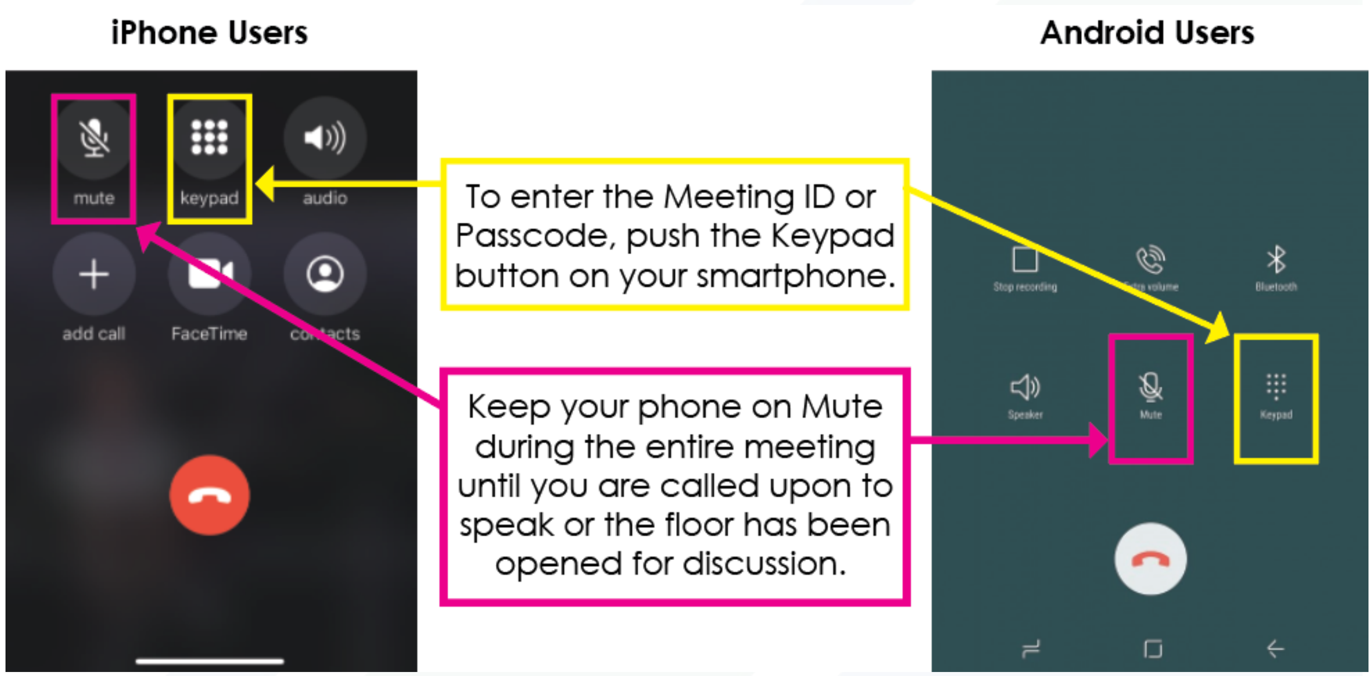
Additional Information

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

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

Calling into the Zoom meeting using a smartphone

1. Dial the phone number listed at the beginning of this document.
2. When prompted, enter the Meeting ID number followed by **#**
3. Once you are in the meeting, notify the meeting host that you are in and state your name.
4. If you do not wish to speak, please make sure your phone is on **Mute**
    a. If you're using a smartphone, look at your screen and click the Mute button



Report to the
Redevelopment Authority
of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	Neil Stechschulte, Director

AGENDA ITEM # D.1

Consideration with possible action on a development agreement with Bay City Lofts, LLC for financial assistance on the redevelopment of 0 University Avenue (Parcel 21-1249-1-3).

BACKGROUND

This item was previously recommended for approval by the RDA on May 25, 2023. Because of the complex nature of the financing, some of the project's investors requested some clarifications to the minimum valuation and tax payment language and the language relating to the ability to transfer of the property.

This project was originally planned for 216 S Military Avenue, but disagreements with the property owner forced the Developer to identify an alternative location. The project is now being proposed for a 1.8 acre site that was a former gas station, and includes a 4-story multi-family residential building with some first-floor office space to facilitate an agreement with Lutheran Family Services to provide services to the community. The proposed project includes the development 48 residential units (13 one-bedroom units, 24 two-bedroom units, 1 three-bedroom unit, and 10 three-bedroom townhouse units). Ground floor space includes common spaces for residents, private residences, and office space for Lutheran Family Services.

The Developer has worked with WHEDA to ensure that this project would still be eligible for affordable housing tax credits.

Planned Unit Development for zoning for the project was approved by the City Council on May 2, 2023.

The Developer is requesting $800,000 in TIF assistance on a Pay-Go basis. The project is estimated to be $15 million in construction costs, but is projected to be valued at $3 million.

Additional requests for funding through ARPA and HOME programs are forthcoming to the RDA, and are included as references within this development agreement.

RECOMMENDATION

Approval of the Development Agreement with Bay City Lofts, LLC for TIF assistance related to the redevelopment of 0 University Ave (Parcel 21-1249-1-3), subject to the final review and approval by the City Attorney.

FISCAL IMPACT

Pay Go TIF. Will reduce available funds in ARPA and HOME programs, but is considered to be consistent with the purpose of those programs.

ATTACHMENTS

1. Bay City Lofts Development Agreement - RBVD Comments 6.21.2023
2. Litera Compare Redline - Bay City Lofts Development Agreement - RBVD Comments and Bay City Lofts Development Agreement - RBVD Comments 6 21 2023

City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 23-___

BAY CITY LOFTS UNIVERSITY AVENUE REDEVELOPMENT

This Development Agreement is made this 6th day of June, 2023,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and BAY CITY LOFTS, LLC, a Wisconsin limited liability company ("Developer").

RECITALS

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

Tax Parcel	Address	Acres	Assessed Value
21-1249-1-3	0 University Ave.	1.837	$289,400

B. The parcel listed above shall be referred to as the "Property." The Property comprises approximately one and eight hundred thirty-seven thousandths (1.837) 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:

> Constructing a 4-story multi-family residential building with some first-floor office space to facilitate an agreement with Lutheran Social Services of Wisconsin and Upper Michigan, Inc. ("LSS") to provide services to the community. The proposed project includes the development 48 residential units (13 one-bedroom units, 24 two-bedroom units, and 11 three-bedroom townhouse units). Ground floor space includes common spaces for residents, private residences, and office space for LSS.

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

D. As of January 1, 2023, the Property and improvements thereto have an aggregate assessed value of Two Hundred Eighty-Nine Thousand Four Hundred Dollars ($289,400) which based on the assessed tax rates in effect as of January 1, 2023, the Property and improvements thereto yields approximately:

1. Five Thousand Four Hundred and Five dollars ($5,405.99) in total gross real estate taxes annually (assessed mill rate of $18.68);

2. Five Thousand Four Hundred and Five dollars ($5,405.99) 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 $18.68); and

3. Two Thousand One Hundred Ninety-Three Dollars ($2,193.65) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

E. Upon completion of the proposed Project, the City estimates the aggregate assessed property value of the Property and the proposed Private Improvements (defined herein) to be at least Three Million Dollars ($3,000,000), which is anticipated to yield additional real estate taxes of approximately:

1. Fifty-Six Thousand and Forty Dollars ($56,040.00) in total gross real estate taxes annually (assessed mill rate of $18.68);

2. Fifty-Six Thousand and Forty Dollars ($56,040.00) in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $18.68); and

3. Twenty-Two Thousand Seven Hundred Forty Dollars ($22,740.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

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. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which TIF assistance may be afforded Developer.

G. 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.

H. In order to induce Developer to undertake the Project in the form approved in accordance with this Agreement, such that it will, as applicable, 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 (defined herein) generated by the Property and the Private Improvements. 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) and any Guaranty Payment (defined below) actually received by the City generated by any increase of value of the Property and the Private Improvements in any tax year above the Base Value. The amount of Available Tax Increment may fluctuate based on the Annual Assessed Value, tax rate, depreciation and other independent factors.

D. "Base Value" means the aggregate assessed value of the Property as of 1/1/2023.

E. "City" means the City of Green Bay, Brown County, Wisconsin.

F. "Concept Plan" means the plan for the Project.

G. "Developer" means BAY CITY LOFTS, LLC, its successors and/or assigns.

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. "Plans and Specifications" means the plans and specifications developed for the Project.

J. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT C and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.

K. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.

L. "Project" means the Project as defined in the Recitals.

M. "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.

N. "Public Improvements" means the infrastructure improvements in connection with the Project that will ultimately be dedicated to the City 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.

O. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section IV. C. 4.

P. "Special Assessment" means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.

Q. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.

R. "TID" means Tax Increment Finance District #18.

S. "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.

T. "TIF Incentive" means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. FINANCIAL ASSISTANCE

A. Tax Incremental Financing (TIF). Evaluation of the qualification for TIF assistance is to be made according to the "but for" test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer. The nature of the TIF Incentive available to Developer under this Agreement shall be defined as the following:

1. PAYGo Reimbursement. The City shall provide the 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 and Private Improvements shall have a minimum aggregate assessed value of Three Million Dollars ($3,000,000) on or before January 1, 2025.

    b) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, Qualified Expenditures shall be reimbursed to Developer through the payment of the TIF Incentive in accordance with this Agreement.

    c) The assessed value of the Property and Private Improvements shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property and Private Improvements as of January 1, 2023. 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) Available Tax Increment shall be distributed as follows:

        (I) Developer shall guarantee an annual minimum revenue payment obligation to the City beginning January 1, 2025. This annual minimum revenue obligation shall be no less than the property taxes paid on a $3,000,000 taxable assessed valuation. This obligation may be met through an annual property tax payment. Should the property's assessed value be lower than $3,000,000 in taxable assessed valuation, the Developer shall pay the difference in the current property tax payment and property taxes paid on a $3,000,000 taxable assessed valuation to the City (a "Guaranty Payment"). If the value is higher than $3,000,000, the full property tax payment shall be made to the City.

(II) Beginning with the 2025 tax year, the City shall make available eighty-five percent (85%) of the annual Available TIF Increment to the Developer until all Qualified Expenditures, not to exceed the Tax Incentive Cap (defined below), 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.

(III) 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.

(IV) The City shall utilize five percent (5%) 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 Available TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, for the 2025 tax year, the Available TIF Increment would be determined as of January 1, 2025 and the PAYGo reimbursement would first be payable in 2026.

2. 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.

3. Assignment. Developer may assign any of its payment rights hereunder to any lender(s) providing financing for the Project and to any future purchaser or developer of any part of the Property upon approval of the RDA, which will not be unreasonably withheld, conditioned or delayed, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has a written agreement pursuant to which they agree to assume the obligations of Developer hereunder. The City shall execute such consents and assignment documents as any lender(s) may reasonably require to confirm the City's agreement to continue to disburse TIF Incentives in connection with any assignment to a lender or its successor. 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 Available Tax Increment.

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

a) Monetary Limitation. The TIF Incentive in any year shall not exceed eighty five percent (85%) of the Available Tax Increment for the Property and the Private Improvements.

b) Tax Incentive Cap. The maximum TIF Incentive to be paid by the City for Qualified Expenses incurred and paid by Developer shall not exceed a total $800,000 over the life of the TID.

c) 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.

5. Temporal Limitation. Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred and paid Qualified Expenditures, an 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.

6. 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.

7. 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.

B. HOME Grant Funds. The Developer intends to apply for $450,000 of funds from the City's HOME program. Award of these funds will be subject to a separate application and agreement. Approval of this development agreement in no way guarantees the approval of these funds. The Developer shall adhere to all requirements of the City's HOME program as defined in separate agreements to be approved by the RDA.

C. Large-Scale Affordable Housing Loan Program (ARPA). The Developer intends to apply for a $450,000 loan through the Large-Scale Affordable Housing Loan Program. The Developer shall adhere to all requirements of the City's HOME program as defined in a separate loan agreement to be approved by the RDA.

D. 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. Any additional funding from such sources shall be subject to the approval of Developer and will be structured to avoid adverse tax consequences for Developer and its members.

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Prior to July 1, 2023, 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 August 1, 2023, and prior to commencement of construction 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 August 1, 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 Ten Million Dollars ($10,000,000) 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 $30,000, 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) Enhanced stormwater management costs allowing for better building design and improving the overall function of the site.

f) Costs related to the installation of environmentally sustainable infrastructure and practices in the project.

g) Site improvements related to providing access to public transit or alternative transportation options.

h) Enhanced pedestrian, bicycle, and streetscape improvements beyond basic code requirements as approved by the RDA.

i) 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.

D. RDA Approvals. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the Concept Plan, Construction Documents, or Development Budget, or any revisions; provided, however, that the RDA shall approve such revised Concept Plan, Construction Documents, or Development Budget unless it determines such revisions would impair the objectives of this Agreement, impose substantial financial burdens on the City or the RDA, or adversely affect the Concept Plan. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans. At any time during the implementation of the development contemplated by this Agreement, the RDA or Developer may propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the RDA and the Developer. At any time during the implementation of the development contemplated by this Agreement, Developer may submit to the RDA proposed revisions in the approved Concept Plan, Construction Documents, or Development Budget in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan.

E. Compliance with Planning; Zoning; Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:

1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.

2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than August 1, 2023, proof of equity in the form of the value of the Property and any private equity contributions from Developer's members, 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.

G. Proof of Financing. By no later than August 1, 2023, 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, 2023, 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. Intentionally Deleted.

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 1, 2023. Construction shall be substantially completed no later than December 1, 2024. 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 with one hard copy and one digital copy.

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 notice relating to such transfer thirty (30) days before the contemplated transfer. Developer may assign all rights and obligations under this Agreement without City's prior approval only to an entity controlled and affiliated with Developer or its members to own, manage and operate the Property or to any lender(s) providing financing for the Project. 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, or any foreclosure or deed in lieu of foreclosure arising therefrom or the transfer of any interest in any investor member of Developer or the replacement of Developer's managing member by an investor member.

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.

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 Project, 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.

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 maintained 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.

7. Additional Notice and Cure Rights. In addition to any applicable notice and cure rights for Developer, Developer's investor member shall have the right, but not the obligation, to cure any default hereunder, on the same terms and conditions as the Developer, and such cure will be accepted by the City and RDA as if made by the Developer. In addition, any Lender providing financing for the Project shall have the right, but not the obligation, to cure any default hereunder, on the same terms and conditions as the Developer, and such cure will be accepted by the City and RDA as if made by the Developer. City and RDA shall send all notices of default under this Agreement to investor member and to any lender(s) who have requested such notice(s) in writing.

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 Available 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. Except as otherwise provided herein, 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.

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 1, 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.stechschulte@greenbayi.gov facsimile: 920-448-3426
To the Developer:	Bay City Lofts, LLC c/o Gorman & Company, LLC 200 North Main Street Oregon, WI 53575 e-mail: bswanton@gormanusa.com phone: 608-835-3900
with copies to:	Reinhart Boerner Van Deuren s.c. Attention: Stephen Elliott 1000 North Water Street, Suite 1700 Milwaukee, WI 53202 e-mail: selliott@reinhartlaw.com phone: 414-298-8257

CREA Bay City Lofts, LLC
Attention: Asset Management
30 South Meridian Street, Suite 400
Indianapolis, IN 46204

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 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:

BAY CITY LOFTS, LLC

By Bay City Lofts MM, LLC, its managing member

By GEC Bay City Lofts, LLC, its manager

By Gorman & Company, LLC, its manager

By: ______________________________
Michael Redman, Secretary

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Personally came before me this ________ day of ________________ 2023, the above named Michael Redman , as Secretary of Gorman & Company, LLC, manager of GEC Bay City Lofts, LLC, manager of Bay City Lofts MM, LLC, managing member of BAY CITY LOFTS, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____

*____

Notary Public, ________________ County, Wisconsin

My Commission Expires ________________________

Signature page 2 of 3

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

THE CITY OF GREEN BAY

By: ______________________________________
Eric Genrich, Mayor

By: ______________________________________
Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of _________________ 2023, 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 _________________ 2023 the above named __________________________ and __________________________, on behalf of the Redevelopment Authority of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
*____
Notary Public, _________________ County, Wisconsin
My Commission Expires __________________________

EXHIBIT A

Property Map

EXHIBT B

Legal Description

Lot 1 of Certified Survey Map No. 5146, recorded April 3, 1996 in Volume 33 of Certified Survey Maps on pages 272-274, as Document No. 1492295, corrected by Affidavit recorded April 18, 1996 as Document No. 1494748, said map being part of Government Lots 2 and 3, and part of the Southeast 1/4 of the Northwest 1/4 of Section 33, Township 24 North, Range 21 East, in the City of Green Bay, East side of the Fox River, County of Brown, State of Wisconsin.

For informational purposes only:
Property Address: Situated on University Avenue, Green Bay, WI
Tax Key Number: 21-1249-1-3

EXHIBIT C
Preliminary Concept Plan

City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 23-___

BAY CITY LOFTS UNIVERSITY AVENUE REDEVELOPMENT

This Development Agreement is made this 6th day of June, 2023,

by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),

THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),

and BAY CITY LOFTS, LLC, a Wisconsin limited liability company ("Developer").

RECITALS

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

Tax Parcel	Address	Acres	Assessed Value
21-1249-1-3	0 University Ave.	1.837	$289,400

B. The parcel listed above shall be referred to as the "Property." The Property comprises approximately one and eight hundred thirty-seven thousandths (1.837) 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:

Constructing a 4-story multi-family residential building with some first-floor office space to facilitate an agreement with Lutheran Social Services of Wisconsin and Upper Michigan, Inc. ("LSS") to provide services to the community. The proposed project includes the development 48 residential units (13 one-bedroom units, 24 two-bedroom units, and 11 three-bedroom townhouse units). Ground floor space includes common spaces for residents, private residences, and office space for LSS.

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

D. As of January 1, 2023, the Property and improvements thereto have an aggregate assessed value of Two Hundred Eighty-Nine Thousand Four Hundred Dollars ($289,400) which based on the assessed tax rates in effect as of January 1, 2023, the Property and improvements thereto yields approximately:

1. Five Thousand Four Hundred and Five dollars ($5,405.99) in total gross real estate taxes annually (assessed mill rate of $18.68);
2. Five Thousand Four Hundred and Five dollars ($5,405.99) 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 $18.68); and

3. Two Thousand One Hundred Ninety-Three Dollars ($2,193.65) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

E. Upon completion of the proposed Project, the City estimates the aggregate assessed property value of the Property and the proposed Private Improvements (defined herein) to be at least Three Million Dollars ($3,000,000), which is anticipated to yield additional real estate taxes of approximately:
   1. Fifty-Six Thousand and Forty Dollars ($56,040.00) in total gross real estate taxes annually (assessed mill rate of $18.68);
   2. Fifty-Six Thousand and Forty Dollars ($56,040.00) in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $18.68); and
   3. Twenty-Two Thousand Seven Hundred Forty Dollars ($22,740.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

   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. Developer has requested Tax Incremental Finance ("TIF") assistance from the City and RDA with regard to certain expenses, including, but not limited to; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which TIF assistance may be afforded Developer.
G. 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.
H. In order to induce Developer to undertake the Project in the form approved in accordance with this Agreement, such that it will, as applicable, 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 (defined herein) generated by the Property and the Private Improvements. 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) and any Guaranty Payment (defined below) actually received by the City generated by any increase of value of the Property and the Private Improvements in any tax year above the Base Value. The amount of Available Tax Increment may fluctuate based on the Annual Assessed Value, tax rate, depreciation and other independent factors.

Stephen C. Elliott [SCE1] June 1, 2023 03:19 PM
~~This term should be tied to the increment from this property. The City is agreeing to return a portion of this to the Developer, so this should not be subject to prior reduction for "payment on bonds or other obligations as determined by the City" before the required amount goes to Developer.~~

D. "Base Value" means the aggregate assessed value of the Property as of 1/1/2023.
E. "City" means the City of Green Bay, Brown County, Wisconsin.
F. "Concept Plan" means the plan for the Project.
G. "Developer" means BAY CITY LOFTS, LLC, its successors and/or assigns.
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. "Plans and Specifications" means the plans and specifications developed for the Project.

Stephen C. Elliott [SCE2] June 6, 2023 12:52 AM
~~This term is not used in the Agreement.~~

J. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT C and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
K. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.
L. "Project" means the Project as defined in the Recitals.
M. "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.
N. "Public Improvements" means the infrastructure improvements in connection with the Project that will ultimately be dedicated to the City 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.
O. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section IV. C. 4.
P. "Special Assessment" means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.
Q. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.

R. "TID" means Tax Increment Finance District #18.

S. "TIF" means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.

T. "TIF Incentive" means the incentive as set forth in Section III of this Agreement including specifically the Tax Incentive Cap.

III. FINANCIAL ASSISTANCE

A. Tax Incremental Financing (TIF). Evaluation of the qualification for TIF assistance is to be made according to the "but for" test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer. The nature of the TIF Incentive available to Developer under this Agreement shall be defined as the following:

1. PAYGo Reimbursement. The City shall provide the 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 and Private Improvements shall have a minimum aggregate assessed value of Three Million Dollars ($3,000,000) on or before January 1, 2025.

   b) Developer shall be responsible to incur and pay all of the upfront costs of the Project and, Qualified Expenditures shall be reimbursed to Developer through the payment of the TIF Incentive in accordance with this Agreement.

   c) The assessed value of the Property and Private Improvements shall be determined on January 1 of each tax year and shall be compared to the assessed value of the Property and Private Improvements as of January 1, 2023. 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) Available Tax Increment shall be distributed as follows:

      (I) Developer shall guarantee an annual minimum revenue payment obligation to the City beginning January 1, 2025. This annual minimum revenue obligation shall be no less than the property taxes paid on a $3,000,000 taxable assessed valuation. This obligation may be met through an annual property tax payment. Should the property's assessed value be lower than $3,000,000 in taxable assessed valuation, the Developer shall pay the difference in the current property tax payment and property taxes paid on a $3,000,000 taxable assessed valuation to the City (a "Guaranty Payment").

Stephen C. Elliott [SCE3] June 6, 2023 01:16 PM
~~"Available Tax Increment" is the relevant term for this Agreement - it relates to the actual increase in taxes generated specifically by this Property. This term is not needed.~~

Stephen C. Elliott [SCE4] June 1, 2023 03:21 PM
~~This requirement should be deleted. There should be no need for a guaranty. If the value is lower, then the "TIF Incentive" will reflect that reduced value - i.e. the Available Tax Increment will be lower by a corresponding amount.~~

Stephen C. Elliott [SCE5] June 1, 2023 03:23 PM
~~What does this mean? What are the "TID revenues"? The Developer's tax payments will be the source of the TIF Incentive, not other TID revenues.~~

Stephen C. Elliott [SCE6] June 1, 2023 03:24 PM
~~The base year should be set in this agreement. 2023 would be acceptable to Developer.~~

Stephen C. Elliott [SCE7] June 1, 2023 03:28 PM
~~Isn't this already covered by the idea of "Available Tax Increment"?~~

If the value is higher than $3,000,000, the full property tax payment shall be made to the City.

(II) Beginning with the 2025 tax year, the City shall make available eighty-five percent (85%) of the annual Available TIF Increment to the Developer until all Qualified Expenditures, not to exceed the Tax Incentive Cap (defined below), 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.

(III) 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.

(IV) The City shall utilize ~~ten~~five percent (~~10~~5%) 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 Available TIF Increment determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, for the 2025 tax year, the Available TIF Increment would be determined as of January 1, 2025 and the PAYGo reimbursement would first be payable in 2026.

2. 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.

3. Assignment. Developer may assign any of its payment rights hereunder to any lender(s) providing financing for the Project and to any future purchaser or developer of any part of the Property upon approval of the RDA, which will not be unreasonably withheld, conditioned or delayed, provided however, that the City shall be obligated only to disburse TIF Incentives to the party with whom the City has ~~an~~a written agreement pursuant to which they agree to assume the obligations of Developer hereunder. The City shall execute such consents and assignment documents as any lender(s) may reasonably require to confirm the City's agreement to continue to disburse TIF Incentives in connection with any assignment to a lender or its successor. 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 Available Tax Increment.

Stephen C. Elliott [SCE8] June 1, 2023 03:30 PM
~~This section should not be necessary. If the tax bill is higher than $3,000,000, then its due because it's a tax bill. This Agreement doesn't need to say that the tax payment is due. If the value is less than $3,000,000 the "Available Tax Increment" is lower, and so is the "TIF Incentive". No shortfall payment concept should be required in a PayGo agreement.~~

Stephen C. Elliott [SCE9] June 1, 2023 03:33 PM
~~What is the "incentive period"?~~

Stephen C. Elliott [SCE10] June 1, 2023 03:27 PM
~~These need to be adjusted such that the total is 100% (currently 105% = 85% + 10% + 10%)~~

Stephen C. Elliott [SCE11] June 6, 2023 01:27 PM
~~Our lenders will require the City sign a collateral assignment whereby the City agrees to continue paying the incentive provided successor owners (including lender or its assigns) performs its obligations as successor to "Developer" under this Agreement.~~

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

   a) Monetary Limitation. The TIF Incentive in any year shall not exceed eighty five percent (~~80~~85%) of the Available Tax Increment for the Property and the Private Improvements.
   b) Tax Incentive Cap. The maximum TIF Incentive to be paid by the City for Qualified Expenses incurred and paid by Developer shall not exceed a total $800,000 over the life of the TID.
   c) 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.

Stephen C. Elliott [SCE12] June 1, 2023 03:39 PM
~~Throughout the agreement, we need to be clear that all value/assessment/increment concepts account for the land and improvements to it – not just the land.~~

5. Temporal Limitation. Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred and paid Qualified Expenditures, an 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.

6. 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.

Stephen C. Elliott [SCE13] June 1, 2023 03:40 PM
~~City should be able to expressly state when the TID expires. Please confirm that date to us.~~

7. 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.

B. HOME Grant Funds. The Developer intends to apply for $450,000 of funds from the City's HOME program. Award of these funds will be subject to a separate application and agreement. Approval of this development agreement in no way guarantees the approval of these funds. The Developer shall adhere to all requirements of the City's HOME program as defined in separate agreements to be approved by the RDA.

C. Large-Scale Affordable Housing Loan Program (ARPA). The Developer intends to apply for a $450,000 loan through the Large-Scale Affordable Housing Loan Program. The Developer shall adhere to all requirements of the City's HOME program as defined in a separate loan agreement to be approved by the RDA.

D. 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. Any additional funding from such sources shall be subject to the approval of Developer and will be structured to avoid adverse tax consequences for Developer and its members.

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Prior to July 1, 2023, 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 August 1, 2023, and prior to commencement of construction 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 August 1, 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 Ten Million Dollars ($10,000,000) 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 $30,000, 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) Enhanced stormwater management costs allowing for better building design and improving the overall function of the site.
    f) Costs related to the installation of environmentally sustainable infrastructure and practices in the project.
    g) Site improvements related to providing access to public transit or alternative transportation options.
    h) Enhanced pedestrian, bicycle, and streetscape improvements beyond basic code requirements as approved by the RDA.
    i) 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.

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.

Stephen C. Elliott [SCE14] June 6, 2023 12:57 AM
~~We need to understand what approvals, beyond the required permitting process for the project, remain before construction can commence. What has the RDA approved/not approved at this stage?~~

E. Compliance with Planning; Zoning; Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:
    1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.

2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than August 1, 2023, proof of equity in the form of the value of the Property and any private equity contributions from Developer's members, 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.

G. Proof of Financing. By no later than August 1, 2023, 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, 2023, 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. Intentionally Deleted.

Stephen C. Elliott [SCE15] June 6, 2023 12:59 AM
~~This lot was already created by CSM.~~

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 1, 2023. Construction shall be substantially completed no later than December 1, 2024. 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 with one hard copy and one digital copy.

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 notice ~~of~~relating to such transfer ~~promptly after it occurs~~thirty (30) days before the contemplated transfer. Developer may assign all rights and obligations under this Agreement without City's prior approval only to an entity controlled and affiliated with Developer or its members to own, manage and operate the Property or to any lender(s) providing financing for the Project. 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, or any foreclosure or deed in lieu of foreclosure arising therefrom or the transfer of any interest in any investor member of Developer or the replacement of Developer's managing member by an investor member.

~~2. Intentionally Deleted. .~~

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.

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 Project, 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:

Stephen C. Elliott [SCE16] June 6, 2023 01:02 PM
~~City and RDA have no insurable interest in the Property.~~

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.

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 maintained 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 ~~managing member~~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.
7. Additional Notice and Cure Rights. In addition to any applicable notice and cure rights for Developer, Developer's investor member shall have the right, but not the obligation, to cure any default hereunder, on the same terms and conditions as the Developer, and such cure will be accepted by the City and RDA as if made by the Developer. In addition, any Lender providing financing for the Project shall have the right, but not the obligation, to cure any default hereunder, on the same terms and conditions as the Developer, and such cure will be accepted by the City and RDA as if made by the Developer. City and RDA shall send all notices of default under this Agreement to investor member and to any lender(s) who have requested such notice(s) in writing.

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 Available 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.

Stephen C. Elliott [SCE17] June 1, 2023 03:45 PM
~~Discuss in relation to payment start date. The term of this Agreement needs to run long enough to get to the full $800,000 in payments based on projected increment.~~

X. MISCELLANEOUS PROVISIONS

A. No Effect Until Executed. The terms of this Agreement shall have no force and effect unless and until this Agreement is executed by all Parties.

B. Assignment. Except as otherwise provided herein, 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.

Stephen C. Elliott [SCE18] June 1, 2023 03:48 PM
~~This contradicts statements above regarding assignment. We need to verify all these terms are consistent and allow for assignability without City approval to lenders and to buyers with notice and written assumption of Developer obligations by the Buyer.~~

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 1, 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.stechschulte@greenbayi.gov facsimile: 920-448-3426

To the Developer:	Bay City Lofts, LLC c/o Gorman & Company, LLC 200 North Main Street Oregon, WI 53575 e-mail: bswanton@gormanusa.com phone: 608-835-3900
with copies to:	Reinhart Boerner Van Deuren s.c. Attention: Stephen Elliott 1000 North Water Street, Suite 1700 Milwaukee, WI 53202 e-mail: selliott@reinhartlaw.com phone: 414-298-8257
	CREA Bay City Lofts, LLC Attention: Asset Management 30 South Meridian Street, Suite 400 Indianapolis, IN 46204
	~~[Need to verify IFF Address -IFF is a lender]~~
	~~[Need to verify Associated Bank Address]~~

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 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:

BAY CITY LOFTS, LLC

By Bay City Lofts MM, LLC, its managing member

By GEC Bay City Lofts, LLC, its manager

By Gorman & Company, LLC, its manager

By: ______________________________
Michael Redman, Secretary

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

Personally came before me this ________ day of ________________ 2023, the above named Michael Redman , as Secretary of Gorman & Company, LLC, manager of GEC Bay City Lofts, LLC, manager of Bay City Lofts MM, LLC, managing member of BAY CITY LOFTS, LLC, a Wisconsin limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____

*____

Notary Public, _________________ County, Wisconsin

My Commission Expires _________________________

Signature page 2 of 3

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

THE CITY OF GREEN BAY

By: ____
Eric Genrich, Mayor

By: ____
Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of _________________ 2023, 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 _________________ 2023 the above named __________________________ and __________________________, on behalf of the Redevelopment Authority of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____

*____

Notary Public, ________________ County, Wisconsin

My Commission Expires ________________________

EXHIBIT A

Property Map

EXHIBT B

Legal Description

Lot 1 of Certified Survey Map No. 5146, recorded April 3, 1996 in Volume 33 of Certified Survey Maps on pages 272-274, as Document No. 1492295, corrected by Affidavit recorded April 18, 1996 as Document No. 1494748, said map being part of Government Lots 2 and 3, and part of the Southeast 1/4 of the Northwest 1/4 of Section 33, Township 24 North, Range 21 East, in the City of Green Bay, East side of the Fox River, County of Brown, State of Wisconsin.

For informational purposes only:
Property Address: Situated on University Avenue, Green Bay, WI
Tax Key Number: 21-1249-1-3

EXHIBIT C

Preliminary Concept Plan

Summary report: **Litera Compare for Word 11.3.1.3 Document comparison done on 6/21/2023 12:20:18 PM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original filename: Bay City Lofts Development Agreement - RBVD Comments.docx	
Modified filename: Bay City Lofts Development Agreement - RBVD Comments 6.21.2023.docx	
Changes:	
Add	22
~~Delete~~	33
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	55

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	Will Peters

AGENDA ITEM # D.2

Consideration with possible action on a development agreement with City East Apartments, LLC for the redevelopment of 1165 East Walnut Street (Parcel 14-198).

BACKGROUND

Staff and the Developer have been working on the redevelopment of the RDA-owned property located at 1165 East Walnut Street since Fall of 2021. The proposed development will be 43 units of affordable housing. Nine units will be available to families earning 30% CMI, seventeen units will be available to families earning 50% CMI, ten units will be available to families earning 60% CMI, and seven units will be market rate. This project will also incorporate the headquarters of Brown County United Way and their "City East Center". Attached you will find the proposed development agreement and related supporting documentation.

RECOMMENDATION

To approve a development agreement with City East Apartments, LLC for the redevelopment of 1165 East Walnut Street, subject to final review and approval of the City Attorney.

FISCAL IMPACT

ATTACHMENTS

1. City East Center Overview
2. Org Chart
3. Modified Document City East Apartments 1165 E Walnut DA-FINAL-RDA-062223

Brown County United Way

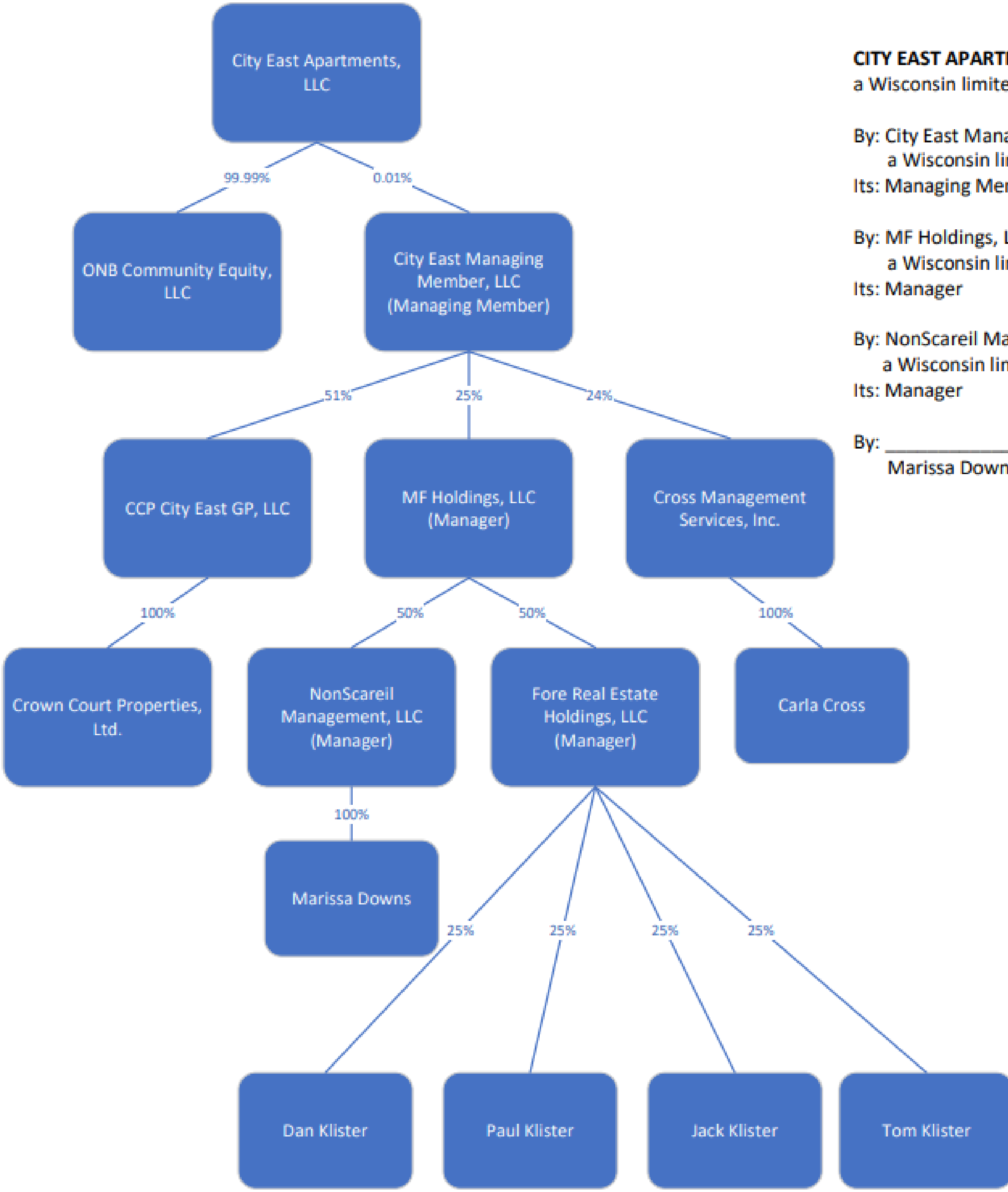
City East Center

In summer of 2023, a groundbreaking will take place to create a new community space - **City East Center**.

The Center is part of a public private partnership with the City of Green Bay and regional developers to provide affordable housing, as well as programming and support for the residents and neighbors. The vision is to create a space where nonprofits can collaborate to welcome people of all ages to learn, find assistance when needed, and build relationships with other residence to strengthen their sense of belonging in the neighborhood.

Vision

- The community space will be available for local nonprofits to utilize for programming, planning and networking space
- BCUW staff will be located within the Center to continue to support nonprofits, residents and neighborhood groups.
- BCUW staff and local nonprofits will survey needs in the community and collaborate to offer programming to youth, adults and families.



CITY EAST APARTMENTS,
a Wisconsin limited liabilit

By: City East Managing Me
a Wisconsin limited lia
Its: Managing Member

By: MF Holdings, LLC,
a Wisconsin limited lia
Its: Manager

By: NonScareil Manageme
a Wisconsin limited lial
Its: Manager

By: ____________________
Marissa Downs, Mana

DEVELOPMENT AGREEMENT 23-04

1165 E WALNUT STREET REDEVELOPMENT

This Development Agreement is made this ___ day of June, 2023,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and CITY EAST APARTMENTS, LLC, a Wisconsin limited liability company ("Developer").

RECITALS

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

Tax Parcel	Address	Acres	Assessed Value
14-198	1165 E. Walnut St.	1.21	$0

B. The parcel listed above shall be referred to as the "Property." The Property comprises approximately one and twenty-one hundredths (1.21) 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:

> Construct a 3-story multi-family residential building with some first-floor office space to facilitate an agreement with Brown County United Way to provide services to the community and serve as the main office for their organization. The proposed project includes the development of 43 residential units (5 one-bedroom units, 26 two-bedroom units, and 12 three-bedroom units). First- floor space includes common spaces for residents/community, private residences, and office space for Brown County United Way.

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

D. As of January 1, 2023, the Property has an aggregate assessed value of zero ($0) which based on the assessed tax rates in effect as of January 1, 2023, the Property yields approximately:

1. Zero dollars ($0) in total gross real estate taxes annually (assessed mill rate of $18.68); and
2. Zero dollars ($0) 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 $18.68); and
3. Zero Dollars ($0) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be at least Three Million Dollars ($3,000,000), which is anticipated to yield additional real estate taxes of approximately:

1. Fifty-Six Thousand and Forty Dollars ($56,040.00) in total gross real estate taxes annually (assessed mill rate of $18.68);

2. Fifty-Six Thousand and Forty Dollars ($56,040.00) in real estate taxes to the local taxing jurisdictions (total real estate taxes less real estate taxes to the State of Wisconsin) annually (assessed mill rate of $18.68); and

3. Twenty-Two Thousand Seven Hundred Forty Dollars ($22,740.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.58).

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. Developer has requested financial assistance from the City and RDA with regard to certain expenses, including, but not limited to; land acquisition, demolition, remodeling, repair or reconstruction of existing buildings; construction of new buildings; the construction of public works infrastructure, and maintenance of affordable rents which will constitute qualified expenditures for which financial assistance may be afforded Developer.

G. The City and RDA desire to have Developer perform the Project in order to generate economic activity and provide affordable housing for the community consistent with the City Comprehensive Plan.

H. 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; 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 certain incentives as set forth in this Agreement. 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.

Commented [JB1]: Internal: deleted TIF language. OK per Law.

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. "City" means the City of Green Bay, Brown County, Wisconsin.

D. "Concept Plan" means the plan for the Project, which site plan has been approved by the City as of the date hereof.

Commented [JB2]: New language.

E. "Developer" means CITY EAST APARTMENTS, LLC or any assignee of the same.

F. "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 – Approved Concept Plan

Commented [JB3]: New

G. "Future Project" means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement.

H. "Plans and Specifications" means the plans and specifications developed for the Project.

I. "Approved Concept Plan" means the site plan of the Project approved by the City as of the date hereof, 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.

Commented [JB4]: Modified. C&ED to Ok

J. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.

K. "Project" means the Project as defined in the Recitals.

L. "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.

M. "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.

N. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section IV. C. 4.

O. "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.

P. "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.

III. FINANCIAL ASSISTANCE

A. <u>Property Transfer</u>. The RDA shall transfer the site to the DEVELOPER no later than July 31, 2023 for the price of one dollar ($1.00).

B. HOME Grant Funds. The Developer has applied for a $400,000 grant through the City's HOME program. Award of these funds will be subject to a separate grant application and grant agreement. Approval of this development agreement in no way guarantees the approval of these funds. The Developer shall adhere to all requirements of the City's HOME program as defined in a separate grant agreement approved by the RDA. If awarded to the Developer, funds shall not be transferred to another entity without formal approval of the RDA. City, RDA and the Developer acknowledge and agree that the HOME program proceeds are contemplated to be granted to the Developer's nonprofit partner, Crown Court Properties, Ltd., a Wisconsin nonstock corporation, which shall be obligated to provide all HOME program proceeds to the Developer.

Commented [JB5]: New language. Modified by law otherwise OK

C. TIDAH Grant Funds. The Developer has applied for a $400,000 grant through the City's TIDAH program. Award of these funds will be subject to a separate grant application and grant agreement. Approval of this development agreement in no way guarantees the approval of these funds. The Developer shall adhere to all requirements of the City's TIDAH program as defined in a separate grant agreement approved by the RDA. If awarded to the Developer, funds shall not be transferred to another entity without formal approval of the RDA. City, RDA and the Developer acknowledge and agree that the TIDAH program proceeds are contemplated to be granted to the Developer's nonprofit partner, Crown Court Properties, Ltd., a Wisconsin nonstock corporation (or a wholly-owned subsidiary thereof), which shall be obligated to provide all TIDAH program proceeds to the Developer.

Commented [JB6]: New language. Modified by law otherwise OK

D. Large-Scale Affordable Housing Loan Program (SLFRF). The Developer has applied for a $300,000 loan through the Large-Scale Affordable Housing Loan Program. The Developer shall adhere to all requirements of the City's Large-Scale Affordable Housing Loan Program as defined in a separate loan agreement approved by the RDA. If awarded to the Developer, funds shall not be transferred to another entity without formal approval of the RDA.

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. Any grant proceeds are contemplated to be granted to Crown Court Properties, Ltd., a Wisconsin nonstock corporation (or a wholly-owned subsidiary thereof), and subsequently loaned to the Developer.

Commented [JB7]: New language. OK per Law

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Developer has submitted a Concept Plan to RDA for approval, which it has obtained. The Concept Plan clearly identifies:

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

Commented [JB8]: Modified to reflect Plan is approved.

B. Construction Documents. Developer has submitted site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval, which it has obtained. The Construction Documents 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.

Commented [JB9]: Same comment as above

C. Development Budget. Developer has submitted a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval, which it has obtained. The Development Budget included:

1. Not less than Eight Million Eight Hundred Thousand Dollars ($8,800,000) in "hard" construction costs for the entire Project; and

Commented [JB10]: This dollar amount was reduced from $9 million

2. A line item of not less than five percent (5%) of total Project costs for cost overruns and change orders (which is included in the hard construction cost number listed above); 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

Commented [JB11]: Same comment as above

D. Design Requirements and RDA Approvals. The Project shall be designed in such a manner that it is similar to the predominant housing style in the neighborhood and shall conform to the proposal as submitted in conjunction with this Agreement. 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.

Commented [JB12]: Concern would be that it creates ambiguity as to what is substantial.

E. Compliance with Planning; Zoning; Permits and Use. Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:

1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.

2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than July 31, 2023, proof of equity in the form of a commitment from a low-income housing tax credit investor and construction-to-permanent financing by a senior lender contemplated to be Wisconsin Housing and Economic Development Authority.

G. Proof of Financing. Developer has delivered proof satisfactory to the City and RDA of financing, which after injection of the tax credit 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 July 31, 2023, 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.

Commented [JB13]: Modified.

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. The City and/or RDA have caused a combination of parcels that now constitutes the Property.

Commented [JB14]: Modified

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 September 30, 2023. Construction shall be completed no later than December 31, 2024. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project. The Project shall be deemed completed upon issuance of an Occupancy Permit by the City of Green Bay In the event DEVELOPER fails to complete construction by the Completion Date, the DEVELOPER shall transfer the RDA site back to the RDA upon written request of the RDA and at no cost to the RDA; This transfer to the RDA shall be via special warranty deed and the RDA site shall be subject to no liens or other encumbrances other than those existing at the time of the original transfer by the RDA.

Commented [JB15]: Date Change

Commented [JB16]: Change. This is ok.

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. Developer shall allow City staff on site to review the progress of the Project at the City's request.

M. Copies of Documents. All documents from Developer to the City or RDA shall be submitted with one hard copy and one digital copy.

N. Maintenance and Repair. Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.

O. Transfer or Sale of Project Property.

1. Notice of Intent to Transfer. The Developer may not sell, transfer, or convey the Property or any part thereof prior to the termination of this Agreement (other than as specifically provided in subsection (3) hereof), without first obtaining approval from the RDA and the City, which shall not be unreasonably withheld, conditioned, or delayed. 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. 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. Permitted Transfers. Notwithstanding the restrictions noted above, the following transfers, sales, or conveyances of the Property, or any part thereof, shall not require prior approval from the RDA or the City, but Developer shall provide written notice to the RDA and the City of each such transfer, sale, or conveyance:

a) BCUW Transfer. Developer contemplates that it will construct the Project and subject the Project to a condominium form of ownership. After the Project has been condo-ized, Developer will convey to Brown County United Way (or an entity controlled by it) a unit that contains portions of the first floor of the building located on the Project, together with certain common elements (the "BCUW Unit"). RDA and the City agree and acknowledge that the creation of the condominium and the conveyance of the BCUW Unit is specifically permitted and do not require any additional approvals beyond administrative approvals required for the creation of a condominium under Wisconsin law. Additionally, any liens held by RDA or the City in the form of mortgages or other collateral that is attached to the BCUW Unit will be partially released to permit Developer to convey the BCUW Unit to Brown County United Way free and clear of RDA or City liens or encumbrances.

b) Transfers of Membership Interests Related to Tax Credit Investment. Developer is contemplated to be a tax credit investment vehicle, such that certain membership interests in Developer, directly or indirectly, will be transferred. Developer contemplates that it will transfer 99.99% of its membership interests to Old National Bank, or an affiliate thereof (the "Investor Member"). The Investor Member may further transfer its membership interests to other prospective investor members. Additionally, at the conclusion of the tax credit period (i.e., 10 years after the Project

Commented [JB17]: Modification. OK per law

Commented [JB18]: Modification. OK per law.

is placed in service), the Investor Member may transfer its membership interests in Developer to other existing members in Developer.

c) Transfers of Membership Interests in Developer. Other than transfers of membership interests in Developer or in the Investor Member, other members of Developer may transfer interests from time to time; provided, however, that no transfer shall be permitted to another member (or to a trust created for the benefit of another member) to the extent such a transfer causes Developer to have a change in control of the Developer.

Commented [JB19]: I'm ok with this language.

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 Project, 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.

Commented [JB20]: Modified from "First Phase"- OK

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 to the extent Developer has any employees. The amounts of employer's liability coverage shall be in not less than the following limits:

Commented [JB21]: Added lanugage. OK per law

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 – one million dollars ($1,000,000.00) per occurrence;

Commented [JB22]: Reduced from $2 million.

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.

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.

Notwithstanding the foregoing, Developer shall have no indemnity obligation with respect to Losses to the extent such Losses were incurred as a result of the acts or omissions of either RDA or the City.

Commented [JB23]: Added language. OK per law. Makes indemnifications proportional.

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, conditioned, or delayed. 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, conditioned, or delayed. 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.

Commented [JB24]: Added. OK per law

Commented [JB25]: Added. OK per law

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.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

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

A. 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 that are unknown to the RDA and the City.

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 ten percent (110%) 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.

Commented [JB26]: Reduced from 120%

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 after providing written notice to Developer and providing a cure period of 20 calendar days for payment defaults and 45 calendar days for non-payment defaults (except that if the non-payment default is of a nature that cannot be cured within 45 days, but Developer is diligently pursuing a cure, then Developer shall have an additional 90 days to provide a cure).;

2. Offset and Recoupment. Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach.;

3. Sue for Damages. Sue for all damages caused by the Event of Default;

4. Other Remedies. Pursue any other remedies available to the City or RDA at law or in equity;

5. Interest. Collect interest on all delinquent amounts at the rate of twelve percent (12%) per annum from the date such amount was due; and

6. 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.

7. Return of Property to the RDA. In the event DEVELOPER fails to complete construction by the Completion Date, subject to the extension noted above, the DEVELOPER shall transfer the RDA site back to the RDA upon written request of the RDA and at no cost to the RDA. This transfer to the RDA shall be via special warranty deed and the RDA site shall be subject to no liens or other encumbrances other than those existing at the time of the original transfer by the RDA.

Commented [JB27]: New language. Reasonable but up to your discretion.

Commented [JB28]: Removed withholding PayGo.

Commented [JB29]: Deleted Specific Performance

Commented [JB30]: Added. OK per law

Commented [JB31]: Added. OK per law.

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.

G. Cures by Investor Member or Developer's senior lender. The Investor Member and Developer's senior lender, from time to time, shall each have the right, but not the obligation, to proffer a cure of any breach of this Agreement. RDA and the City shall consider such cure as if proffered directly by Developer.

Commented [JB32]: Added.

IX. TERMINATION

A. Date of Termination. This Agreement shall terminate upon the earliest of the date:

1. This Agreement is terminated because of an Event of Default and failure to cure within the notice and cure period; or

Commented [JB33]: Added.

2. The parties agree in writing to terminate this Agreement.

B. Survival of Certain Provisions. Sections IV. E., IV. I., IV. K., IV.O.2., IV.P., IV.Q.2., IV.S.2., V.A., V.B., V.C., VII.C., 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., X.R., and X.S. 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, conditioned, or delayed.

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 July 1, 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.stechschulte@greenbayi.gov
facsimile: 920-448-3426

To the Developer:
City East Apartments, LLC
Attention: Marissa Downs
3912 North Lightning Drive
Appleton, Wisconsin 54913
e-mail: downs@mosaicpropertyventures.com
phone: (920) 602-6679

with a copies to:
Reinhart Boerner Van Deuren s.c.
Attention: Joseph D. Shumow
22 East Mifflin Street, Suite 700
Madison, Wisconsin 53703
e-mail: jshumow@reinhartlaw.com
phone: (608) 229-2245

ONB Community Equity, LLC
Attention: Asset Management
One Main Street
Evansville, Indiana 47708
e-mail: ______________________
phone: (   )

Applegate & Thorne-Thomsen, PC
Attention: Warren P. Wenzloff
425 S. Financial Place, Suite 1900
Chicago, IL 60605
e-mail: wwenzloff@att-law.com
phone: (312) 491-3321

Wisconsin Housing and Economic Development Authority
Attention: Legal
908 East Main Street, Suite 501
Madison, Wisconsin 53703
e-mail: mfortney@wheda.com
phone: (608) 266-7884

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. To the extent this Agreement is recorded, the City and RDA shall cause it to be partially released as to the BCUW Unit upon transfer to Brown County United Way.

Commented [JB34]: Added. OK per Law

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 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:
CITY EAST APARTMENTS, LLC

By: City East Managing Member, LLC, its Managing Member

By: MF Holdings, LLC, its Manager

By: Nonscareil Management, LLC, its Manager

By: ______________________________________
Marissa Downs, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of _________________ 2023, the above named Marissa Downs, the Manager of the Manager of the Manager of the Managing Member of CITY EAST APARTMENTS, LLC, a Wisconsin limited liability 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 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

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this _________ day of _________________ 2023, 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 _________________ 2023 the above named __________________________ and __________________________, on behalf of the Redevelopment Authority of the City of Green Bay, a Wisconsin municipal corporation, to me known to be the person who executed the foregoing instrument and acknowledged the same.

____
*____
Notary Public, _________________ County, Wisconsin
My Commission Expires __________________________

EXHIBIT A
Property Map

1165 E Walnut Street

49969295v2

EXHIBT B
Legal Description

Parcel Number: 14-198

Legal Description:

PLAT OF NAVARINO LOTS 748 THRU 753

EXHIBIT C
Preliminary Concept Plan

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	Will Peters

AGENDA ITEM # D.3

Consideration with possible action on the request by City East Apartments, LLC to transfer recipient of the TIDAH and HOME Grants to their development partner, Crown Court Properties, LLC.

BACKGROUND

The Developer, City East Apartments, LLC, is requesting to transfer the recipient of the TIDAH and HOME Grants from MF Housing Partners, LLC/City East Apartments, LLC to their non-profit partner Crown Court Properties, LLC. The need for this request relates to the negative impact receiving a grant will have on the financing of the project under the for-profit company, City East Apartments, LLC. Attached is the formal request from the developer and a copy of their organizational chart.

RECOMMENDATION

To approve the request by City East Apartments, LLC to transfer recipient of the TIDAH and HOME Grants to their development partner, Crown Court Properties, LLC subject to final review and approval of funding agreements by the City Attorney.

FISCAL IMPACT

ATTACHMENTS

1. CCP Request

HOUSING PARTNERS LLC

June 21, 2023

Will J. Peters Jr.
Neighborhood Development Specialist
Department of Community and Economic Development

Re: Request to Change Recipient of TIDAH and HOME

Mr. Peters:

MF Housing Partners would like to request the RDA consider a change of the recipient for the TIDAH and HOME funds that are being contributed by the City to Crown Court Properties, LTD (or a wholly-owned subsidiary thereof). Crown Court Properties is a non-profit development partner of City East that will be able to accept the grant funds without any negative impact on the project itself.

Sincerely,

Marissa Downs

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	Will Peters

AGENDA ITEM # D.4

Consideration with possible action on the approval of the ARPA(SLFR) loan documents.

BACKGROUND

Report to be provided at RDA meeting.

RECOMMENDATION

To approve the ARPA(SLFR) Mortgage and Mortgage note for the City East Apartments Development at 1165 E. Walnut Street, upon final review and approval from City Attorney.

FISCAL IMPACT

ATTACHMENTS

1. ARPA-MORTGAGE NOTE-City East- 1165 E Walnut-finaldraft06.21.23
2. ARPA-Mortgage

Document Number

LARGE SCALE AFFORDABLE HOUSING PROGRAM

LOAN AGREEMENT AND MORTGAGE NOTE

As an applicant for the Large Scale Affordable Housing Program Loan for certain real estate ("Property") located at: 1165 E. Walnut Street, Green Bay, Wisconsin and more fully described as:

PARCEL NUMBER: 14-198

PLAT OF NAVARINO LOTS 748 THRU 753

the development and construction of which is to be financed by Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") through the City of Green Bay, a Wisconsin Municipal Corporation, ("Holder"), the undersigned ("Borrower") hereby acknowledges and agrees as follows:

1. Subject to the terms and conditions of this Agreement, Holder agrees to provide a loan to Borrower, in an amount of $300,000.00 Three Hundred Thousand and No/100 Dollars) (the "Loan").

2. All proceeds of the Loan shall be used for the development and construction of a 43- unit affordable housing project commonly known as the City East Apartments in Green Bay, Wisconsin (the "Project").

3. This Loan shall be evidenced this Loan Agreement and Mortgage Note ("Mortgage Note") from Borrower to Holder of even date herewith and will be secured by a Real Estate Mortgage of even date therewith (the "Mortgage") on the Property.

4. The Borrower, jointly and severally if more than one, promises to pay to the Holder the principal sum of the Loan in the amount $ Three Hundred Thousand dollars and no/100 Dollars ($300,000.00) plus interest at the rate of 2.0% per annum, compounded annually and starts the first of the month following the disbursement of all loan funds, in immediately available funds in twenty (20) installments, each equal to the "Payment Amount" as defined below, commencing on the first day 2- years following the certificate of occupancy issuance date for the Project and continuing annually on the first day of each year thereafter through 2044, plus a final installment of all outstanding principal plus accrued interest no later than December 31, 2044. ("Maturity Date")

5. The entire outstanding balance of the Loan, if not sooner paid or declared to be due in accordance with the terms hereof, together with any other amounts due and payable hereunder or under any of the documents evidencing or securing the Loan, shall be due on or before December 31, 2044 (the "Maturity Date").

6. Borrower shall make payments of accrued interest and principal on the annual installment due dates of (i) eighteen thousand three hundred sixty three dollars and 57/100 ($18,363.57) the "Payment Amount". The remaining unpaid principal balance together with accrued interest thereon shall be due in full at the Maturity Date.

7. Borrower shall use the proceeds of the Loan solely in connection with the construction and development of the Project. The Loan proceeds may be used for any costs associated with the acquisition or construction of the Project ("Eligible Costs"). Grantor shall achieve completion of construction of the Project before December 31, 2024.

8. Provided Borrower is not in default under the terms of the Loan Documents, Loan proceeds will be disbursed to the Borrower within fifteen (15) business days of receipt by Holder of a drawdown request and copies of invoices for Eligible Costs (as hereinafter defined) reasonably satisfactory to Holder. The amount requested shall be limited to the amount needed for payment of Eligible Costs. Holder shall retain five percent (5%) of the Loan proceeds until the Project is substantially complete and Borrower provides Holder with a certificate of substantial completion from the Project architect and a copy of a certificate of occupancy allowing the Project to be occupied for its intended use. Disbursements may not be requested until needed for payment of Eligible Costs. Holder shall have right to disapprove any disbursement request not in accordance with this Agreement and Holder may adjust the disbursement of proceeds accordingly. Disbursements shall be made only to Borrower. Holder shall not be responsible for the disbursements of Loan proceeds to subcontractors or any other eligible payees.

9. Holder reserves the right, after reasonable notice, to inspect the job site or premises for the sole purpose of insuring that the performance is progressing or has been completed in compliance with this Agreement. Borrower shall provide reasonable access to the Property during normal working hours, provided that such access shall not disrupt construction of the Project.

10. Notwithstanding anything to the contrary in this Loan Agreement and Mortgage Note or other Loan Documents, Holder, by making the Loan or by any action pursuant to this Loan Agreement and Mortgage Note or the other Loan Documents, is not and shall not be deemed to be a partner of joint venture with Borrower.

11. Borrower warrants that Borrower has record title to or an equitable interest in the Property.

12. As a recipient of SLFRF, Borrower shall be subject to following the rules and regulations of Federal Register 31 CFR Part 35 Final Rule. In further, Borrower hereby acknowledges and agrees to be subject to and participate with a third-party financial audit if applicable in accordance with the rules and requirements of the U.S. Treasury.

13. Borrower acknowledges that the Project is expected to be eligible for low-income housing credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the “Code”).

14. Borrower acknowledges and agrees the Project shall maintain its status as a qualified affordable housing for not less than 20 years from the date the certificate of occupancy is issued (“Affordability Period”)

15. If at any time during the “Affordability Period” the Project becomes non-compliant, including if such Project ceases to satisfy the requirements to be a qualified low-income housing project (as defined in section 42(g) of the Code) or a qualified residential rental project (as defined in section 142(d) of the Code), or if such project fails to comply with any of the requirements of the extended low-income housing commitment that 36 are described in section 42(h)(6)(B)(i)-(iv) of the Code, the Loan shall become payable and due in full to the Holder.

16. Borrower acknowledges and understands that any false statement or misrepresentation made in connection with this Loan and Mortgage Note may subject the Borrower to criminal and civil penalties under United States and Wisconsin law.

17. Borrows acknowledges and agrees as a condition for accepting such a loan, to waive any right to request a qualified contract (as defined in section 42(h)(6)(F) of the Code).

18. If Borrower fails to pay any installment payable hereunder within days after it becomes due or if any other default, including a default under any security for this Note, is not cured within days after notice of default is mailed to Borrower, Holder may at its option and without further notice accelerate the amount due under the Note and declare it immediately due and payable. If any installment payable hereunder is delinquent more than days, Borrower shall pay a late charge to Holder of 5% of the delinquent amount. Borrower shall pay all costs and expenses, including reasonable attorney fees, of collection and enforcement of any security for the Note, unless prohibited by law.

19. In the event of any prepayment, this Note shall not be treated as in default with respect to payment so long as the unpaid balance of principal and interest (and in such case accruing interest shall be treated as unpaid principal) is less than the amount that said indebtedness would have been had the payments been made as specified above; provided that payments shall continue in the event of credit of any proceeds of insurance or condemnation, the condemned premises being thereafter excluded from any mortgage given as security for this Note.

20. Holder may grant renewals or extensions or otherwise modify the terms of this Note or any instrument securing this Note without affecting the liability of Borrower or any guarantor of this Note.

21. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deterioration or decreasing in value due to its condition. Unless it is determined that repair or restoration is not economically feasible. Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Holder has released proceeds for such purposes. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation of the completion of such repair or restoration.

22. Borrower shall maintain Property in compliance with applicable housing and zoning codes. Borrower shall maintain hazard insurance and flood insurance if so required for the Property and shall keep current and promptly pay all property tax payments for the life of the loan.

23. Holder or its agent may make reasonable entries upon and inspection of the Property. If it has reasonable cause, Holder may inspect the interior of the improvements on the Property. Holder shall give Borrower a 12 hour notice prior to such an interior inspection specifying such reasonable cause.

24. Borrower agrees to defend, indemnify and hold harmless the officers, members, and employees of the Holder from liability and claim for damages because of bodily injury, death, property damage, sickness, disease, or loss and expense arising or in any way resulting from performance under any agreement relating to the Large Scale Affordable Housing Program.

25. Any and all notices directed to be given pursuant to the terms of this Note so shall be given in writing and delivered by registered or certified mail, return receipt requested or by personal delivery to the address set forth below:

City of Green Bay
100 North Jefferson Street, Room 608
Green Bay, WI 54301.

This Note is secured by____.

Dated______________________________________.

____________________________________(SEAL) ____________________________________ (SEAL)
*   *

GUARANTY

The undersigned, for valuable consideration, hereby guarantees payment of all sums due and to become due under the above Note, including (without limitation) principal, interest and costs and expenses of collection.

Dated______________________________________.

GUARANTOR:

____________________________________(SEAL) ____________________________________(SEAL)
*   *

Document Number	**MORTGAGE** Document Name	

Know all men, that ______________________________"Mortgagor," of __________ County, Wisconsin hereby mortgages to the City of Green Bay , a municipal corporation ,

"Mortgagee" to secure payment of $______ Dollars ______________________ ($.00) evidenced by a note or notes, or other obligation ("Mortgage Note") dated_____________, executed by______BORROWER__________________

____,

to Mortgagee, and any extensions, renewals and modifications of the Mortgage Note and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights

Recording Area

Name and Return Address

City of Green Bay
100 North Jefferson Street
Green Bay, WI 54301

and interests appurtenant thereto in law or equity, all rents, issue and profits arising therefrom, including insurance proceeds and condemnation awards, all structures, improvements and fixtures located thereon, in Brown County, State of Wisconsin ("Property"):

____
Parcel Identification Number (PIN

DESCRIPTION

ADDRESS

1. MORTGAGOR'S COVENANTS.

a. **COVENANT OF TITLE**. Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:

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

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

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

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

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

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

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

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

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

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

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

9. **ENVIRONMENTAL PROVISION**. Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used,

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

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

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

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

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

Dated__________________________________.

____(SEAL)

____(SEAL)

THIS INSTRUMENT WAS DRAFTED BY

____

City of Green Bay

ACKNOWLEDGMENT

State of Wisconsin
Brown County. Personally came before me this ______day of ____________, 20__, the above named

____

____

____

To me known to be the person who executed the foregoing instrument and acknowledge the same.

____

____

Notary Public Brown County, Wisconsin
My commission expires

____

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	

AGENDA ITEM # E.1

Overview of Possible Redevelopment in Mason Street/Hinkle Street area (Garritt Bader).

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
June 22, 2023	

AGENDA ITEM # E.2

Director's Report

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None