AGENDA OF THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

FRIDAY, OCTOBER 11, 2024, 9:00 AM

City Hall, Room 604 - The Harry Maier Room.
Virtual attendance is also available via Zoom.

A. Zoom Meeting Information.

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

   Or call in by phone: +1 312 626 6799
   Meeting ID: 831 8804 4732
   Passcode: 084117

   If you wish to speak at this public meeting or leave a comment, please fill out the online Comment Form prior to the meeting. More detailed Zoom Instructions can be found online.

B. Roll Call.

1. Members: Chair Gary Delveaux, Vice-Chair Matt Schueller, Deby Dehn, Ald. Kathy Hinkfuss, Stephen Srubas and Melanie Parma.
   Liaisons: Jeff Mirkes, Leah Weycker, and Brooke Hafs.

C. Approval of the Agenda.

1. Approval of the agenda for the Friday, October 11, 2024, meeting of the Redevelopment Authority.

D. Regular Business.

1. Consideration with possible action on a revised Development Agreement (24-04), TIF Disbursement Agreement, and Collateral Assignment with Nova GB SPE, LLC.

E. Informational.

1. Director's report and project updates.

2. Date of next meeting: November 7, 2024

F. Adjournment.

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

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
October 11, 2024	Matt Buchanan, Staff

AGENDA ITEM # D.1

Consideration with possible action on a revised Development Agreement (24-04), TIF Disbursement Agreement, and Collateral Assignment with Nova GB SPE, LLC.

BACKGROUND

In May 2024, the Redevelopment Authority (RDA) and City of Green Bay approved Development Agreement 24-04 with Nova GB, LLC to construct an eight-story mixed-use building at 221 Cherry Street. The proposal included the creation of 268 market-rate apartments, ground-floor commercial space, and an internal two-story parking ramp. The redevelopment is anticipated to generate $38,000,000 in increased aggregate assessed property value. Per the agreement, RDA will transfer ownership of the property to the developer for $1. Additionally, the City will provide an $8,500,000 TIF loan, and 95% of the available TIF increment to reimburse qualified expenditures.

Since the approval of the Development Agreement in May, the developer has discovered a need to relocate underground utilities to accommodate the project, causing minor delays to project timeline. The developer still plans to start construction during the fourth quarter of this year. However, changes to key milestone dates listed in the development agreement are requested, including:

- Development Agreement execution deadline changes from July 1, 2024 to November 1, 2024
- The date of the property's transfer of ownership changes from no later than 60 days after the Development Agreement's execution, to before January 1, 2025.
- Construction completion date deadline changes from June 30, 2027 to August 31, 2027

The Developer has also requested a reduction in their minimum equity commitments from 20% to 18%. This 2% reduction in developer equity will not impact the previously approved level of investment from the City of Green Bay.

Additional revisions are being requested to address the Developer's intent to use the Development Agreement as collateral for financing and to provide necessary assurances to their lender. The previously approved Development Agreement allows assignment of payment rights to a lender for financing the project, contingent on RDA approval. The Developer is now requesting this collateral assignment of TIF payment rights to their lender.

The Developer will remain responsible for all obligations and duties under the Development Agreement. However, in the event of the Developer's default, the lender would assume full responsibility. The Collateral Assignment document is being finalized between the Developer and the lender, and the final draft will be subject to review and approval by the City Attorney.

RECOMMENDATION

Approval of the revised Development Agreement (24-04), TIF Disbursement Agreement, and Collateral Assignment with Nova GB SPE, LLC, subject to final review and approval by the City Attorney.

FISCAL IMPACT

The proposed revisions to the previously approved Development Agreement (24-04), TIF Disbursement Agreement, and Collateral Assignment, will not have a fiscal impact to the City of Green Bay.

ATTACHMENTS

1. DA 24-04-221 Cherry Street-RDA - Clean-10.09.24
2. DA 24-04-221 Cherry Street-RDA - Redline-10.09.24
3. TIF Disbursement Agreement-Clean-10.08.24
4. TIF Disbursement Agreement-Redline-10.08.24

DEVELOPMENT AGREEMENT 24-04

221 CHERRY STREET REDEVELOPMENT

This Development Agreement is made this [date] day of October, 2024,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and NOVA GB SPE, LLC, a Delaware limited liability company ("Developer"), an affiliated entity of
NOVA GB LLC and New Land Enterprises, LLC.

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
12-112	221 Cherry St.	1.447	$0.00

B. The parcel listed in A. above shall be referred to as the "Property." The Property comprises approximately one and four hundred forty-seven thousandths (1.447) 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 improvements on the Property in accordance with this Agreement, which include but are not necessarily limited to the following (the "Project"):

Constructing an eight (8) story mixed-use building, including approximately two hundred sixty-eight (268) market rate multi-family apartment units, approximately fourth thousand eight hundred fifty (4,850) square feet of commercial space on the first floor, and an internal two (2) story parking ramp.

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

D. As of January 1, 2024, the Property has an aggregate assessed value of Zero Dollars ($0.00) which based on the assessed tax rates in effect as of January 1, 2024, the Property yields approximately:

1. Zero Dollars ($0.00) in total gross real estate taxes annually (assessed mill rate of $19.34);

2. Zero Dollars ($0.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.77).

E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be at least Thirty-Eight Million Dollars ($38,000,000), which is anticipated to yield approximately:
1. Seven Hundred Thirty-Four Thousand Nine Hundred Twenty Dollars ($734,920) in total gross real estate taxes annually (assessed mill rate of $19.34);

2. Two Hundred Ninety-Five Thousand Two Hundred Sixty Dollars ($295,260) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.77).

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. The RDA and the City will ask the Joint Review Board (JRB) to create a new Tax Increment District (the TID), effective tax year January 1, 2024, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the "TID."

G. Developer has requested assistance from the City and RDA with regard to certain expenses, including, but not limited to; demolition; environmental remediation; clearing of land; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which tax incremental financing assistance by the City may be afforded to the Developer.

H. The City and RDA desire to have Developer perform the Project in order to generate economic activity and tax base for the community consistent with the City Comprehensive Plan.

I. In order to induce Developer to undertake the Project, such that the Project will remediate environmental contamination and/or enhance the physical landscape, build new structures with high-performance designs, systems, and finishes, create a significantly higher per-acre property value than adjacent properties and the City average, generate property taxes greater than the cost of providing infrastructure and services, build new structures for individuals of all ages and abilities, is located in places easy to reach on foot, bicycle, or transit, expand non-motorized transportation networks, expand our range of residential and commercial real estate products, create and/or enhance unique public spaces, amenities, and art, and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

J. The parties hereby acknowledge and agree that the following may not be completed prior to execution of this Agreement but shall occur promptly thereafter (i) the TID as defined in Section II.T. below shall be created by the City; (ii) the City shall relocate the public art located on the Property to a location other than the Property; and (iii) the City shall close on the sale of the Property to Developer.

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 incentives as set forth in this Agreement. The City intends to recover its costs through the TIF Increment as defined in Section III.B.2.b. below generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

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

A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.

B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.

C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.

D. "Base Value" means the aggregate assessed value of the Property when the TID was created, which shall be Zero Dollars ($0.00).

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

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

G. "Developer" means NOVA GB SPE, LLC or any assignee of the same.

H. "Exhibits" means the supplementary reference information attached to this development agreement that shall include the following:

1. Exhibit A – Map of the Property
2. Exhibit B – Legal Description of the Property
3. Exhibit C – Preliminary Concept Plan
4. Exhibit D – TIF Disbursement Agreement

I. Intentionally Omitted.

J. “Plans and Specifications” means the plans and specifications developed for the Project.

K. “Preliminary Concept Plan” means the initial Concept Plan, a copy of which is attached as EXHIBIT 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 which may not be unreasonably withheld.

L. “Private Improvements” means the improvements to be constructed on the Property that are not Public Improvements.

M. “Project” means the Project as defined in the Recitals.

N. “Public Art” means art that shall be accessible to the public, and includes all forms of original creations of visual art, conceived in any medium, material, or combination thereof, including paintings, drawings, stained glass, and murals in any media; statues, bas relief, mobile, kinetic, electronic, neon, or other sculptures; environmental artworks; fountains, arches or other structures intended for ornament; integrated and functional architectural elements of a structure; video and other media-based works; inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints; crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials; artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself.

O. “Public Improvements” means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:

1. road, lighting, streetscape, pedestrian, and bicycle improvements; and
2. Public Art; and
3. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and
4. telephone, high-speed cable or internet service, and related technology infrastructure; and
5. natural gas, electrical power, and other public utilities; and
6. any related engineering, grading, erosion control, and landscaping; and
7. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.

P. “Qualified Expenditures” means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section III. B. 4.

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

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

S. “Tax Increment” means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year’s assessed value of all taxable property in the TID.

T. “TID” means the future Tax Increment District to be created in 2024 by the City of Green Bay, The RDA and the City will ask the Joint Review Board (JRB) to create a Tax Increment District (the ‘TID’), effective January 1, 2024, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the “TID.”

U. “TIF” means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.

V. “TIF Incentive” or “TIF Incentives” means each incentive or incentives collectively as set forth in Section III.B and Section III.C of this Agreement up to the Tax Incentive Cap.

W. “Tax Incentive Cap” means as described and provided for in Section III.C.2 of this Agreement.

III. TAX INCREMENT FINANCING

A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the “but for” test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer’s qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.

B. Nature of TIF Incentives. The TIF Incentives available to Developer under this Agreement shall be defined as the following:

1. Property Transfer. The City and/or RDA shall convey the Property to the Developer through the following process:

    a) Prior to January 1, 2025, the City and/or RDA shall convey Tax Parcel 12-112, excluding all City and/or RDA parcels or right-of way, to Developer, free and clear of liens and encumbrances that materially prohibit development of the Property as herein proposed, via warranty deed, for the sum of one dollar ($1.00), and shall provide an owner's policy of title insurance at the time of conveyance.

    b) Upon transfer of the Property to Developer, the Developer shall enter a into written month-to-month Lease of the Property with the City and/or RDA for continued parking use to allow for additional time for the City to relocate parking commitments and monuments existing on the Property. The parties agree that the monthly rent shall not exceed one-dollar ($1.00) per month.

c) The RDA shall take a Preferred Forgivable Equity Investment in the Project of Seven Hundred Seventeen Thousand and One Hundred Dollars ($717,100), which is the estimated value of the Property that will be transferred to the Developer. The Preferred Forgivable Equity Investment shall be secured by this Agreement, shall survive the expiration of this Agreement, and shall be forgiven at the point in time that the aggregate assessed value of the Property is greater than or equal to Thirty-Eight Million Dollars ($38,000,000.00) ("Minimum Assessed Value"). Should the aggregate assessed value of the Property fail to be greater than or equal to the Minimum Assessed Value on or before January 1, 2028, the Developer shall pay the City and/or RDA the Preferred Forgivable Equity Investment.

2. TIF Funds and Personal Guarantee.

a) Except the Property Transfer outlined in Section III.B.1.a. above, and the TIF Funds as defined in Section III.B.2.b. below, the Developer shall obtain all necessary equity and private loan commitments that are necessary to complete the Project.

b) In order for this Project to occur, City shall contribute not less than $8,500,000.00 in Tax Increment Financing assistance ("TIF Funds") to Developer. These TIF Funds shall be borrowed by the City whether by bond or note, over a 20 year term at the lowest possible interest rate available to the City at the time of issuance ("TIF Incentive"), to be disbursed to the Developer pursuant to a TIF Disbursement Agreement, attached hereto as Exhibit D, and shall be repaid through the Available Tax Increment generated by the Property starting for the taxable year of 2027 (payable in 2028) plus any Annual Shortfall (as defined in Section III.B.2.c below). City's Debt Service payments on the TIF Incentive shall be repaid through Available Tax Increment and is subject to Developer's personal guarantee of the Annual Shortfall as set forth in Article III. Section B.2.c). Upon Developer's receipt of such TIF Funds, which shall be governed by the TIF Disbursement Agreement attached hereto as Exhibit D, between the parties, Developer shall utilize the TIF Funds for the construction of the Project and for designated Qualified Expenditures and improvements as set forth in this Agreement. The City and Developer agree that the TIF Disbursement Agreement is subject to the review and approval of the lender for the Project, and the parties agree to work together in good faith the modify the TIF Disbursement Agreement as may be reasonable required by such lender.

c) Any individual member of the Developer shall personally guarantee any Annual Shortfall, as defined in this Section III.B.2.c below starting for the taxable year of 2027 (payable in 2028). An Annual Shortfall exists when the City's TIF Increment is less than the City's Debt Service annual payments on the TIF Loan ("Annual Shortfall"). The City's TIF Increment is defined as the property tax generated in any given year less the tax generated on the base value of the Property at the time the TIF was established. The City's Debt Service annual payments is defined as the City's debt service annually on Eight Million, Five Hundred Thousand Dollars ($8,500,000), of TIF Assistance borrowed over 20 years at an interest rate of the lesser of the City's lowest possible borrowing rate at the time or 5.5%. The formula for any Annual Shortfall is as follows:

Available Tax Increment

Less : City's Debt Service annual payment for the TIF Funds

____

= Annual Shortfall (if the difference is negative)

d) At the time of the issuance of the TIF Funds, the City shall provide to Developer an amortization schedule showing the City's Debt Service for the TIF funds each year necessary to have repaid the TIF Funds in full over the course of the 20-year life of the City's bond or note at the City's lowest possible borrowing rate at the time or 5.5% (the lesser of the two).

e) In the event of an Annual Shortfall, the owner of record for the Property and or the entity responsible for the payment of property tax assessed to the Property shall be invoiced for any Annual Shortfall that exists in a calendar year and shall pay the Annual Shortfall within thirty (30) days of receipt of the City's invoice. City may only invoice Developer for the Annual Shortfall, without adding any other costs or administrative expenses. If the owner of record for the Property and or the entity responsible for the payment of property tax assessed to the Property fails to pay for Annual Shortfall then City may place the unpaid amount as a Special Charge against the Property or enforce the Personal Guarantee as provided herein.

f) Any individual member of the Developer shall provide the Personal Guarantee to the City and RDA, subject to their approval, for any Annual Shortfall realized pursuant to Section III.B.2.c. of this Agreement. The Personal Guarantee shall expire or be released upon the sooner of the (x) termination of the TID, (y) the retirement of the City's Debt Service on the specific bonds or notes issued for the TIF Funds, or (z) 20 years. Developer may, but shall not be obligated to, prepay the unpaid principal balance of the TIF Funds at any time, and if Developer elects to pay off the unpaid principal balance and any accrued but unpaid interest of the TIF Funds prior to the natural occurrence of the retirement of the debt, the Personal Guarantee shall be released by the City and RDA. In the event Developer elects to pay off the unpaid principal balance and any accrued but unpaid interest of the TIF Funds prior to the natural occurrence of the retirement of the debt ("Prepayment"), and the debt associated with the TIF Funds that creates the City's Debt Service may be paid off early at such time as the Developer makes the Prepayment, the City shall, if allowed by the nature of the debt, apply the Developer's Prepayment to the payoff of the debt so as to ensure the Prepayment satisfies the Developer's obligations to pay the City's Debt Service annual payment for the TIF Funds hereunder and eliminate the Annual Shortfall obligations hereunder.

g) Notwithstanding anything else in this Agreement, no assignments shall be made of Personal Guarantee without the consent of the RDA and City which shall not be unreasonably withheld. The Personal Guarantee(s) provided under this section shall remain with the Developer until such time as any party assuming this Agreement as permitted herein enters into a new personal guarantee reasonably approved by the RDA and City. However, the obligation to satisfy payment of any Annual Shortfall, as provided in Section III.B.2.e. shall remain until the City's Debt Service is retired or the TID is terminated, whichever event is sooner.

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

   a) The Developer guarantees that the Property shall have a minimum aggregate assessed value equal to Thirty-Eight Million Dollars $38,000,000.00 on or before January 1, 2028.

   b) Except for the Property Transfer, Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient, and up to the limits of the TID and this Agreement, the value of the Qualified Expenditures shall also be reimbursed to Developer in accordance with the following:

      i. Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the Base Value to determine Available Tax Increment.

      ii. City shall first be entitled to Available Tax Increment as defined in Section II.C. to cover the City's Debt Service annual payment on the TIF Funds.

      iii. City shall then be entitled to five percent (5%) of remaining Available Tax Increment to cover administrative costs incurred by the TID, and for public infrastructure and improvements within the new TID.

      iv. Developer shall not be entitled to any Available Tax Increment unless the City's Debt Service annual payment on the TIF Funds for this Project has been met for that particular year. Upon reaching this threshold, the remaining Available Tax Increment shall be known as "TIF Increment" and distributed as follows:

         (a) The City shall make available ninety five percent (95%) of the annual TIF Increment to the Developer (the "PAYGo Reimbursement") until all Qualified Expenditures have been repaid to Developer or the TID expires or is earlier terminated. 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.

         (b) The PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after the full payment of the real estate taxes, Special Assessments and Special Charges against the Property for the previous year. For example, if the first occupancy permit is issued on September 1, 2030, the TIF Increment would be determined as of January 1, 2031, and the PAYGo reimbursement would first be payable in 2032.

4. Qualified Expenditures. TIF Funds and PAYGo Reimbursement payments shall be disbursed in the following priority, and only fund the following:

   a) Public Improvements, if applicable, and environmental remediation related activities, and asbestos abatement related activities as may be required by State and Federal law; then

   b) Private Improvements specifically approved by the City or RDA as stated in Section IV. C.4; then

   c) Any other activity specifically approved by the City or RDA.

5. Assignment. Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property and / or provide a collateral assignment of this Agreement and the Disbursement Agreement and any escrow agreement related as a requirement of the Disbursement Agreement to a lender for the Project, pursuant to which, said lender may assume all rights and obligations of the Developer under this Agreement, upon approval of the RDA and City which approval may not be unreasonably withheld, provided however, that the City shall be obligated only to disburse TIF Incentives and/or TIF Increment to the party who has been assigned and has duly assumed this Agreement, as approved by the RDA and City, or a party with whom the City has entered into an alternative agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value and guaranteed aggregate assessed value generated by any third-party purchaser and/or developer of any part of the Property.

C. Limitations. The TIF Incentives available to Developer for the Project are limited as follows:

1. Monetary Limitation. The PAYGo Reimbursement in any year shall not exceed ninety-five percent (95%) of the Available TIF Increment for the Property.

2. Tax Incentive Cap. The City shall not be obligated to pay TIF Incentives in excess of the total amount of Qualified Expenditures incurred and paid by Developer.

3. Tax Receipts Limitation. Only the Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.

4. Temporal Limitation. Provided Developer qualifies for PAYGo Reimbursement 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, PAYGo Reimbursement payments shall be made on or before September 1 of each year; provided, however, in no event shall PAYGo Reimbursement payments continue after the earlier of the termination date of the TID or the termination of this Agreement if before the termination of the TID.

5. Maximum Life of the TID. Payments shall not be made beyond the statutory maximum life of the proposed TID.

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

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

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Prior to June 1, 2024, 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 to be constructed on the Property.

B. Construction Documents. Prior to January 1, 2025, and prior to commencement of construction of any phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval and such approval shall not be unreasonably withheld. The Construction Documents shall include:

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

C. Development Budget. Prior to January 1, 2025, Developer shall submit a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval and such approval shall not be unreasonably withheld. The Development Budget shall include:

1. Not less than Fifty-Five Million Dollars ($55,000,000) in "hard" construction costs for the entire Project; and

2. A line item of not less than five percent (5%) of total "hard" construction costs for the Project and 5% of the "soft" construction costs for the Project (excluding reserves and developer fees) for cost overruns and change orders as total contingency; and

3. A line item of not less than one percent (1%) of the Minimum Assessed Value, 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 but not necessarily limited to, and as approved by the RDA and City:

    a) The Property and costs associated with the Property Transfer

    b) Environmental and hazardous material remediation and related activities

    c) Public Improvements

    d) Utility relocation costs.

    e) 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.

    f) Enhanced building design, architecture, or materials beyond basic code requirements as approved by the RDA.

    g) Enhanced landscaping beyond basic code requirements as approved by the RDA.

    h) Costs associated with the construction of structured parking on the Property allowing for better building design and improving the overall function of the site.

    i) Enhanced stormwater management costs allowing for better building design and improving the overall function of the site.

    j) Costs related to the installation of environmentally sustainable infrastructure and practices in the project, which may include but not necessarily be limited to building HVAC automation controls, high efficiency.

    k) Site improvements related to providing access to public transit or alternative transportation options or bicycle related infrastructure, or electric vehicle charging.

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

m) 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.

n) Costs associated with the borrowing of the amounts to be reimbursed by the TIF Funds until such time as the TIF Funds are received.

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

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

1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.
2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.

F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than January 1, 2025, proof of equity commitments equal to not less than eighteen percent (18%) of the Development Budget less anticipated grants and TIF Incentives ("Equity") for injection into the Project and otherwise in an amount sufficient to obtain financing for all Project costs. Any available Equity obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any other third party financing may be used to pay Project costs.

G. Proof of Financing. By no later than January 1, 2025, Developer shall have delivered proof reasonably satisfactory to the City and RDA of financing, which combined with the injection of the Equity into the Project and the TIF Incentives, 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. Not later than December 31, 2024 and subject to the City's obligations hereunder, Developer shall have closed on the purchase of all of the parcels comprising the Property and all of the necessary rights of way required for the Project. Developer shall provide copies of deeds and such other closing documents as requested by the City or RDA regarding the purchase of the Property and rights of way. The Property and rights of way shall be owned in the name of the Developer.

I. Termination or Relocation of Easements. Developer shall have agreements with all holders of easements or any other rights that may be affected by the Project, regarding the termination, modification or relocation of such easements and other rights in order to accommodate the Concept Plan.

J. Certified Survey Map. Promptly after the Property has been acquired by Developer, Developer shall cause a certified survey map to be prepared, approved by the City, RDA, and any other party whose consent is required, and shall cause the certified survey map to be recorded with the Brown County Register of Deeds.

K. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenditures as set forth in the approved Development Budget.

L. Improvement of Property. Developer shall promptly design and complete the Project. Substantial work on the Project shall commence no later than ninety (90) days after the last to occur of approval by the City and RDA of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, and/or issuance of a building permit and all other permits or licenses required to commence construction. Construction shall be substantially completed as evidenced by occupancy permit no later than August 31, 2027. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.

M. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA. Developer shall submit a copy of annual, audited financial statements for Developer through termination of this Agreement.

N. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.

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

P. Transfer or Sale of Project Property.

1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer for review and consent by the City and the RDA, which such consent may 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 ("PILOT") P prior to the closure of the TID, the City shall be entitled to a PILOT amount equal to 100% of the property tax assessed on the Property. Provided a PILOT exists as a result of the foregoing, following the closure of the TID, the City shall be entitled to a PILOT amount equal to 40% of the property tax assessed on the Property.

3. Right of First Refusal. Developer shall not sell, trade, grant, or encumber the Property, except as specifically provided herein. Should, the City in its sole discretion determine that the Developer has not substantially completed the Project in accordance with Article IV. L above, by August 31, 2027, Developer shall provide City the exclusive right, for a period not to exceed one (1) year from the determination of incompletion of the Project to purchase an undeveloped or substantially underdeveloped portion of the Property. For clarity, the City's exclusive right to purchase the Property due to Developer's inability to complete the Project shall only be effective if Developer has failed to complete the Project on or before August 31, 2027. The purchase price shall be equivalent to the purchase price paid for the Property under this Agreement. This Right of First Refusal shall run with the land and shall survive the termination or expiration of this Agreement, and shall remain in place until such time as the Project is completed in accordance with Article IV. L above. For clarity, this right of first refusal and Developer's prohibition against encumbering the Property shall not apply if Developer for the purpose of obtaining financing or refinancing any loan(s) which require a mortgage to encumber the Property, places a mortgage on the Property.

Q. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.

R. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of the First Phase, Developer shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same.

2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):

   a) Arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property; or

   b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.

3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:

   a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants, "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and

   b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.

4. Survival. The provisions of this Section shall survive the conveyance to Developer of any City and/or RDA Property.

S. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:

   a) Bodily Injury by Accident – one hundred thousand dollars ($100,000.00) per accident;

b) Bodily Injury by Disease – one hundred thousand dollars ($100,000.00) per employee; and

c) Five hundred thousand dollars ($500,000.00) policy limit.

2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.

3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:

   a) General Aggregate Limit – two million dollars ($2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars ($2,000,000.00);

   b) Bodily Injury and Property Damage – two million dollars ($2,000,000.00) per occurrence;

   c) Fire Legal Liability Damage Limit – one hundred thousand dollars ($100,000.00) per occurrence; and

   d) Medical Expense Limit – ten thousand dollars ($10,000.00) per person.

4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:

   a) Bodily Injury – two hundred fifty thousand dollars ($250,000.00) per person; and

   b) One million dollars ($1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars ($250,000.00) per occurrence.

5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars ($1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.

6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer

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

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

T. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:

   a) Any breach by Developer of the terms of this Agreement;

   b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or

   c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.

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

and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

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

A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.

B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.

C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.

D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.

E. TID District. The RDA and City intend to create a new TID effective January 1,2024, and once created shall be in effect and in good standing with and certified by the Wisconsin Department of Revenue.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

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

A. TID. The RDA and City intend to create a new TID effective January 1, 2024, and once created shall be in effect and in good standing with and certified by the Wisconsin Department of Revenue.

B. Due Authorization. The City Council shall consent to the City entering into this Agreement and shall authorize the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

VII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, and are true and correct and there has been no material change in any of the same.

B. No Material Change in Developer Operations. There has been no adversely 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 and Project, when completed, will conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.

D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, 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 the real 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 written notice of such failure to pay;

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 which is not made true or cannot be made true within thirty (30) business days of written notice of such discrepancy.

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 reasonable 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. Except as permitted by Section VII. D. 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. Withholding of TIF Payments. If an Event of Default occurs which remains uncured after any applicable cure period, the City may withhold TIF Funds and/or annual PAYGo Reimbursement payments until the Event of Default is cured and, upon such cure, the TIF Funds and/or PAYGo Reimbursement payments shall resume in full;

2. Termination. Terminate this Agreement without further notice to Developer;

3. 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 TIF Funds and/or of PayGo Reimbursement payments to the Developer until temporary defaults are remedied to the satisfaction of the City.;

4. Specific Performance. Sue for specific performance;

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

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

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

8. 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 to Developer 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 terminate upon expiration of the TID.

C. Survival of Certain Provisions. Sections III.B.1.c.; III.B.2.c.; III.B.2.e.; III. D.; IV.E.; IV.I.; IV.K.; IV.P.2.; IV.Q.; IV. R.2; IV.T.1.; IV. T.2.; 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.K.; X.L.; X. N.; X. O.; X.P.; X.Q.; X. R.; and X.T. 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 for to an entity created solely for the purposes of owning the Project and over which the Developer maintains managerial control, Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, until the obligations of the Developer under Section III hereof are fully performed and satisfied. Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld.

C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

D. No Personal Liability. Except for intentionally harmful acts, 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. Except for intentionally harmful acts, 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, pandemics including but not limited to COVID-19 or any variant of COVID-19, 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 three hundred sixty-five (365) 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 November 1, 2024 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

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

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: cheryl.renier-wigg@greenbaywi.gov
To the Developer:	New Land Enterprises, LLC Address: 1840 N Farwell Ave. STE A, Milwaukee, WI 53202 e-mail: tim@newlandmke.com phone: 414-271-5263
with a copy to:	Attorney Name Sheldon Oppermann Firm Address 1840 N Farwell Ave. STE A Firm City, Zip Milwaukee, WI 53202 email: sheldon@newlandmke.com phone: 414-550-9717

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. This Agreement may be signed electronically and 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 (each a “Permitted Lien”). 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) that is not a Permitted Lien.

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. Due Authority. Developer shall provide to the City and RDA a copy of the Statement of Authority for Limited Liability Company on file with the State of Wisconsin Department of Financial Institutions.

T. 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:
NOVA GB, LLC

By: ___________________________________
NOVA GB Sponsor, LLC
Manager

By: ___________________________________
Tim Gokhman, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 2024, the above named ____ to me known to be the person(s) 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 NOVA GB, LLC

THE CITY OF GREEN BAY

By: ______________________________________
Eric Genrich, Mayor

By: ______________________________________
Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 2024, 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 NOVA GB, LLC ENTERPRISES, LLC

REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

By: ______________________________

Gary J. Delveaux, Chair

Attest: ______________________________

Cheryl Renier-Wigg, Executive Director

ACKNOWLEDGMENT

STATE OF WISCONSIN)

) SS

COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 202, 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

DESCRIPTION OF PARCEL 12-112

All of Lots 29, 30, 31, 46, 47 and 48, according to the recorded Plat of Navarino;

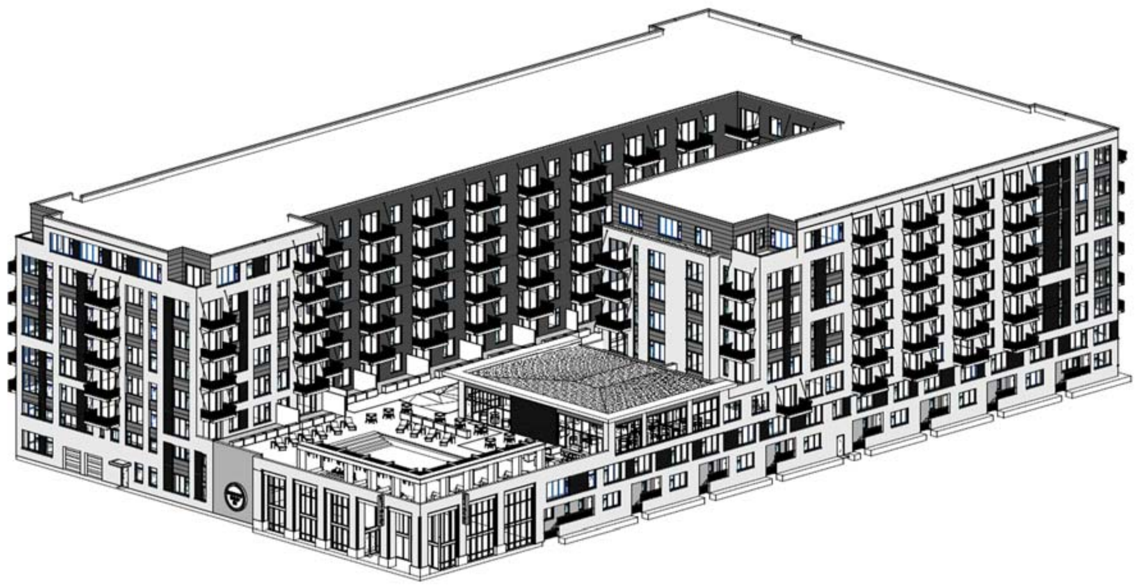
also, that part of Lots 32 and 45, according to the recorded Plat of Navarino, lying southerly of Lot 2, Brown County Certified Survey Map Number 2215, recorded in Volume 10 of Certified Survey Maps, page 79, as Document Number 958383, now known as Baylake City Center Condominium, recorded in Volume 4 of Condominium Plats, Page 190, as Document Number 2173810, (said Certified Survey Map Number 2215 and Baylake City Center Condominium being part of Lots 32-35 and 42-45, according to the recorded Plat of Navarino, and the Vacated Pine Street and the Vacated Washington Street rights-of way, recorded in Jacket 4707, Image 1, as Document Number 958327);

also, the vacated Public Alley lying easterly of Lots 29, 30, 31, and westerly of Lots 46, 47 and 48, according to the recorded Plat of Navarino, recorded in Jacket 4707, Image 1, as Document Number 958327;

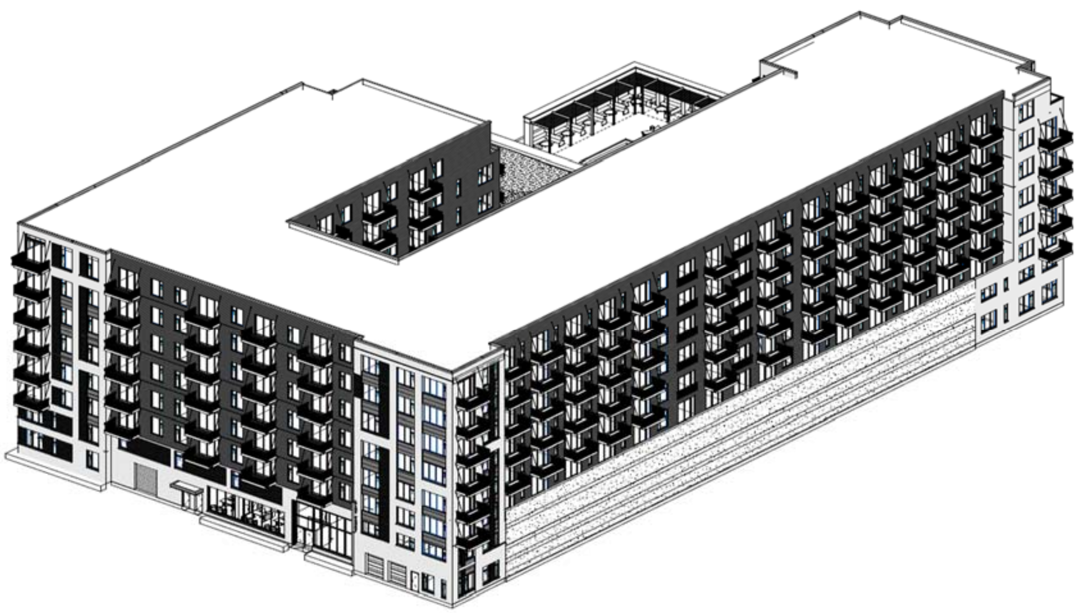
all located in the City of Green Bay, Brown County, Wisconsin.

Tax parcel number 12-112.

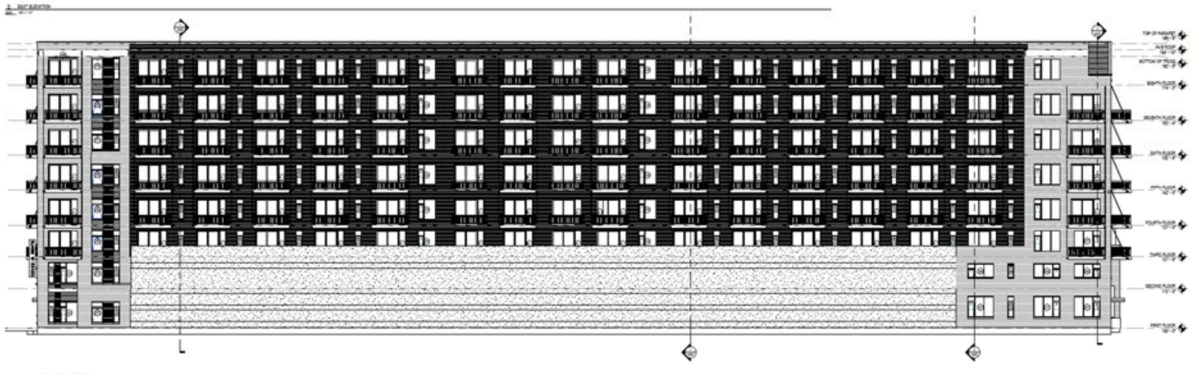
EXHIBIT C
Preliminary Concept Plan

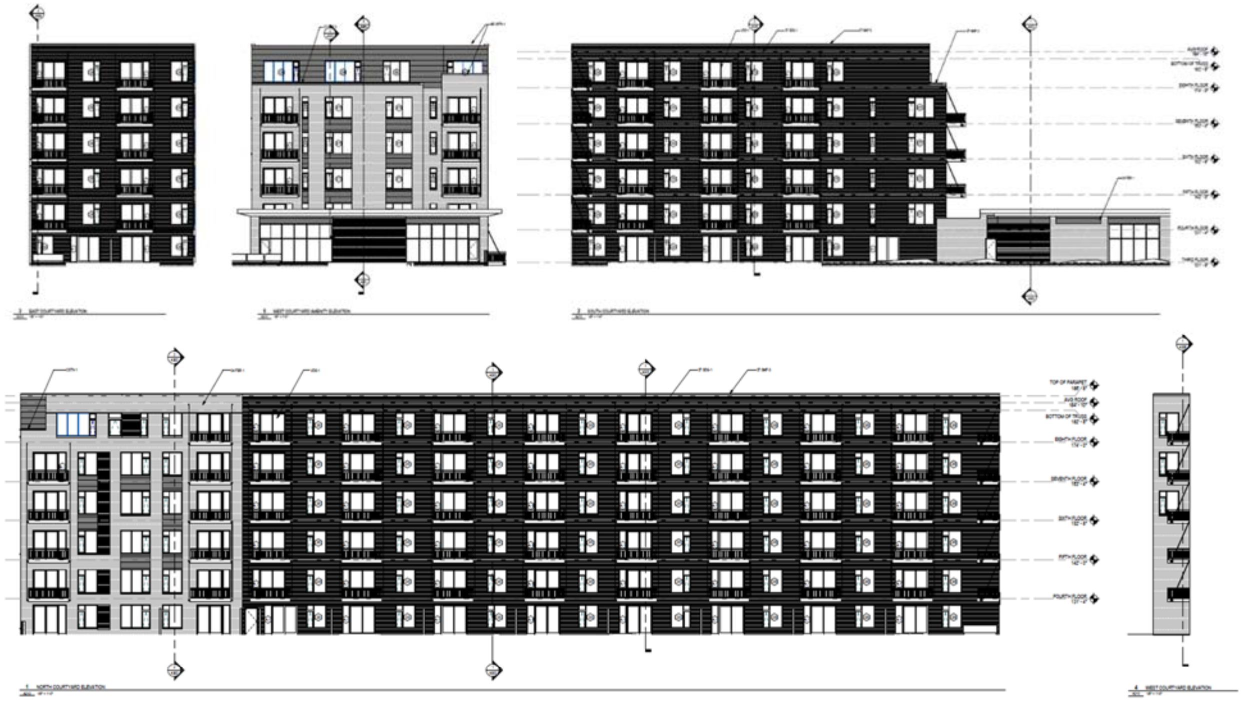


1 NORTHEAST CORNER



2 SOUTHWEST CORNER





EXTERIOR BRICK MASONRY #1

EXTERIOR BRICK MASONRY #2

EXTERIOR FIBER CEMENT BOARD SIDING

EXTERIOR STONE MASONRY #1
(Pedestal of Columns condition)

EXTERIOR STONE MASONRY #2
(Poolside Cabana condition)

EXTERIOR STONE MASONRY #3
(Sill Condition)

PRE-CAST CONCRETE PANEL

PRE-FINISHED ALUMINUM
(Coping Condition)

PRE-FINISHED ALUMINUM
(Balcony Condition)

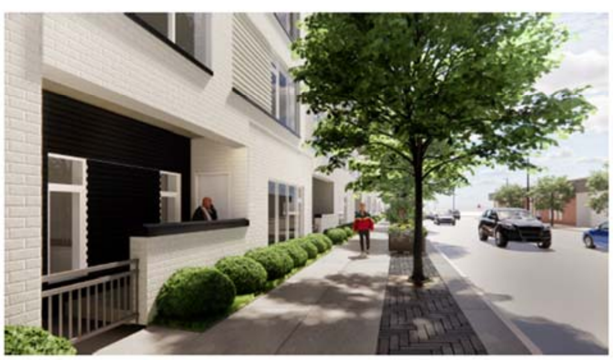
SOUTHWEST STREET CORNER LOOKING NORTH

SOUTHEAST CORNER LOOKING NORTH

POOLSIDE CABANA LOOKING NORTH

SOUTHWEST SIDEWALK CORNER LOOKING SOUTH

ADAMS STREET LOOKING SOUTHWEST



CHERRY STREET LOOKING EAST

CENTRAL COURTYARD LOOKING WEST

EXHIBIT D
TIF Disbursement Agreement

[We should replace this with the edited document since we have one]

DEVELOPMENT AGREEMENT 24-04

221 CHERRY STREET REDEVELOPMENT

This Development Agreement is made this [date]~~21~~st day of ~~May~~October, 2024,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation ("City"),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY ("RDA"),
and NOVA GB SPE, LLC, a ~~Wisconsin~~ Delaware limited liability company ("Developer"), an affiliated entity of NOVA GB LLC and New Land Enterprises, LLC.

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
12-112	221 Cherry St.	1.447	$0.00

B. The parcel listed in A. above shall be referred to as the "Property." The Property comprises approximately one and four hundred forty-seven thousandths (1.447) 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 improvements on the Property in accordance with this Agreement, which include but are not necessarily limited to the following (the "Project"):

> Constructing an eight (8) story mixed-use building, including approximately two hundred sixty-eight (268) market rate multi-family apartment units, approximately fourth thousand eight hundred fifty (4,850) square feet of commercial space on the first floor, and an internal two (2) story parking ramp.

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

D. As of January 1, 2024, the Property has an aggregate assessed value of Zero Dollars ($0.00) which based on the assessed tax rates in effect as of January 1, 2024, the Property yields approximately:

1. Zero Dollars ($0.00) in total gross real estate taxes annually (assessed mill rate of $19.34);

2. Zero Dollars ($0.00) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.77).

E. Upon completion of Proposed Project, the City estimates the aggregate assessed property value of the Property to be at least Thirty-Eight Million Dollars ($38,000,000), which is anticipated to yield approximately:
1. Seven Hundred Thirty-Four Thousand Nine Hundred Twenty Dollars ($734,920) in total gross real estate taxes annually (assessed mill rate of $19.34);

2. Two Hundred Ninety-Five Thousand Two Hundred Sixty Dollars ($295,260) in real estate taxes to the City of Green Bay annually (assessed mill rate of $7.77).

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. The RDA and the City will ask the Joint Review Board (JRB) to create a new Tax Increment District (the TID), effective tax year January 1, 2024, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the "TID."

G. Developer has requested assistance from the City and RDA with regard to certain expenses, including, but not limited to; demolition; environmental remediation; clearing of land; construction of new buildings; or the construction of public works infrastructure, which will constitute qualified expenditures for which tax incremental financing assistance by the City may be afforded to the Developer.

H. The City and RDA desire to have Developer perform the Project in order to generate economic activity and tax base for the community consistent with the City Comprehensive Plan.

I. In order to induce Developer to undertake the Project, such that the Project will remediate environmental contamination and/or enhance the physical landscape, build new structures with high-performance designs, systems, and finishes, create a significantly higher per-acre property value than adjacent properties and the City average, generate property taxes greater than the cost of providing infrastructure and services, build new structures for individuals of all ages and abilities, is located in places easy to reach on foot, bicycle, or transit, expand non-motorized transportation networks, expand our range of residential and commercial real estate products, create and/or enhance unique public spaces, amenities, and art, and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

J. The parties hereby acknowledge and agree that the following may not be completed prior to execution of this Agreement but shall occur promptly thereafter (i) the TID as defined in Section II.T. below shall be created by the City; (ii) the City shall relocate the public art located on the Property to a location other than the Property; and (iii) the City shall close on the sale of the Property to Developer.

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 incentives as set forth in this Agreement. The City intends to recover its costs through the TIF Increment as defined in Section III.B.2.b. below generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

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

A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.

B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.

C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.

D. "Base Value" means the aggregate assessed value of the Property when the TID was created, which shall be Zero Dollars ($0.00).

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

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

G. "Developer" means NOVA GB SPE-, LLC or any assignee of the same.

H. "Exhibits" means the supplementary reference information attached to this development agreement that shall include the following:

1. Exhibit A – Map of the Property

2. Exhibit B – Legal Description of the Property

3. Exhibit C – Preliminary Concept Plan

4. Exhibit D – TIF Disbursement Agreement

I. Intentionally Omitted.

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

K. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as EXHIBIT 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 which may not be unreasonably withheld.

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

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

N. "Public Art" means art that shall be accessible to the public, and includes all forms of original creations of visual art, conceived in any medium, material, or combination thereof, including paintings, drawings, stained glass, and murals in any media; statues, bas relief, mobile, kinetic, electronic, neon, or other sculptures; environmental artworks; fountains, arches or other structures intended for ornament; integrated and functional architectural elements of a structure; video and other media-based works; inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints; crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials; artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself.

O. "Public Improvements" means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:

1. road, lighting, streetscape, pedestrian, and bicycle improvements; and

2. Public Art; and

3. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and

4. telephone, high-speed cable or internet service, and related technology infrastructure; and
5. natural gas, electrical power, and other public utilities; and

6. any related engineering, grading, erosion control, and landscaping; and

7. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.

P. "Qualified Expenditures" means any expenditures of Developer for the Project that are eligible for TIF Incentives as defined in Section III. B. 4.

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

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

S. “Tax Increment” means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year’s assessed value of all taxable property in the TID.

T. “TID” means the future Tax Increment District to be created in 2024 by the City of Green Bay, The RDA and the City will ask the Joint Review Board (JRB) to create a Tax Increment District (the ‘TID’), effective January 1, 2024, which includes the Property and may include adjacent property, and which will provide part of the financing for certain costs of the Project, and after creation, shall replace all references to the “TID.”

U. “TIF” means Tax Increment Financing, as described in Section III below and in particular, Tax Increment Financing relating to the TID.

V. “TIF Incentive” or “TIF Incentives” means each incentive or incentives collectively as set forth in Section III.B and Section III.C of this Agreement up to the Tax Incentive Cap.

W. “Tax Incentive Cap” means as described and provided for in Section III.C.2 of this Agreement.

III. TAX INCREMENT FINANCING

A. Qualification for TIF. Developer shall demonstrate to the satisfaction of City and RDA a need for TIF, with such determination to be made according to the “but for” test, that is, that but for the City and RDA providing TIF, the Project would not happen. At the request of the City or RDA, Developer shall provide an independent analysis from a consultant expert in TIF to justify to the satisfaction of the City and RDA the Developer’s qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.

B. Nature of TIF Incentives. The TIF Incentives available to Developer under this Agreement shall be defined as the following:

1. Property Transfer. The City and/or RDA shall convey the Property to the Developer through the following process:

    a) ~~Not later than sixty (60) days following the mutual execution of this Agreement~~Prior to January 1, 2025, the City and/or RDA shall convey Tax Parcel 12-112, excluding all City and/or RDA parcels or right-of way, to Developer, free and clear of liens and encumbrances that materially prohibit development of the Property as herein proposed, via warranty deed, for the sum of one dollar ($1.00), and shall provide an owner's policy of title insurance at the time of conveyance.

    b) Upon transfer of the Property to Developer, the Developer shall enter a into written month-to-month Lease of the Property with the City and/or RDA for continued parking use to allow for additional time for the City to relocate parking commitments and monuments existing on the Property. The parties agree that the monthly rent shall not exceed one-dollar ($1.00) per month.

c) The RDA shall take a Preferred Forgivable Equity Investment in the Project of Seven Hundred Seventeen Thousand and One Hundred Dollars ($717,100), which is the estimated value of the Property that will be transferred to the Developer. The Preferred Forgivable Equity Investment shall be secured by this Agreement, shall survive the expiration of this Agreement, and shall be forgiven at the point in time that the aggregate assessed value of the Property is greater than or equal to Thirty-Eight Million Dollars ($38,000,000.00) ("Minimum Assessed Value"). Should the aggregate assessed value of the Property fail to be greater than or equal to the Minimum Assessed Value on or before January 1, 2028, the Developer shall pay the City and/or RDA the Preferred Forgivable Equity Investment.

2. TIF Funds and Personal Guarantee.

a) Except the Property Transfer outlined in Section III.B.1.a. above, and the TIF Funds as defined in Section III.B.2.b. below, the Developer shall obtain all necessary equity and private loan commitments that are necessary to complete the Project.

b) In order for this Project to occur, City shall contribute not less than $8,500,000.00 in Tax Increment Financing assistance ("TIF Funds") to Developer. These TIF Funds shall be borrowed by the City whether by bond or note, over a 20 year term at the lowest possible interest rate available to the City at the time of issuance ("TIF Incentive"), to be disbursed to the Developer pursuant to a TIF Disbursement Agreement, attached hereto as Exhibit D, and shall be repaid through the Available Tax Increment generated by the Property starting for the taxable year of 2027 (payable in 2028) plus any Annual Shortfall (as defined in Section III.B.2.c below). City's Debt Service payments on the TIF Incentive shall be repaid through Available Tax Increment and is subject to Developer's personal guarantee of the Annual Shortfall as set forth in Article III. Section B.2.c). Upon Developer's receipt of such TIF Funds, which shall be governed by the TIF Disbursement Agreement attached hereto as Exhibit D, between the parties, Developer shall utilize the TIF Funds for the construction of the Project and for designated Qualified Expenditures and improvements as set forth in this Agreement. The City and Developer agree that the TIF Disbursement Agreement is subject to the review and approval of the lender for the Project, and the parties agree to work together in good faith the modify the TIF Disbursement Agreement as may be reasonable required by such lender.

c) Any individual member of the Developer shall personally guarantee any Annual Shortfall, as defined in this Section III.B.2.c below starting for the taxable year of 2027 (payable in 2028). An Annual Shortfall exists when the City's TIF Increment is less than the City's Debt Service annual payments on the TIF Loan ("Annual Shortfall"). The City's TIF Increment is defined as the property tax generated in any given year less the tax generated on the base value of the Property at the time the TIF was established. The City's Debt Service annual payments is defined as the City's debt service annually on Eight Million, Five Hundred Thousand Dollars ($8,500,000), of TIF Assistance borrowed over 20 years at an interest rate of the lesser of the City's lowest possible borrowing rate at the time or 5.5%. The formula for any Annual Shortfall is as follows:

Available Tax Increment

Less : City’s Debt Service annual payment for the TIF Funds

____

= Annual Shortfall (if the difference is negative)

d) At the time of the issuance of the TIF Funds, the City shall provide to Developer an amortization schedule showing the City’s Debt Service for the TIF funds each year necessary to have repaid the TIF Funds in full over the course of the 20-year life of the City’s bond or note at the City’s lowest possible borrowing rate at the time or 5.5% (the lesser of the two).

e) In the event of an Annual Shortfall, the owner of record for the Property and or the entity responsible for the payment of property tax assessed to the Property shall be invoiced for any Annual Shortfall that exists in a calendar year and shall pay the Annual Shortfall within thirty (30) days of receipt of the City's invoice. City may only invoice Developer for the Annual Shortfall, without adding any other costs or administrative expenses. If the owner of record for the Property and or the entity responsible for the payment of property tax assessed to the Property fails to pay for Annual Shortfall then City may place the unpaid amount as a Special Charge against the Property or enforce the Personal Guarantee as provided herein.

f) Any individual member of the Developer shall provide the Personal Guarantee to the City and RDA, subject to their approval, for any Annual Shortfall realized pursuant to Section III.B.2.c. of this Agreement. The Personal Guarantee shall expire or be released upon the sooner of the (x) termination of the TID, (y) the retirement of the City’s Debt Service on the specific bonds or notes issued for the TIF Funds, or (z) 20 years. Developer may, but shall not be obligated to, prepay the unpaid principal balance of the TIF Funds at any time, and if Developer elects to pay off the unpaid principal balance and any accrued but unpaid interest of the TIF Funds prior to the natural occurrence of the retirement of the debt, the Personal Guarantee shall be released by the City and RDA. In the event Developer elects to pay off the unpaid principal balance and any accrued but unpaid interest of the TIF Funds prior to the natural occurrence of the retirement of the debt ("Prepayment"), and the debt associated with the TIF Funds that creates the City’s Debt Service may be paid off early at such time as the Developer makes the Prepayment, the City shall, if allowed by the nature of the debt, apply the Developer’s Prepayment to the payoff of the debt so as to ensure the Prepayment satisfies the Developer’s obligations to pay the City’s Debt Service annual payment for the TIF Funds hereunder and eliminate the Annual Shortfall obligations hereunder.

g) Notwithstanding anything else in this Agreement, no assignments shall be made of Personal Guarantee without the consent of the RDA and City which shall not be unreasonably withheld. The Personal Guarantee(s) provided under this section shall remain with the Developer until such time as any party assuming this Agreement as permitted herein enters into a new personal guarantee reasonably approved by the RDA and City. However, the obligation to satisfy payment of any Annual Shortfall, as provided in Section III.B.2.e. shall remain until the City’s Debt Service is retired or the TID is terminated, whichever event is sooner.

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

   a) The Developer guarantees that the Property shall have a minimum aggregate assessed value equal to ~~the Minimum Assessed Value~~ Thirty-Eight Million Dollars $38,000,000.00 on or before January 1, 2028.

   b) Except for the Property Transfer, Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient, and up to the limits of the TID and this Agreement, the value of the Qualified Expenditures shall also be reimbursed to Developer in accordance with the following:

      i. Commencing the first year after the first occupancy permit for the Project has been issued, the assessed value of the Property shall be determined on January 1 of each tax year and shall be compared to the Base Value to determine Available Tax Increment.

      ii. City shall first be entitled to Available Tax Increment as defined in Section II.C. to cover the City's Debt Service annual payment on the TIF Funds.

      iii. City shall then be entitled to five percent (5%) of remaining Available Tax Increment to cover administrative costs incurred by the TID, and for public infrastructure and improvements within the new TID.

      iv. Developer shall not be entitled to any Available Tax Increment unless the City's Debt Service annual payment on the TIF Funds for this Project has been met for that particular year. Upon reaching this threshold, the remaining Available Tax Increment shall be known as "TIF Increment" and distributed as follows:

         (a) The City shall make available ninety five percent (95%) of the annual TIF Increment to the Developer (the "PAYGo Reimbursement") until all Qualified Expenditures have been repaid to Developer or the TID expires or is earlier terminated. 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.

         (b) The PAYGo Reimbursement payments will be payable to Developer in the year following the year of the TIF Increment determination, after the full payment of the real estate taxes, Special Assessments and Special Charges against the Property for the previous year. For example, if the first occupancy permit is issued on September 1, 2030, the TIF Increment would be determined as of January 1, 2031, and the PAYGo reimbursement would first be payable in 2032.

4. Qualified Expenditures. TIF Funds and PAYGo Reimbursement payments shall be disbursed in the following priority, and only fund the following:

   a) Public Improvements, if applicable, and environmental remediation related activities, and asbestos abatement related activities as may be required by State and Federal law; then

   b) Private Improvements specifically approved by the City or RDA as stated in Section IV. C.4; then

   c) Any other activity specifically approved by the City or RDA.

5. Assignment. ~~The Developer may provide a collateral assignment of this Agreement and the Disbursement Agreement and any escrow agreement created as a requirement of the Disbursement Agreement to the lender for the Project, pursuant to which, the lender for the Project, may assume all rights and obligations of the Developer under this Agreement without further consent by the City or RDA ("Collateral Assignment").~~ Developer may assign any of its payment rights hereunder to any future purchaser or developer of any part of the Property and / or provide a collateral assignment of this Agreement and the Disbursement Agreement and any escrow agreement related as a requirement of the Disbursement Agreement to a lender for the Project, pursuant to which, said lender may assume all rights and obligations of the Developer under this Agreement, upon approval of the RDA and City which approval may not be unreasonably withheld, provided however, that the City shall be obligated only to disburse TIF Incentives and/or TIF Increment to the party who has been assigned and has duly assumed this Agreement, as approved by the RDA and City, or a party with whom the City has entered into an alternative agreement. It shall be incumbent upon Developer to enter into a separate agreement with any third parties if it intends to assign its payment rights hereunder, or seek either reimbursement or allocation of any Incremental Property Value and guaranteed aggregate assessed value generated by any third-party purchaser and/or developer of any part of the Property.

C. Limitations. The TIF Incentives available to Developer for the Project are limited as follows:

1. Monetary Limitation. The PAYGo Reimbursement in any year shall not exceed ninety-five percent (95%) of the Available TIF Increment for the Property.

2. Tax Incentive Cap. The City shall not be obligated to pay TIF Incentives in excess of the total amount of Qualified Expenditures incurred and paid by Developer.

3. Tax Receipts Limitation. Only the Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay such amounts.

4. Temporal Limitation. Provided Developer qualifies for PAYGo Reimbursement 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, PAYGo Reimbursement payments shall be made on or before September 1 of each year; provided, however, in no event shall PAYGo Reimbursement payments continue after the earlier of the

termination date of the TID or the termination of this Agreement if before the termination of the TID.

5. Maximum Life of the TID. Payments shall not be made beyond the statutory maximum life of the proposed TID.

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

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

IV. OBLIGATIONS OF DEVELOPER

A. Concept Plan. Prior to June 1, 2024, 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 to be constructed on the Property.

B. Construction Documents. Prior to January 1, 2025, and prior to commencement of construction of any phase of the Project, Developer shall submit site plans, building plans, and other drawings that fix and describe the size and character of the entire Project, along with architectural and general contracts, to RDA for approval and such approval shall not be unreasonably withheld. The Construction Documents shall include:

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

C. Development Budget. Prior to January 1, 2025, Developer shall submit a Development Budget, prepared in accordance with general principles for construction and development budgeting, to RDA for approval and such approval shall not be unreasonably withheld. The Development Budget shall include:

1. Not less than Fifty-Five Million Dollars ($55,000,000) in "hard" construction costs for the entire Project; and

2. A line item of not less than five percent (5%) of total “hard” construction costs for the Project and 5% of the “soft” construction costs for the Project (excluding reserves and developer fees) ~~costs~~ for cost overruns and change orders as total contingency; and

3. A line item of not less than one percent (1%) of the Minimum Assessed Value, 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 but not necessarily limited to, and as approved by the RDA and City:

    a) The Property and costs associated with the Property Transfer

    b) Environmental and hazardous material remediation and related activities

    c) Public Improvements

    d) Utility relocation costs.

    e) 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.

    f) Enhanced building design, architecture, or materials beyond basic code requirements as approved by the RDA.

    g) Enhanced landscaping beyond basic code requirements as approved by the RDA.

    h) Costs associated with the construction of structured parking on the Property allowing for better building design and improving the overall function of the site.

    i) Enhanced stormwater management costs allowing for better building design and improving the overall function of the site.

    j) Costs related to the installation of environmentally sustainable infrastructure and practices in the project, which may include but not necessarily be limited to building HVAC automation controls, high efficiency.

    k) Site improvements related to providing access to public transit or alternative transportation options or bicycle related infrastructure, or electric vehicle charging.

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

m) 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.

n) Costs associated with the borrowing of the amounts to be reimbursed by the TIF Funds until such time as the TIF Funds are received.

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

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

1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.
2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to a traffic impact analysis regarding the Project.

F. Proof of Equity. Developer shall have in place and shall provide the City and RDA no later than January 1, 2025, proof of equity commitments equal to not less than eighteen~~twenty~~ percent (18~~20~~%) of the Development Budget less anticipated grants and TIF Incentives ("Equity") for injection into the Project and otherwise in an amount sufficient to obtain financing for all Project costs. Any available Equity obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any other third party financing may be used to pay Project costs.

G. Proof of Financing. By no later than January 1, 2025, Developer shall have delivered proof reasonably satisfactory to the City and RDA of financing, which combined with the injection of the Equity into the Project and the TIF Incentives, 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. ~~Within sixty (60) days of the mutual execution of this Agreement and subject to the City's obligations hereunder,~~By no later than December 31, 2024, Developer shall have closed on the purchase of all of the parcels comprising the Property and all of the necessary rights of way required for the Project. Developer shall provide copies of deeds and such other closing documents as requested by the City or RDA regarding the purchase of the Property and rights of way. The Property and rights of way shall be owned in the name of the Developer.

I. Termination or Relocation of Easements. Developer shall have agreements with all holders of easements or any other rights that may be affected by the Project, regarding the termination, modification or relocation of such easements and other rights in order to accommodate the Concept Plan.

J. Certified Survey Map. Promptly after the Property has been acquired by Developer, Developer shall cause a certified survey map to be prepared, approved by the City, RDA, and any other party whose consent is required, and shall cause the certified survey map to be recorded with the Brown County Register of Deeds.

K. Use of Funds. Developer may use TIF supported funds only to fund Qualified Expenditures as set forth in the approved Development Budget.

L. Improvement of Property. Developer shall promptly design and complete the Project. Substantial work on the Project shall commence no later than ninety (90) days after the last to occur of approval by the City and RDA of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, and/or issuance of a building permit and all other permits or licenses required to commence construction. Construction shall be substantially completed as evidenced by occupancy permit no later than August 31, ~~June 30,~~ 2027. Developer shall file with the RDA copies of the detailed construction plans within ninety (90) days after completion of the Project.

M. Reports and Information. During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of construction. Upon request of the RDA. Developer shall submit a copy of annual, audited financial statements for Developer through termination of this Agreement.

N. Copies of Documents. All documents from Developer to the City or RDA shall be submitted in triplicate.

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

P. Transfer or Sale of Project Property.

1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer for review

and consent by the City and the RDA, which such consent may not be unreasonably withheld, conditioned or delayed. ~~The City or RDA may deny the request for any commercially reasonable reason.~~ ~~Except as a result of the foregoing or as a result of the Collateral Assignment,~~ 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 ("PILOT") P prior to the closure of the TID, the City shall be entitled to a PILOT amount equal to 100% of the property tax assessed on the Property. Provided a PILOT exists as a result of the foregoing, following the closure of the TID, the City shall be entitled to a PILOT amount equal to 40% of the property tax assessed on the Property.

3. Right of First Refusal. Developer shall not sell, trade, grant, or encumber the Property, except as specifically provided herein. Should, the City in its sole discretion determine that the Developer has not substantially completed ~~any elements of~~ the Project in accordance with Article IV. L above, ~~as defined herein~~ by August 31, 2027, Developer shall provide City the exclusive right, for a period not to exceed one (1) year from the determination of incompletion of the Project to purchase an undeveloped or substantially ~~and materially~~ underdeveloped portion of the Property. For clarity, the City's exclusive right to purchase the Property due to Developer's inability to complete the Project shall only be effective if Developer has failed to complete the Project on or before August 31~~June 30~~, 2027. The purchase price shall be equivalent to the purchase price paid for the Property under this Agreement. This Right of First Refusal shall run with the land and shall survive the termination or expiration of this Agreement, and shall remain in place until such time as the ~~aggregate assessed Property value meets or exceeds the Minimum Assessed Value~~Project is completed in accordance with Article IV. L above. For clarity, this right of first refusal and Developer's prohibition against encumbering the Property shall not apply if Developer for the purpose of obtaining financing or refinancing any loan(s) which require a mortgage to encumber the Property, places a mortgage on the Property.

Q. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.

R. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of the First Phase, Developer shall be satisfied, through such means as are

commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same.

2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):

   a) Arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property; or

   b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.

3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:

   a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants, "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and

   b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.

4. Survival. The provisions of this Section shall survive the conveyance to Developer of any City and/or RDA Property.

S. Insurance. Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:

    a) Bodily Injury by Accident – one hundred thousand dollars ($100,000.00) per accident;

    b) Bodily Injury by Disease – one hundred thousand dollars ($100,000.00) per employee; and

    c) Five hundred thousand dollars ($500,000.00) policy limit.

2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.

3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:

    a) General Aggregate Limit – two million dollars ($2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars ($2,000,000.00);

    b) Bodily Injury and Property Damage – two million dollars ($2,000,000.00) per occurrence;

    c) Fire Legal Liability Damage Limit – one hundred thousand dollars ($100,000.00) per occurrence; and

    d) Medical Expense Limit – ten thousand dollars ($10,000.00) per person.

4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:

    a) Bodily Injury – two hundred fifty thousand dollars ($250,000.00) per person; and

    b) One million dollars ($1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars ($250,000.00) per occurrence.

5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars ($1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs IV. S. 1. to IV S. 3. above.

6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

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

T. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:

    a) Any breach by Developer of the terms of this Agreement;

    b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or

    c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.

2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer

shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

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

A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.

B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.

C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.

D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.

E. TID District. The RDA and City intend to create a new TID effective January 1,2024, and once created shall be in effect and in good standing with and certified by the Wisconsin Department of Revenue.

VI. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

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

A. TID. The RDA and City intend to create a new TID effective January 1, 2024, and once created shall be in effect and in good standing with and certified by the Wisconsin Department of Revenue.

B. Due Authorization. The City Council shall consent to the City entering into this Agreement and shall authorize the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

VII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, and are true and correct and there has been no material change in any of the same.

B. No Material Change in Developer Operations. There has been no adversely 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 and Project, when completed, will conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.

D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, 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 the real 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 written notice of such failure to pay;

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 which is not made true or cannot be made true within thirty (30) business days of written notice of such discrepancy.

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 reasonable 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. Except as permitted by Section VII. D. 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. Withholding of TIF Payments. If an Event of Default occurs which remains uncured after any applicable cure period, the City may withhold TIF Funds and/or annual PAYGo Reimbursement payments until the Event of Default is cured and, upon such cure, the TIF Funds and/or PAYGo Reimbursement payments shall resume in full;

2. Termination. Terminate this Agreement without further notice to Developer;

3. 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 TIF Funds and/or of PayGo Reimbursement payments to the Developer until temporary defaults are remedied to the satisfaction of the City.;

4. Specific Performance. Sue for specific performance;

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

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

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

8. 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 to Developer 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 terminate upon expiration of the TID.

C. Survival of Certain Provisions. Sections III.B.1.c.; III.B.2.c.; III.B.2.e.; III. D.; IV.E.; IV.I.; IV.K.; IV.P.2.; IV.Q.; IV. R.2; IV.T.1.; IV. T.2.; 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.K.; X.L.; X. N.; X. O.; X.P.; X.Q.; X. R.; and X.T. 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 for to an entity created solely for the purposes of owning the Project and over which the Developer maintains managerial control, Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, until the obligations of the Developer under Section III hereof are fully performed and satisfied. Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld.

C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

D. No Personal Liability. Except for intentionally harmful acts, 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. Except for intentionally harmful acts, 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, pandemics including but not limited to COVID-19 or any variant of COVID-19, 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 three hundred sixty-five (365) 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 November~~July~~ 1, 2024 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
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

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: cheryl.renier-wigg@greenbaywi.gov

To the Developer: New Land Enterprises, LLC
Address: 1840 N Farwell Ave. STE A, Milwaukee, WI 53202
e-mail: tim@newlandmke.com
phone: 414-271-5263

with a copy to: Attorney Name Sheldon Oppermann
Firm Address 1840 N Farwell Ave. STE A
Firm City, Zip Milwaukee, WI 53202
email: sheldon@newlandmke.com
phone: 414-550-9717

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. This Agreement may be signed electronically and 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 (each a “Permitted Lien”). 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) that is not a Permitted Lien.

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. Due Authority. Developer shall provide to the City and RDA a copy of the Statement of Authority for Limited Liability Company on file with the State of Wisconsin Department of Financial Institutions.

T. 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:
NOVA GB, LLC

By: ______________________________
NOVA GB Sponsor, LLC
Manager

By: ______________________________
Tim Gokhman, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 2024, the above named ____ to me known to be the person(s) 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 NOVA GB, LLC

THE CITY OF GREEN BAY

By: ___________________________________
Eric Genrich, Mayor

By: ___________________________________
Celestine Jeffreys, Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 2024, 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 NOVA GB, LLC ENTERPRISES, LLC

REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY

By: ______________________________________
Gary J. Delveaux, Chair

Attest: ______________________________________
Cheryl Renier-Wigg, Executive Director

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) SS
COUNTY OF BROWN)

Personally came before me this ________ day of ________________ 202, 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

DESCRIPTION OF PARCEL 12-112

All of Lots 29, 30, 31, 46, 47 and 48, according to the recorded Plat of Navarino;

also, that part of Lots 32 and 45, according to the recorded Plat of Navarino, lying southerly of Lot 2, Brown County Certified Survey Map Number 2215, recorded in Volume 10 of Certified Survey Maps, page 79, as Document Number 958383, now known as Baylake City Center Condominium, recorded in Volume 4 of Condominium Plats, Page 190, as Document Number 2173810, (said Certified Survey Map Number 2215 and Baylake City Center Condominium being part of Lots 32-35 and 42-45, according to the recorded Plat of Navarino, and the Vacated Pine Street and the Vacated Washington Street rights-of way, recorded in Jacket 4707, Image 1, as Document Number 958327);

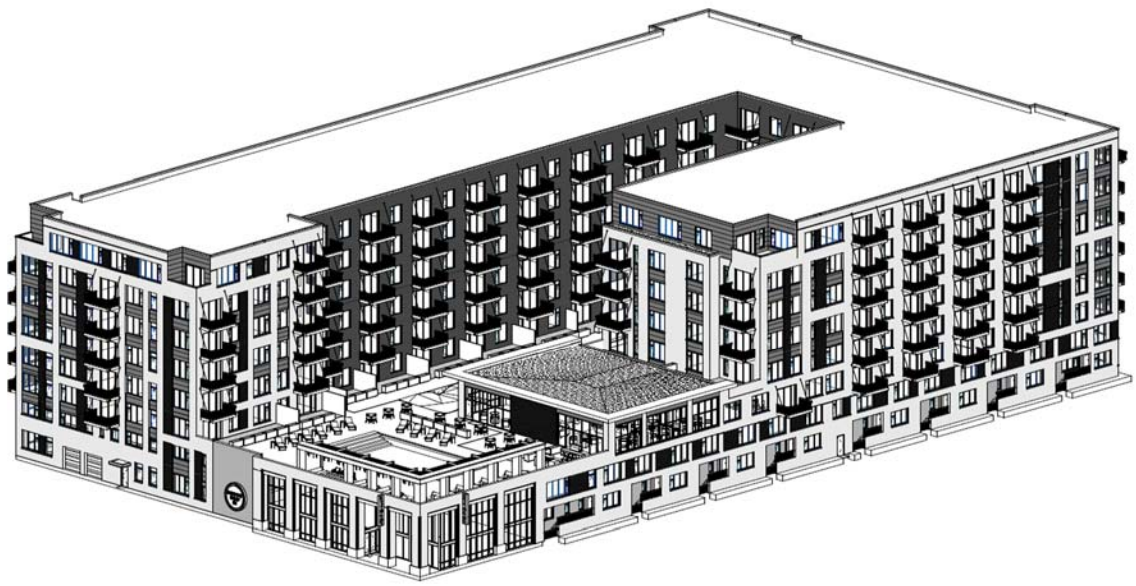
also, the vacated Public Alley lying easterly of Lots 29, 30, 31, and westerly of Lots 46, 47 and 48, according to the recorded Plat of Navarino, recorded in Jacket 4707, Image 1, as Document Number 958327;

all located in the City of Green Bay, Brown County, Wisconsin.

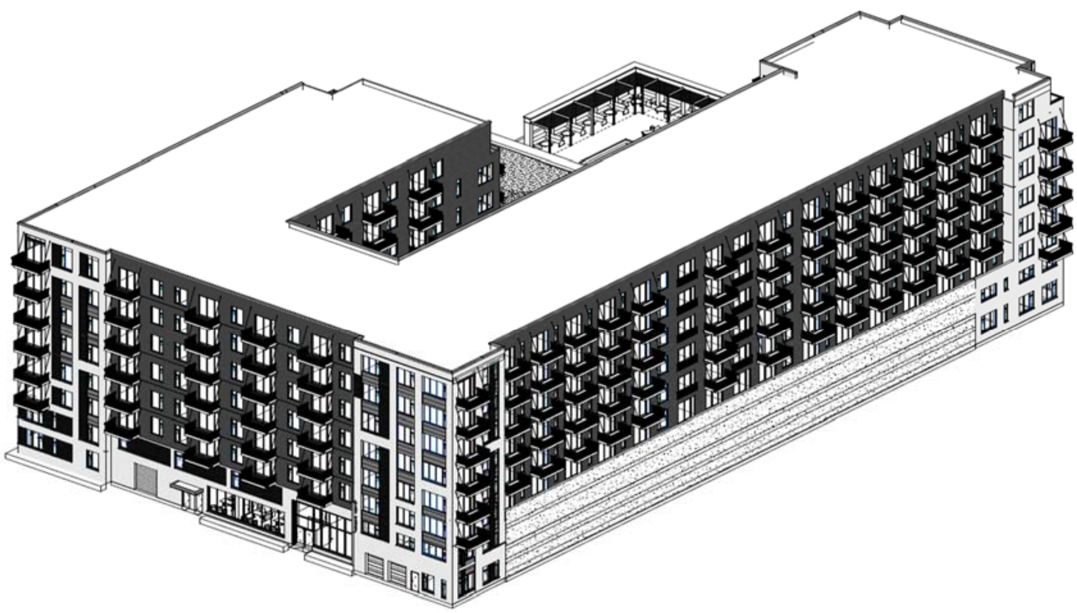
Tax parcel number 12-112.

EXHIBIT C

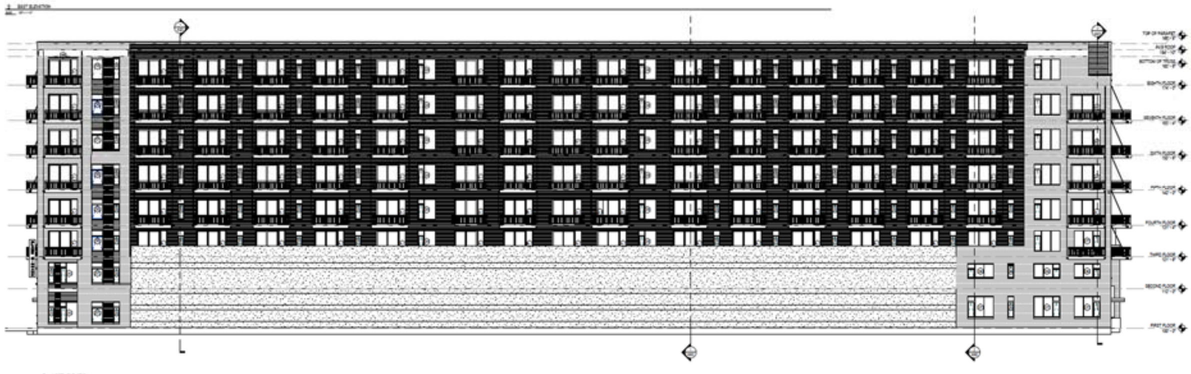
Preliminary Concept Plan

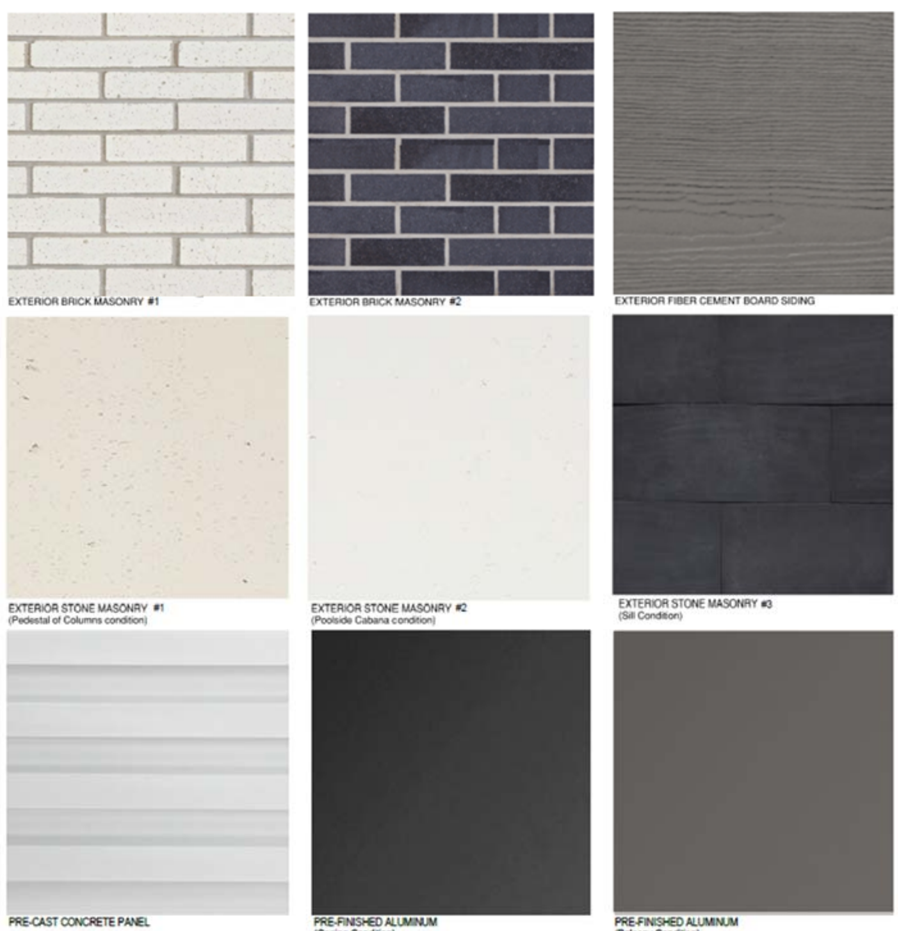


1 NORTHEAST CORNER



2 SOUTHWEST CORNER




EXTERIOR BRICK MASONRY #1
EXTERIOR BRICK MASONRY #2
EXTERIOR FIBER CEMENT BOARD SIDING
EXTERIOR STONE MASONRY #1
(Pedestal of Columns condition)
EXTERIOR STONE MASONRY #2
(Poolside Cabana condition)
EXTERIOR STONE MASONRY #3
(Sill Condition)
PRE-CAST CONCRETE PANEL
PRE-FINISHED ALUMINUM
(Coping Condition)
PRE-FINISHED ALUMINUM
(Balcony Condition)

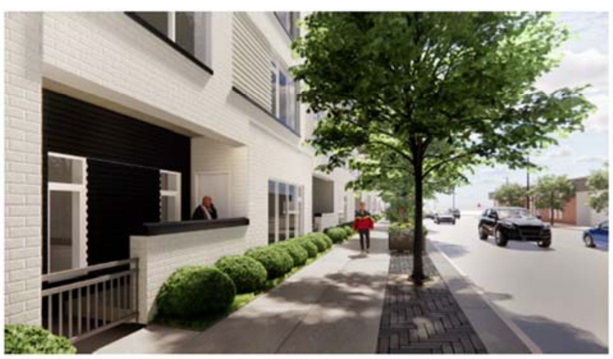
SOUTHWEST STREET CORNER LOOKING NORTH

SOUTHEAST CORNER LOOKING NORTH

POOLSIDE CABANA LOOKING NORTH

SOUTHWEST SIDEWALK CORNER LOOKING SOUTH

ADAMS STREET LOOKING SOUTHWEST



CHERRY STREET LOOKING EAST

CENTRAL COURTYARD LOOKING WEST

EXHIBIT D
TIF Disbursement Agreement

[We should replace this with the edited document since we have one]

~~**TAX INCREMENT FINANCING (TIF) DISBURSEMENT AGREEMENT**~~
~~**CITYDECK COMMONS**~~

~~This Tax Increment Financing Disbursement Agreement is made and entered into this _______ day of ___________________, 2024, by and between the **Redevelopment Authority of the City of Green Bay** (hereinafter "RDA"), the **City of Green Bay** (hereinafter "CITY"), **NOVA GB LLC**, a Wisconsin Limited Liability Company (hereinafter "TIF RECIPIENT"). The RDA, CITY, and TIF RECIPIENT may sometimes be referred to individually as "Party" and collectively "Parties."~~

~~**WHEREAS**, the Parties have entered into a Development Agreement dated May __, 2024 relating to the Property (the "Development Agreement").~~

~~**WHEREAS**, the RDA owns property (hereinafter the "Property") (parcel no. 12-112) located at 221 Cherry Stret, Green Bay, Wisconsin; and~~

~~**WHEREAS**, the CITY and RDA desire to have TIF RECIPIENT construct an eight (8) story mixed-use building, including approximately two hundred sixty-eight (268) market rate multi-family apartment units, approximately fourth thousand eight hundred fifty (4,850) square feet of commercial space on the first floor, and an internal two (2) story parking ramp (the "Project"); and~~

~~**WHEREAS**, CITY and RDA desire to see the Property developed into an active mixed-use development that generates economic activity and tax base for the community; and~~

~~**NOW THEREFORE** based upon the covenants and considerations contained herein, the Parties mutually agree as follows:~~

1. ~~The real estate subject to this Agreement, is located in the City of Green Bay, Brown County, State of Wisconsin, and is legally described as follows:~~

   ~~Parcel 12-112~~

   ~~LEGAL DESCRIPTION NEEDED~~

2. ~~The term of this Agreement shall be twenty-five (25) years or until TIF RECIPIENT satisfies the full amount of the CITY's debt service pursuant to the terms and conditions of the Development Agreement, whichever occurs sooner.~~

3. ~~Pursuant to the terms of the Development Agreement between the Parties, the tax increment financing (hereinafter "TIF") amount of not less than $8.5 million shall be placed into an escrow account as a lump sum into TIF RECIPIENT's bank.~~

4. ~~TIF RECIPIENT shall draw first from the Developer's equity account prior to accessing any TIF monies from CITY or RDA. Thereafter, TIF monies may be drawn from the escrow account on a percentage basis along with any of TIF RECIPIENT's loan monies. The percentage basis for draw calculations shall be as follows: For every $1,000.00 spent related to the Project, CITY or RDA shall authorize the disbursement of $150.00 after review and written approval by CITY or RDA of any invoices for any work completed.~~

5. ~~All draws shall be expressly approved in writing by all of the following parties before the draw occurs: TIF RECIPIENT, RDA, and CITY. The TIF RECIPIENT, RDA, and CITY agree to work together in good faith to process draw requests and related requests for disbursement in good faith and in a timely manner. In the event any item of a draw or disbursement request is disputed, the parties agree to modify the request to allow the undisputed items to be processed without unnecessary delay.~~

6. ~~This Agreement shall not take effect until final approval by the RDA and CITY and upon execution.~~

7. ~~This Agreement may be terminated only upon written consent of the parties.~~

8. ~~This Agreement may only be amended upon written consent of the RDA and the City. Any amendments shall be in writing and executed by all parties.~~

9. ~~In the event of alleged default on all or any part of this Agreement, prior to and as a condition of instituting legal proceedings, the non-defaulting Party shall give the defaulting Party specific written notice of such default, in the manner provided herein. The alleged defaulting Party shall have five (5) business days for any payment default and thirty (30) days for any non-payment default to cure said default. If the defaulting Party does not cure said default during the applicable cure period, the non-defaulting Party may take any and all steps necessary to address such default, including but not limited to, instituting any necessary legal action.~~

10. ~~Unless expressly provided otherwise herein, the rights and remedies of the Parties provided herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively or together, at the sole and absolute discretion of either Party and may be exercised as often as occasion therefore shall arise. This is a guarantee of payment and not of collection.~~

11. ~~The failure of any party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by either party shall be valid or~~

~~binding on such party unless it is in writing signed by such party and only to the extent therein set forth.~~

12. ~~This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the Parties with respect to its subject matter, there being no terms, conditions, warranties, or representations with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assignees.~~

13. ~~TIF RECIPIENT may not assign this Agreement or any of its rights or obligations without the written consent of the CITY or RDA.~~

14. ~~Except as may be otherwise specifically set forth in this Agreement, all development of the Project shall proceed in accordance and full compliance with all applicable ordinances, resolutions, codes and requirements of the CITY, as the same may be amended or adopted from time to time.~~

15. ~~This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between TIF RECIPIENT, RDA and CITY, and there are not promises, agreements, conditions or understandings, either oral or written, express or implied, between them, with respect to the guarantee provided hereby other than as herein set forth. Except as herein provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.~~

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

17. ~~Time is of the essence for performance of the terms and conditions contained in this Agreement. However, upon written request of any party, an extension of an agreed-upon time period may be granted at the sole discretion of the granting party.~~

18. ~~No official or employee of the CITY shall be personally liable to TIF RECIPIENT 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 TIF RECIPIENT under this Agreement.~~

19. ~~A notice, demand, or other communication under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage pre-paid, return receipt requested, or delivered personally:~~

~~To TIF RECIPIENT:~~ ~~NOVA GB LLC~~
~~c/o New Land Enterprises~~
~~1840 N Farwell Ave.~~
~~STE A~~
~~Milwaukee, WI 53202~~

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

~~To RDA:~~ ~~Redevelopment Authority of the City of Green Bay~~
~~Attention: Executive Director~~
~~100 N. Jefferson St., Room 600~~
~~Green Bay, WI 54301~~

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

~~NOVA GB LLC~~
~~By: NOVA GB Sponsor LLC, its Manager~~

~~By:~~ ______________________________
~~Tim Gokhman~~
~~Its: Manager~~

~~REDEVELOPMENT AUTHORITY~~ **~~CITY OF GREEN BAY~~**

~~By:~~ ______________________________ ~~By:~~ ______________________________
~~Gary J. Delveaux, Chair~~ ~~Eric Genrich, Mayor~~

~~By:~~ ______________________________ ~~By:~~ ______________________________
~~Cheryl Renier-Wigg, Executive Director~~ ~~Celestine Jeffreys, Clerk~~

TAX INCREMENT FINANCING (TIF) DISBURSEMENT AGREEMENT
221 CHERRY STREET DEVELOPMENT

This Tax Increment Financing (TIF) Disbursement Agreement is made and entered into this ______ day of _________________, 2024, by and between the **Redevelopment Authority of the City of Green Bay** (hereinafter "RDA"), the **City of Green Bay** (hereinafter "CITY"), **NOVA GB SPE LLC**, a Delaware Limited Liability Company (hereinafter "TIF RECIPIENT The RDA, CITY, and TIF RECIPIENT may sometimes be referred to individually as "Party" and collectively "Parties."

WHEREAS, the Parties have entered into a Development Agreement dated October __, 2024 relating to the Property (the "Development Agreement").

WHEREAS, the RDA owns property (hereinafter the "Property") (parcel no. 12-112) located at 221 Cherry Stret, Green Bay, Wisconsin; and

WHEREAS, the CITY and RDA desire to have TIF RECIPIENT construct an eight (8) story mixed-use building, including approximately two hundred sixty-eight (268) market rate multi-family apartment units, approximately fourth thousand eight hundred fifty (4,850) square feet of commercial space on the first floor, and an internal two (2) story parking ramp (the "PROJECT"); and

WHEREAS, CITY and RDA desire to see the Property developed into an active mixed-use development that generates economic activity and tax base for the community; and

NOW THEREFORE based upon the covenants and considerations contained herein, the Parties mutually agree as follows:

1. The real estate subject to this Agreement, is located in the City of Green Bay, Brown County, State of Wisconsin, and is legally described as follows:

   <u>Parcel 12-112</u>

   LEGAL DESCRIPTION NEEDED

2. The term of this Agreement shall be twenty-five (25) years or until TIF RECIPIENT satisfies the full amount of the CITY's debt service pursuant to the terms and conditions of the Development Agreement, whichever occurs sooner.

3. Pursuant to the terms of the Development Agreement between the Parties, the tax increment financing (hereinafter "TIF FUNDS") amount of not less than $8.5 million shall be placed into an escrow account as a lump sum at TIF RECIPIENT's bank ("TIF ACCOUNT"). The TIF ACCOUNT shall be subject to an escrow agreement between Knight Barry Title Group having an address of 201 E. Pittsburgh Ave. in Milwaukee, WI ("TITLE COMPANY"), the RDA, CITY, TIF RECIPIENT, and TIF Recipient's lender

(“LENDER”) providing that the TIF FUNDS in the TIF ACCOUNT shall be disbursed in accordance with this Agreement and such other terms as are customary in similar escrow agreements (“ESCROW AGREEMENT”).

4. The ESCROW AGREEMENT shall further provide that the TIF RECIPIENT shall draw first from the TIF RECIPIENT’s equity account prior to accessing any TIF FUNDS from the TIF ACCOUNT. Thereafter, TIF FUNDS may be drawn from the TIF ACCOUNT on a percentage basis of each construction draw as approved by TIF RECIPIENT and LENDER, along with the LOAN proceeds approved by LENDER, to pay invoices associated with each construction draw request so approved. The percentage basis for draw calculations for TIF FUNDS shall be as follows: For every $1205.00 spent by TIF RECEIPENT related to the Project, CITY or RDA shall authorize the disbursement of $205.00 (the “TIF PERCENTAGE”). Notwithstanding the foregoing, the final disbursement of the remaining balance of the TIF FUNDS shall be made from the TIF ACCOUNT for payment of invoices associated with the construction draw following substantial completion of the PROJECT, evidenced by the receipt of an unconditional occupancy permit for the PROJECT.

5. All construction draws requesting TIF FUNDS from the TIF ACCOUNT pursuant to the TIF PERCENTAGE shall be expressly approved in writing by all of the following parties before the TIF FUNDS from the TIF ACCOUNT may be released: TIF RECIPIENT, LENDER, RDA, and CITY. The TIF RECIPIENT, RDA, and CITY agree to work together in good faith to process each construction draw request and related requests for disbursement in good faith and in a timely manner. In the event any item of a draw or disbursement request for TIF FUNDS is disputed by any one of the required approvers, the Parties agree to cooperate in good faith to modify the request to allow the undisputed items to be processed without unnecessary delay.

    a. In the event of a delay in the draw funding of any one item, in accordance with the foregoing, due to good faith objection by the RDA and/or CITY that is not also disputed by LENDER and cannot be resolved in a timely manner, and thus the TIF PERCENTAGE for that disputed item is not released or the TIF PERCENTAGE release of TIF FUNDS is duly delayed, TIF RECIPIENT shall have the right to fund the amount of the TIF FUNDS that would have been funded pursuant to the TIF PERCENTAGE had such draw item been approved by the RDA and/or CITY, from its own resources, so that the draw item requested and approved by LENDER and TIF RECIPIENT (but NOT the RDA and/or CITY) may still be paid in a timely manner.
    b. At such time as the amount disputed by the RDA and/or CITY and funded by the TIF RECIPIENT in accordance with Section 5.a is resolved (or is agreed by the RDA and/or CITY respectively to be no longer in dispute) and thus no longer to be withheld, TIF FUNDS shall be funded to TIF RECIPIENT as reimbursement for the advance made in accordance with Section 5.a.

    For the avoidance of doubt, nothing in this Section 5 shall alter or limit TIF RECIEIENT’S obligation to satisfy all disbursement conditions set forth in the Loan

Documents (including, all obligations to keep the loan in balance) prior to any disbursement of LOAN proceeds.

c. The CITY and RDA shall designate an individual to conduct the reviews and grant the approvals of the CITY and RDA as it relates to the construction draws.

6. This Agreement shall not take effect until final approval by the RDA and CITY and upon execution and is signed by all Parties.

7. This Agreement may be terminated only upon written consent of the Parties.

8. This Agreement may only be amended upon written consent of the Parties. Any amendments shall be in writing and executed by all Parties.

9. In the event of alleged default on all or any part of this Agreement, prior to and as a condition of instituting legal proceedings, any non-defaulting Party shall give the defaulting Party specific written notice of such default, in the manner provided herein. The alleged defaulting Party shall have five (5) business days for any payment default and thirty (30) days for any non-payment default to cure said default. If the defaulting Party does not cure said default during the applicable cure period, any non-defaulting Party may take any and all steps necessary to address such default, including but not limited to, instituting any necessary legal action.

10. Unless expressly provided otherwise herein, the rights and remedies of the Parties provided herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively or together, at the sole and absolute discretion of either Party and may be exercised as often as occasion therefore shall arise. This is a guarantee of payment and not of collection.

11. The failure of any Party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by either party shall be valid or binding on such party unless it is in writing signed by such party and only to the extent therein set forth.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the Parties with respect to its subject matter, there being no terms, conditions, warranties, or representations with respect to its subject matter other than that contained herein. This

Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assignees.

13. Except pursuant to a collateral assignment by TIF RECIPIENT to LENDER in accordance with the Development Agreement, the TIF RECIPIENT may not assign this Agreement or any of its rights or obligations without the written consent of the CITY or RDA. Notwithstanding anything to the contrary, CITY and RDA hereby (i) approves TIF RECIPIENT's collateral assignment of its rights, title and interest in and to this AGREEMENT, the TIF FUNDS, the TIF ACCOUNT and the ESCROW AGREEMENT to LENDER as security for the loan between TIF RECIPIENT and LENDER (the (LOAN"), (ii) agrees that in the event of a breach by TIF RECEIPIENT under the LOAN , LENDER may exercise and enforce all rights and interests of TIF RECIPIENT hereunder and under the ESCROW AGREEMENT, and (iii) agrees that, following a foreclosure of the LOAN (or acceptance of a deed in lieu thereof) and without any further consent or approval by the City or RDA, that a successor owner approved by the CITY in accordance with the Development Agreement may assume this Agreement, and the CITY and RDA will recognize such party as the successor to, TIF RECIPIENT'S right, title and interest in and to this Agreement, the TIF FUNDS, the TIF ACCOUNT and the ESCROW AGREEMENT.

14. Except as may be otherwise specifically set forth in this Agreement, all development of the PROJECT shall proceed in accordance and full compliance with all applicable ordinances, resolutions, codes and requirements of the CITY, as the same may be amended or adopted from time to time.

15. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between TIF RECIPIENT, RDA and CITY, and other than the other documents specifically referenced herein, there are not promises, agreements, conditions or understandings, either oral or written, express or implied, between them, with respect to the matters herein set forth. Except as herein provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

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

17. Time is of the essence for performance of the terms and conditions contained in this Agreement. However, upon written request of any party, an extension of an agreed-upon time period may be granted at the sole discretion of the granting party.

18. No official or employee of the CITY shall be personally liable to TIF RECIPIENT 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 TIF RECIPIENT under this Agreement.

19. A notice, demand, or other communication under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage pre-paid, return receipt requested, or delivered personally:

To TIF RECIPIENT:	NOVA GB SPE LLC c/o New Land Enterprises 1840 N Farwell Ave. STE A Milwaukee, WI 53202
To CITY:	City of Green Bay Attention: City Clerk 100 N. Jefferson St. Green Bay, WI 54301
To RDA:	Redevelopment Authority of the City of Green Bay Attention: Executive Director 100 N. Jefferson St., Room 600 Green Bay, WI 54301

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

[Signature Page Follows]

Signature page to the Tax Increment Financing (TIF) Disbursement Agreement dated as of this ______ day of _________________, 2024, by and between the **Redevelopment Authority of the City of Green Bay** (hereinafter "RDA"), the **City of Green Bay** (hereinafter "CITY"), and **NOVA GB SPE LLC**, a Delaware Limited Liability Company (hereinafter "TIF RECIPIENT") .

TIF RECIPIENT

NOVA GB SPE LLC
By: NOVA GB LLC, its Manager
By: NOVA GB Sponsor LLC, its Manager

By: ______________________________
Tim Gokhman
Its: Manager______________

RDA	CITY
REDEVELOPMENT AUTHORITY	**CITY OF GREEN BAY**
By: ________________________________	By: _________________________________
Gary J. Delveaux, Chair	Eric Genrich, Mayor
By: ________________________________	By: _________________________________
Cheryl Renier-Wigg, Executive Director	Celestine Jeffreys, Clerk

[Exhibit H to the Term Sheet]

TAX INCREMENT FINANCING (TIF) DISBURSEMENT AGREEMENT
~~CITYDECK COMMONS~~221 CHERRY STREET DEVELOPMENT

This Tax Increment Financing (TIF) Disbursement Agreement is made and entered into this ______ day of _________________, 2024, by and between the **Redevelopment Authority of the City of Green Bay** (hereinafter "RDA"), the **City of Green Bay** (hereinafter "CITY"), **NOVA GB SPE LLC**, a ~~Wisconsin~~Delaware Limited Liability Company (hereinafter "TIF RECIPIENT"~~).~~ The RDA, CITY, and TIF RECIPIENT may sometimes be referred to individually as "Party" and collectively "Parties."

WHEREAS, the Parties have entered into a Development Agreement dated ~~May~~~~September~~October __, 2024 relating to the Property (the "Development Agreement").

WHEREAS, the RDA owns property (hereinafter the "Property") (parcel no. 12-112) located at 221 Cherry Stret, Green Bay, Wisconsin; and

WHEREAS, the CITY and RDA desire to have TIF RECIPIENT construct an eight (8) story mixed-use building, including approximately two hundred sixty-eight (268) market rate multi-family apartment units, approximately fourth thousand eight hundred fifty (4,850) square feet of commercial space on the first floor, and an internal two (2) story parking ramp (the "~~Project~~PROJECT"); and

WHEREAS, CITY and RDA desire to see the Property developed into an active mixed-use development that generates economic activity and tax base for the community; and

NOW THEREFORE based upon the covenants and considerations contained herein, the Parties mutually agree as follows:

1. The real estate subject to this Agreement, is located in the City of Green Bay, Brown County, State of Wisconsin, and is legally described as follows:

   Parcel 12-112

   LEGAL DESCRIPTION NEEDED

2. The term of this Agreement shall be twenty-five (25) years or until TIF RECIPIENT satisfies the full amount of the CITY's debt service pursuant to the terms and conditions of the Development Agreement, whichever occurs sooner.

~~3.~~ Pursuant to the terms of the Development Agreement between the Parties, the tax increment financing (hereinafter "TIF FUNDS") amount of not less than $8.5 million shall be placed into an escrow account as a lump sum ~~into~~at TIF RECIPIENT's bank~~.~~

3. ~~TIF~~ ("TIF ACCOUNT"). The TIF ACCOUNT shall be subject to an escrow agreement between Knight Barry Title Group having an address of 201 E. Pittsburgh Ave. in

Milwaukee, WI ("TITLE COMPANY"), the RDA, CITY, TIF RECIPIENT, and TIF Recipient's lender ("LENDER") providing that the TIF FUNDS in the TIF ACCOUNT shall be disbursed in accordance with this Agreement and such other terms as are customary in similar escrow agreements ("ESCROW AGREEMENT").

4. The ESCROW AGREEMENT shall further provide that the TIF RECIPIENT shall draw first from the ~~Developer's~~TIF RECIPIENT's equity account prior to accessing any TIF ~~monies~~FUNDS from ~~CITY or RDA.~~the TIF ACCOUNT. Thereafter, TIF ~~monies~~FUNDS may be drawn from the ~~escrow account~~TIF ACCOUNT on a percentage basis of each construction draw as approved by TIF RECIPIENT and LENDER, along with ~~any of TIF RECIPIENT's loan monies.~~the LOAN proceeds approved by LENDER, to pay invoices associated with each construction draw request so approved. The percentage basis for draw calculations for TIF FUNDS shall be as follows: For every $~~1,000.00~~1205.00 spent by TIF RECEIPENT related to the Project, CITY or RDA shall authorize the disbursement of $~~150.~~205.00 ~~after review and written approval by CITY or RDA of any invoices for any work completed.~~(the "TIF PERCENTAGE"). Notwithstanding the foregoing, the final disbursement of the remaining balance of the TIF FUNDS shall be made from the TIF ACCOUNT for payment of invoices associated with the construction draw following substantial completion of the PROJECT, evidenced by the receipt of an unconditional occupancy permit for the PROJECT.

5. All ~~draws~~construction draws requesting TIF FUNDS from the TIF ACCOUNT pursuant to the TIF PERCENTAGE shall be expressly approved in writing by all of the following parties before the ~~draw occurs~~TIF FUNDS from the TIF ACCOUNT may be released: TIF RECIPIENT, LENDER, RDA, and CITY. The TIF RECIPIENT, RDA, and CITY agree to work together in good faith to process each construction draw ~~requests~~request and related requests for disbursement in good faith and in a timely manner. In the event any item of a draw or disbursement request for TIF FUNDS is disputed~~,~~ by any one of the ~~parties~~required approvers, the Parties agree to cooperate in good faith to modify the request to allow the undisputed items to be processed without unnecessary delay.

   a. In the event of a delay in the draw funding of any one item, in accordance with the foregoing, due to good faith objection by the RDA and/or CITY that is not also disputed by LENDER and cannot be resolved in a timely manner, and thus the TIF PERCENTAGE for that disputed item is not released or the TIF PERCENTAGE release of TIF FUNDS is duly delayed, TIF RECIPIENT shall have the right to fund the amount of the TIF FUNDS that would have been funded pursuant to the TIF PERCENTAGE had such draw item been approved by the RDA and/or CITY, from its own resources, so that the draw item requested and approved by LENDER and TIF RECIPIENT (but NOT the RDA and/or CITY) may still be paid in a timely manner.
   b. At such time as the amount disputed by the RDA and/or CITY and funded by the TIF RECIPIENT in accordance with Section 5.a is resolved (or is agreed by the RDA and/or CITY respectively to be no longer in dispute) and thus no longer to be withheld, TIF FUNDS shall be funded to TIF RECIPIENT as reimbursement for the advance made in accordance with Section 5.a.

For the avoidance of doubt, nothing in this Section 5 shall alter or limit TIF RECIEIENT'S obligation to satisfy all disbursement conditions set forth in the Loan Documents (including, all obligations to keep the loan in balance) prior to any disbursement of LOAN proceeds.

c. The CITY and RDA shall designate an individual to conduct the reviews and grant the approvals of the CITY and RDA as it relates to the construction draws.

6. This Agreement shall not take effect until final approval by the RDA and CITY and upon execution and is signed by all Parties.

7. This Agreement may be terminated only upon written consent of the ~~parties~~Parties.

8. This Agreement may only be amended upon written consent of the ~~RDA and the City.~~Parties. Any amendments shall be in writing and executed by all ~~parties~~Parties.

9. In the event of alleged default on all or any part of this Agreement, prior to and as a condition of instituting legal proceedings, any~~the~~ non-defaulting Party shall give the defaulting Party specific written notice of such default, in the manner provided herein. The alleged defaulting Party shall have five (5) business days for any payment default and thirty (30) days for any non-payment default to cure said default. If the defaulting Party does not cure said default during the applicable cure period, any~~the~~ non-defaulting Party may take any and all steps necessary to address such default, including but not limited to, instituting any necessary legal action.

10. Unless expressly provided otherwise herein, the rights and remedies of the Parties provided herein shall be cumulative and concurrent and shall include all other rights and remedies available at law or in equity, may be pursued singly, successively or together, at the sole and absolute discretion of either Party and may be exercised as often as occasion therefore shall arise. This is a guarantee of payment and not of collection.

11. The failure of any ~~party~~Party to this Agreement to insist upon strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute or be construed as a waiver or relinquishment of any Party's rights, to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect. No waiver by either party shall be valid or binding on such party unless it is in writing signed by such party and only to the extent therein set forth.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If any provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the Parties with respect to its subject matter, there being no terms, conditions, warranties, or

representations with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assignees.

13. Except pursuant to a collateral assignment by TIF RECIPIENT to LENDER in accordance with the Development Agreement, the TIF RECIPIENT may not assign this Agreement or any of its rights or obligations without the written consent of the CITY or RDA. Notwithstanding anything to the contrary, CITY and RDA hereby (i) approves TIF RECIPIENT's collateral assignment of its rights, title and interest in and to this AGREEMENT, the TIF FUNDS, the TIF ACCOUNT and the ESCROW AGREEMENT to LENDER as security for the loan between TIF RECIPIENT and LENDER (the (LOAN"), (ii) agrees that in the event of a breach by TIF RECEIPIENT under the LOAN , LENDER may exercise and enforce all rights and interests of TIF RECIPIENT hereunder and under the ESCROW AGREEMENT, and (iii) agrees that, following a foreclosure of the LOAN (or acceptance of a deed in lieu thereof) and without any further consent or approval by the City or RDA, that a successor owner approved by the CITY in accordance with the Development Agreement may assume this Agreement, and the CITY and RDA will recognize such party as the successor to, TIF RECIPIENT'S right, title and interest in and to this Agreement, the TIF FUNDS, the TIF ACCOUNT and the ESCROW AGREEMENT.

14. Except as may be otherwise specifically set forth in this Agreement, all development of the ~~Project~~PROJECT shall proceed in accordance and full compliance with all applicable ordinances, resolutions, codes and requirements of the CITY, as the same may be amended or adopted from time to time.

15. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between TIF RECIPIENT, RDA and CITY, and other than the other documents specifically referenced herein, there are not promises, agreements, conditions or understandings, either oral or written, express or implied, between them, with respect to the ~~guarantee provided hereby other than as~~matters herein set forth. Except as herein provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

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

17. Time is of the essence for performance of the terms and conditions contained in this Agreement. However, upon written request of any party, an extension of an agreed-upon time period may be granted at the sole discretion of the granting party.

18. No official or employee of the CITY shall be personally liable to TIF RECIPIENT 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 TIF RECIPIENT under this Agreement.

19. A notice, demand, or other communication under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage pre-paid, return receipt requested, or delivered personally:

To TIF RECIPIENT:	NOVA GB SPE LLC c/o New Land Enterprises 1840 N Farwell Ave. STE A Milwaukee, WI 53202
To CITY:	City of Green Bay Attention: City Clerk 100 N. Jefferson St. Green Bay, WI 54301
To RDA:	Redevelopment Authority of the City of Green Bay Attention: Executive Director 100 N. Jefferson St., Room 600 Green Bay, WI 54301

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

~~**NOVA GB LLC**~~

[Signature Page Follows]

Signature page to the Tax Increment Financing (TIF) Disbursement Agreement dated as of this ______ day of __________________, 2024, by and between the **Redevelopment Authority of the City of Green Bay** (hereinafter "RDA"), the **City of Green Bay** (hereinafter "CITY"), and **NOVA GB SPE LLC**, a Delaware Limited Liability Company (hereinafter "TIF RECIPIENT") .

TIF RECIPIENT

NOVA GB SPE LLC
By: NOVA GB LLC, its Manager
By: NOVA GB Sponsor LLC, its Manager

By: ______________________________
Tim Gokhman
Its: Manager______________

RDA	CITY
REDEVELOPMENT AUTHORITY	**CITY OF GREEN BAY**
By: ________________________________	By: _________________________________
Gary J. Delveaux, Chair	Eric Genrich, Mayor
By: ________________________________	By: _________________________________
Cheryl Renier-Wigg, Executive Director	Celestine Jeffreys, Clerk

Report to the
Redevelopment Authority of the City of Green Bay

MEETING DATE	PREPARED BY
October 11, 2024	

AGENDA ITEM # E.1

Director's report and project updates.

BACKGROUND

RECOMMENDATION

FISCAL IMPACT

ATTACHMENTS

None