

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to the Development Agreement (this "**Amendment**"), is between the Town of Clayton, Winnebago County, Wisconsin, a Wisconsin municipal corporation (the "**Town**"), Last Time Realty, LLC, a Wisconsin limited liability company ("**Developer Entity**"), John J. Toppins, a natural person with no legal disabilities ("**Developer Principal**") (Developer Entity and Developer Principal are collectively referred to herein as the "**Developer**"), and The Bank of Kaukauna, a Wisconsin banking corporation ("**Bank of Kaukauna**"). The Town, Developer, and Bank of Kaukauna are collectively referred to herein as the "**Parties**," and each individually as a "**Party**."

WHEREAS, the Town and Developer have entered into that certain Development Agreement, dated June 19, 2024 (the "**Existing Agreement**"), as evidenced by the recording of a Memorandum of Development Agreement dated June 19, 2024, and recorded October 15, 2025, as Document No. 1954515, in the office of the Winnebago County, Wisconsin, Register of Deeds, concerning the development of certain real property located on West American Drive, Town of Clayton, Winnebago County, Wisconsin, as further described in the Existing Agreement (the "**Property**"); and

WHEREAS, pursuant to the Existing Agreement, Developer is responsible for the construction of a 17,503 sq. ft. shop and office building to be 100% owned by Developer Principal and to be used by Valley Truck Leasing, Inc., a Wisconsin corporation ("**Valley Truck**"); and

WHEREAS, the Existing Agreement contains a restrictive covenant at Paragraph IV(P) wherein Developer agrees (i) not to transfer ownership of all or a portion of the Property to an entity that would render any part of the Property exempt from property taxation (the "**Tax Exempt Entity Covenant**"), and (ii) in the event of such a transfer, the Developer, or its successors or assigns, shall make annual payments in lieu of taxes ("**PILOT**") in an amount equal to the property taxes that otherwise would have been paid on the Property; and

WHEREAS, WBD, Inc., a Wisconsin corporation ("**WBD**"), has extended, or will extend, a loan in the amount of One Million Four Hundred Ninety-Five Thousand and 00/100 dollars (\$1,495,000.00) (the "**Loan**") to Developer Entity, such Loan being secured by a lien on Property, pursuant to a mortgage (the "**Mortgage**") from Developer Entity to WBD, which Mortgage has been, or will be, assigned to the U.S. Small Business Administration (the "**SBA**"); and

WHEREAS, in the event that the Mortgage is foreclosed, and the SBA, a Tax-Exempt Entity, becomes the owner of the real property, Bank of Kaukauna has agreed to assume the Tax Exempt Entity Covenant obligation and pay the PILOT, as described in the Existing Agreement and this Amendment.

WHEREAS, Bank of Kaukauna is the mortgagee under a mortgage of the Property, by virtue of a certain real estate mortgage from Developer Entity to Bank of Kaukauna dated September 6, 2024, and recorded on September 27, 2024, as Document No. 1930917, in the office of the Winnebago County, Wisconsin, Register of Deeds; and

WHEREAS, the Parties now desire to amend the Existing Agreement to confirm the Town's ability to terminate the Existing Agreement and to cease payments pursuant thereto in

the event that a tax-exempt entity takes ownership of the Property and PILOT are not timely paid; and

WHEREAS, this Amendment is being made for the purpose of facilitating the Loan while protecting the Town's interests under the Existing Agreement (the Existing Agreement, as amended by this Amendment following the Effective Date (defined below), shall be referred to herein as the "**Amended Agreement**").

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

2. Amendments to the Existing Agreement.

(a) Section II of the Existing Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order:

"PILOT" means Payments in Lieu of Taxation.

"SBA" means the U.S. Small Business Administration or any Certified Development Company administering an SBA 504 financing.

"Tax-Exempt Transferee" means any governmental or quasi-governmental body or instrumentality (including the U.S. Small Business Administration or any Certified Development Company participating in an SBA 504 financing), or any entity whose ownership renders the Property or any portion thereof exempt from general property taxation.

(b) Section IV(P) of the Existing Agreement is hereby amended by deleting the Section in its entirety and inserting the following words in its place:

(c) P. No Transfer to Tax-Exempt Entity; PILOT. Developer agrees that, as long as the District is in existence, no portion of the Property shall be sold, transferred or conveyed to, or leased or owned by any entity or used in any manner which would render any part of the Property exempt from property taxation, except that portion of the Property dedicated to the Town under the terms of this Agreement. In the event the Property, or any part of it, becomes exempt or partially exempt from general property taxation during the term of this Agreement, the Developer, its successors or assigns (each, as applicable, the "**Paying Party**"), shall be responsible for making annual PILOT to the Town in an amount equal to the property taxes that would otherwise have been payable as property taxes with respect to the Property or the applicable portion thereof. PILOT shall be due and payable not later than when the taxes would have been due and payable if the Property were still on the tax rolls.

If the exact property taxes that would have been payable cannot be determined for any reason, including because an assessment was not performed due to tax-exempt ownership, the amount of PILOT due shall equal the immediately preceding year's property tax amount, increased by three percent (3%), compounded annually, for each year that the PILOT are required.

For clarity, and without limiting the foregoing, the Paying Party shall be solely responsible for the payment of: (a) any property taxes unpaid in the year in which the tax-exempt entity acquires ownership of the Property; (b) any property taxes assessed for the year in which the tax-exempt entity acquires ownership of the Property; and (c) the full amount of PILOT owed for any year in which the Property is owned by a tax-exempt entity on January 1 of that year.

For example, if the Property is assessed as of January 1, 2027, with taxes payable in installments throughout 2028, and the Property is transferred to a Tax-Exempt Transferee on June 1, 2027, the Paying Party shall be responsible for all 2027 property taxes and any other unpaid taxes owing on the Property. If the Property remains tax-exempt on January 1, 2028, and is transferred to a taxable entity on June 1, 2028, the Paying Party shall be responsible for the full amount of PILOT owed for the 2028 tax year.

- i. Failure to pay PILOT. In the event the Property is sold, transferred, or conveyed to a Tax-Exempt Transferee, whether by foreclosure, deed-in-lieu, receiver's conveyance, or otherwise, and the PILOT required by this Section IV(P) is not paid within thirty (30) days after the date it would otherwise have been due, such nonpayment shall constitute an Event of Default under Section VII(B) of this Agreement. Upon such Event of Default, the Town may, in its sole discretion, terminate this Agreement, and neither the Developer nor any Tax-Exempt Transferee shall have any right to receive further payments under this Agreement, without prejudice to any other rights or remedies available to the Town. Such termination shall not limit any other of the Town's remedies available under this Agreement, including, but not limited to, the right to seek reimbursement from the Paying Party as a contractual obligation under this Agreement for any unpaid PILOT amounts, together with reasonable legal fees and costs incurred by the Town in enforcing this Agreement or collecting such amounts.

If, following termination of this Agreement, title is thereafter transferred to a taxable owner and delinquent PILOT amounts are paid in full to the Town, the Town may, in its sole discretion, agree in writing to reinstate this Agreement prospectively. Any such reinstatement shall not obligate the Town to pay any amounts that were not appropriated or paid during the period of tax-exempt ownership. Upon reinstatement, the terms of this Agreement shall be enforceable against the new taxable owner as if it had been an original signatory hereto.

- ii. SBA 504 Loan; PILOT. The Bank of Kaukauna, a Wisconsin banking corporation ("**Bank of Kaukauna**") joins the first amendment to this Agreement for the limited purpose of assuming the obligation to make PILOT required under this agreement in the event the Property becomes owned, directly or indirectly, by a Tax-Exempt Transferee as a result of foreclosure, deed-in-lieu of foreclosure, or similar transfer arising from the SBA 504 loan made or to be made to Developer (the "**Loan**"). It is agreed that the Town's consent shall not be required in connection with any conveyance pursuant to or following any SBA foreclosure (or acceptance of deed in lieu of foreclosure) of such mortgage. This provision shall survive any termination or cancellation of this Agreement and shall run with the land

If the SBA, or any tax-exempt successor thereof, acquires legal or equitable title to the Property as a result of a default under the Loan (such occurrence, the "**SBA Transfer**"), Bank of Kaukauna shall be the Paying Party for PILOT obligations required under this Agreement for the duration of such tax-exempt ownership. Bank of Kaukauna's obligation to pay PILOT shall be primary, direct, and enforceable against Bank of Kaukauna, and shall not be dependent upon any action or inaction by the SBA or any other party. In the event of SBA Transfer, Bank of Kaukauna shall also assume the obligation of paying any taxes outstanding at the time of the SBA Transfer in addition to PILOT owed under this section.

In the event that Bank of Kaukauna fails to make any required PILOT payment within thirty (30) days after the date such payment would otherwise have been due, such failure shall constitute an Event of Default under Section VII(B) of this Agreement. Upon such Event of Default, the Town may, in its sole discretion and without prejudice, exercise any and all rights and remedies available under this Agreement or at law or in equity, including termination of this Agreement, cessation of incentive payments, and seeking reimbursement from Bank of Kaukauna for any unpaid PILOT amounts, together with reasonable attorneys' fees, costs, and expenses incurred by the Town in enforcing this Agreement or pursuing collection of such amounts.

(d) Section V of the Existing Agreement is hereby amended by inserting the following section after Section V(H):

I. Suspension and Cessation of Payments During Tax-Exempt Ownership or PILOT Default. Notwithstanding anything to the contrary in this Agreement, in the event that (i) title to all or any portion of the Property is transferred to or vested in a Tax-Exempt Transferee, whether by foreclosure, deed-in-lieu, receiver's conveyance, or otherwise, (ii) the PILOT required by Section IV(P) is not paid in full within thirty (30) days after the date it would otherwise have been due, then, for so long as such condition exists:

- i. No Available Tax Increments shall be appropriated, accrued, or paid to Developer or to any assignee, lender, or other party claiming such

Available Tax Increments through Developer, and no further payments shall be made or accrued under this Agreement, including without limitation, any PAYGo installments or any obligation to issue or pay under any tax increment revenue bond contemplated by this Section V. Such action by the Town under this Section V(I) shall not be considered an Event of Default, as such term is defined within this Agreement.

ii. The Town shall have no obligation to appropriate funds, make payments, or issue any tax increment revenue bond or other instrument for the benefit of Developer or any assignee or lender during any such period.

iii. Such nonpayment shall be considered an Event of Default and the Town may seek any remedies available to it pursuant to Section VII(B) of this Agreement, including, but not limited to termination of this Agreement and seeking reimbursement from the Paying Party for amounts owed to the Town for unpaid PILOT amounts and legal fees incurred in connection with this Agreement.

iv. Upon the Town's termination of this Agreement pursuant to Section VII, rights of Developer and any assignee or lender to receive further payments or performance under this Agreement shall immediately and irrevocably cease. Such termination shall not affect the Town's ability to seek other remedies available to it under Section VII(B) of this Agreement.

v. If, after such termination or suspension, title to the Property is transferred to a taxable owner and delinquent PILOT amounts are paid in full to the Town, the Town may, in its sole discretion, agree in writing to reinstate this Agreement prospectively, but shall have no obligation to pay any amounts not appropriated or paid during the period of tax-exempt ownership or PILOT default.

(e) Section VII(B) of the Existing Agreement is hereby amended by deleting the Section in its entirety and inserting the following words in its place:

B. Default; Remedies. In the event that either the Town or the Developer defaults under any material terms or conditions of this Agreement (an "**Event of Default**"), the defaulting party may, in its sole discretion, terminate this Agreement upon written notice and declare that no further payments or accrual of payment rights shall be made under this Agreement, including, but not limited to, TIF Incentives contemplated by this Agreement. Further, the defaulting party shall be responsible for costs and expenses incurred by reason of such default including, but not limited to, any legal expenses incurred by the nondefaulting party and payments owed under this agreement, including PILOT amounts. Nonexclusive of their right to terminate, the nondefaulting Party may use any legally available means to pursue the amounts owed under this Section VII(B) following an Event of Default. The rights and remedies of the nondefaulting party shall not be limited to those specified in this Agreement, but the nondefaulting party shall have all rights and remedies to which it may be entitled, either at law or in equity. Developer

Entity and Developer Principal shall be jointly and severally liable for the payment and performance of all obligations of the Developer under this Agreement and the Town may bring suit against each such entity, jointly or severally, or against any one or more of them.

3. Sufficiency of Amendment. For clarity, and notwithstanding anything to the contrary, the Parties agree that this Amendment, by which Bank of Kaukauna hereby assumes PILOT obligations detailed in the Amended Agreement for the SBA should the SBA assume legal or equitable title to the Property, and the Town retains the ability to terminate the Amended Agreement should such PILOT not be made, satisfies the requirements to amend the Existing Agreement as provided in section IX(F) of the Existing Agreement.

4. Date of Effectiveness. This Amendment will be deemed effective as of the date that each Party has executed this Amendment (the "**Effective Date**"). Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement, will mean and be a reference to the Amended Agreement.

5. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.

(b) The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by necessary action on the part of such Party.

(c) This Amendment has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(d) Those representations set forth in Section VIII of the Existing Agreement are true, correct, and accurate as of the date of this Amendment.

6. Settlement of Preexisting Claims. AS CONSIDERATION FOR THIS AMENDMENT, TOWN AGREES TO ENTER INTO SUCH AGREEMENTS AS MAY BE

REQUIRED BY DEVELOPER'S CHOSEN LENDER TO FACILITATE DEVELOPER
SECURING AN SBA 504 LOAN.

7. Miscellaneous.

(a) **Governing Law.** This Amendment is governed by and construed in accordance with the laws of the State of Wisconsin, without regard to the conflict of laws provisions of such State.

(b) **Binding Effect.** This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective permitted successors and permitted assigns.

(c) **Headings.** The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

(d) **Counterparts.** This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Amendment electronically shall be effective as delivery of an original executed counterpart of this Amendment.

(e) **Severability.** If any term or provision of this Amendment is held to be invalid, illegal, or unenforceable under applicable law in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Amendment.

(f) **Entire Agreement.** This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

THE TOWN:

TOWN OF CLAYTON, a Wisconsin municipal corporation

By: _____
Russ Geise, Town Chair

Subscribed and sworn to before me this _____ day
of _____, 2026, by Russell Geise, Town
Chair.

Notary Public
My commission expires: _____

By: _____
Kelsey Faust-Kubale, Town Clerk

Subscribed and sworn to before me this _____ day
of _____, 2026, by Kelsey Faust-Kubale,
Town Clerk.

Notary Public
My commission expires: _____

DEVELOPER ENTITY:

Last Time Realty, LLC, a Wisconsin limited liability company

By: John J. Toppins and Mary J. Toppins Joint Revocable Trust, sole member

John J. Toppins, individually

Subscribed and sworn to before me this _____ day
of _____, 2026, by John J Toppins, as
Trustee.

Notary Public
My commission expires: _____

Mary J. Toppins, individually

Subscribed and sworn to before me this _____ day
of _____, 2026, by Mary J Toppins, as
Trustee.

Notary Public
My commission expires: _____

Signature Page Continue on next page

DEVELOPER PRINCIPAL:

By: _____
John J. Toppins, individually

Subscribed and sworn to before me this _____ day
of _____, 2026, by John J Toppins, as
Trustee.

Notary Public
My commission expires: _____

BANK OF KAUKAUNA

BANK OF KAUKAUNA, a Wisconsin banking corporation

By: _____
Name:
Title:

Subscribed and sworn to before me this _____ day
of _____, 2026, by _____,
as _____.

Notary Public
My commission expires: _____