

**TAX INCREMENTAL DISTRICT DEVELOPMENT AGREEMENT**

THIS TAX INCREMENTAL DISTRICT DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of November [\_\_\_\_], 2024 (the “**Effective Date**”) by and among the CITY OF SHEBOYGAN, WISCONSIN (the “**City**”), a Wisconsin municipal corporation, [\_\_\_\_], a Wisconsin [limited liability company] (“**Developer**”) and the REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN, WISCONSIN (“**RDA**”).

**RECITALS**

A. The City created Tax Incremental District No. 24 (“**District**”) as a blight tax increment district under the City’s proposed project plan (the “**Project Plan**”) in order to finance various project costs within the District subject to approvals by the City’s Common Council and the Joint Review Board for the District pursuant to Wis. Stat. § 66.1105 (the “**TI Act**”).

B. The RDA owns the real property located in the District described in greater detail in Exhibit A attached hereto and incorporated herein by reference (collectively, the “**Property**”).

C. The RDA shall convey to Developer the Property pursuant to the terms and conditions of this Agreement.

D. Developer, pursuant to the terms and conditions of this Agreement, is obligated to, among other things, construct thirty-three (33) townhome style apartments on the Property consisting of eleven (11) one-bedroom units, eleven (11) two-bedroom units, and eleven (11) three-bedroom units with Affordable Rental Rates (as defined below) for Sheboygan County (the “**Project**”).

E. Developer acknowledges that but for the conveyance of the Property as contemplated herein and the MRO (as defined below) provided by the City in this Agreement, Developer would not move forward with the Project.

F. The City believes it is appropriate to use tax increments from the District to provide for, among other things, the MRO for the benefit of the District to facilitate development and redevelopment within the District.

G. The City further believes that the Project, as described in this Agreement, is in the best interests of the City and its residents and is reasonably consistent with the public purposes and the development expectations of the City, including, but not limited to, expanding housing, tax base and employment opportunities within the City.

NOW, THEREFORE, the City, Developer and RDA in consideration of the terms and conditions contained in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, each agrees as follows:

AGREEMENT

ARTICLE I – REQUIRED INFORMATION; TERMINATION

**1.1 Required Information.** Neither the City nor the RDA shall have any obligations under this Agreement, and shall have the right to terminate this Agreement in accordance with the provisions of Section 1.2 below, if the Required Information (as defined below) has not been timely provided by the Developer to the City and the RDA in form and substance reasonably acceptable to the City and the RDA. On or before June 1, 2025, Developer shall provide to the City and the RDA the following required information related to the Project by the applicable date set forth below (collectively, the “**Required Information**”) and such other documentation as the City or the RDA may request, both in form and in substance acceptable to the City and the RDA:

(a) A schedule for the construction of Developer Improvements (as defined below) and identifying the following for the Project:

(i) Intended commencement and completion date,

(ii) Reasonably estimated costs associated with the construction, and

(iii) Reasonably estimated value, upon completion, of the intended improvements to be constructed on the Property.

(b) An estimated cost breakdown and construction budget summary listing the intended cost of each improvement and construction expense for the Project, including, without limitation, all hard costs and soft costs, and the cost breakdown and budget shall be certified in writing by Developer and Developer’s general contractor.

(c) All documents authorizing the acquisition of the Property and the construction and financing of the Project and directing the appropriate officer of Developer to execute and deliver this Agreement and all other agreements, documents and contracts required to be executed by it in connection with the transactions which are the subject of this Agreement (including, without limitation, authorizing resolutions of Developer).

(d) Documentation confirming that Developer has complied with all necessary federal, state, county, and municipal laws, ordinances, rules, regulations, directives, orders, and requirements necessary to obtain the governmental approvals and permits relating to the Project. Developer shall also provide copies of all approvals by all applicable government bodies and agencies (including, without limitation, municipal or state issued building permits for the Project).

(e) A copy of the final construction plans and complete specifications for the intended construction related to the Project that are consistent with the provisions of this Agreement (the “**Final Plans**”). The Final Plans must be certified as final and complete (for purposes of obtaining all necessary permits and approvals) and be signed by Developer, the consulting engineer, architect and the general contractor (as applicable) and approved by the City in writing.

**1.2 Termination Rights.** If Developer fails to fully and timely provide the Required Information, as determined in the discretion of the City or the RDA, Developer shall be in Default under this Agreement. If Developer does not provide such Required Information within thirty (30) calendar days after the City or the RDA provides Developer written notice of such Default(s), the City or the RDA shall have the right to terminate this Agreement and shall have no obligation to perform any act under this Agreement (including, without limitation, issuing the MRO).

## ARTICLE II – CONVEYANCE OF THE PROPERTY

**2.1 Property to be Conveyed.** Subject to the terms and conditions set forth in this Agreement (including, without limitation, ARTICLE I above), the RDA shall convey the Property and all improvements thereon to the Developer as set forth in this Agreement.

**2.2 General Terms and Conditions.** The conveyance of the Property to the Developer shall be subject to the following terms and conditions:

(a) The Property shall be conveyed by special warranty deed in the form and substance attached hereto as Exhibit B (the “**Special Warranty Deed**”) with good and marketable title, free and clear of all liens, claims, security interests, mortgages or encumbrances of any kind, except for municipal and zoning ordinances and agreements entered into under them, recorded easements, recorded building and use restrictions and covenants, the property tax exemption restriction and transfer restriction set forth in this Agreement (see Sections 2.4, 4.3 and 7.2 below) and the permitted encumbrances on the Property as set forth on Exhibit C attached hereto (collectively, the “**Permitted Encumbrances**”);

(b) Title to the Property shall be insured by a policy of title insurance, or a binding commitment for such title policy, that will be effective as of the closing date and insure the quality of title of the subject property as provided in Section 2.2(a) above but subject to standard title insurance exceptions, unless the grantee of the subject property, at such party’s sole expense, takes all actions necessary to delete the standard title insurance exceptions to be deleted at closing;

(c) The Developer shall be responsible for paying all costs related to evidence of title in the form of a commitment for an owner’s policy of title insurance with a gap endorsement, on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Further, Developer shall be responsible for obtaining any additional endorsements and paying for all premiums and costs associated with the owner’s policy (and lender’s policy, as applicable) of title insurance covering the Property in such amounts as may be determined by Developer. Each party hereto shall promptly execute and deliver to the other such other documents, certifications and confirmations as may be reasonably required and designated by the title insurer to issue the policies of title insurance described above;

(d) The taxes, assessments and utilities, if any, for the Property will be prorated on the closing date;

(e) The closing for the conveyance of the Property shall occur upon the earlier of: (1) the thirtieth (30) day following the City and RDA's receipt of the Commencement Notice (as defined below); or (2) another date agreed to by the RDA and Developer in writing, provided, in all respects, that there is no Default existing under this Agreement; and

(f) If the RDA conveys the Property to Developer, all of the Property is being conveyed "AS-IS, WHERE-IS" and "WITH ALL FAULTS," and the RDA is making no representations or warranties, express or implied, with respect to the condition of the subject property or improvements. Developer agrees that Developer is relying exclusively upon Developer's own inspection of the Property and improvements thereon. **DEVELOPER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST THE RDA, THE RDA'S OFFICERS, OFFICIALS, MANAGERS, EMPLOYEES, ATTORNEYS, AGENTS AND REPRESENTATIVES, INCLUDING, WITHOUT LIMITATION, CLAIMS BASED IN TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY AND STRICT RESPONSIBILITY), IN CONTRACT, IN WARRANTY, IN EQUITY OR UNDER ANY STATUTE, LAW OR REGULATION ARISING DIRECTLY OR INDIRECTLY OUT OF ANY CONDITION OF THE PROPERTY OR IMPROVEMENTS THEREON, EXCEPT TO THE EXTENT SUCH CLAIMS ARISE SOLELY OUT OF THE FRAUD OR INTENTIONAL MISCONDUCT OF THE RDA.**

**2.3 Consideration.** At the time of the closing of the Property to the Developer, the Developer shall pay to the RDA a purchase price of One Dollar (\$1.00) for the Property.

**2.4 Property Tax Exemption Challenge Restriction.** The Special Warranty Deed for the Property shall include a covenant affecting the Property (and running with the land for the life of the District) that prohibits all current and future owners or users of (including any other party with an interest – whether ownership, leasehold or otherwise – in) all or any portion of the Property from using or permitting the use of all or any portion of the Property in any manner which would render the Property exempt from property taxation.

### **ARTICLE III – COMMENCEMENT NOTICE AND DEVELOPER IMPROVEMENTS**

**3.1 Commencement Notice.** Developer shall provide a written notice to the City of Developer's intention to commence the Project on or before June 1, 2025 (the "Commencement Notice"). To be effective, the Commencement Notice shall be accompanied by, or Developer shall have previously delivered to the City, all of the Required Information. If Developer does not timely provide the Commencement Notice and all of the Required Information to the City, Developer will be deemed to not be ready to develop the Project and be in Default under this Agreement. If Developer does not timely cure any and all Default(s) within thirty (30) calendar days after the City or the RDA provides Developer written notice of such Default(s), the City or the RDA shall have the ability to exercise all remedies available in this Agreement, in equity and at law (including, without limitation, terminating this Agreement) and the City shall have no obligation to issue the MRO and the RDA shall have no obligation to convey the Property to the Developer until all such Defaults are cured, provided the City or the RDA does not terminate this Agreement prior to such Defaults being cured. If the City or the RDA terminates this Agreement

prior to all Defaults being cured, then neither the City nor the RDA has any responsibility or obligation to perform any actions otherwise required by them under this Agreement.

**3.2 Developer Improvements.** Developer shall undertake, at Developer's own expense, the following improvements, obligations and work on the Property materially consistent with the Final Plans and all applicable laws, regulations and ordinances (collectively, the "**Developer Improvements**"):

(a) Developer shall construct and timely complete the Project. Developer shall commence construction of the Project (commencement is evidenced by commencing the installation of footings for the building(s)) as set forth in the site plan attached as Exhibit D) on or before June 30, 2025 (the "**Commencement Date**"). Upon such commencement, Developer shall proceed to the fully-satisfy and complete all of the improvements, obligations and work set forth in this Section 3.2 with due diligence and without unreasonable delay or interruption (with the exception of Force Majeure Events (as defined below), if any. On or before December 31, 2026 (the "**Completion Date**"), the Project shall be completed and all units shall be immediately available for occupancy.

(b) Developer shall promptly pay for all applicable City impact fees and charges related to the Project. As additional consideration to Developer for this Agreement, and so long as no Default occurs under this Agreement, the City agrees to defer the due date for the payment of impact fees to on or before thirty (30) calendar days after the earlier of Developer receiving: (i) a certificate of occupancy for all residential units in the Project, or (ii) a certificate of substantial completion from Developer's architect for the Project.

(c) Developer shall be responsible for all landscaping on the Property, including, without limitation, trees, shrubs, seeding or sod related to the Project.

(d) Developer shall install, or have installed on the Property, all electric, gas, fiber-optic, telephone and cable services and all improvements for the use and operation of the Project.

(e) Developer shall install, or have installed, all sanitary sewer and water laterals on the Property, as well as connections of such laterals to new or existing sewer and water mains.

(f) Developer shall install, or have installed, all storm water drainage systems and facilities on the Property, including drain tiles, pipes, detention ponds and retention ponds, consistent with all applicable laws, regulations and specifications for such systems and facilities.

(g) Developer shall be responsible for all erosion control measures related to Project and the construction of all improvements on the Property.

(h) Developer shall be responsible for all costs related to the work to be performed by Developer under this Agreement, including, but not limited to, all

engineering, inspections, materials, labor, water, sanitary sewer, impact fees, permit and license fees and any and all other fees related to the Project.

The obligations on Developer under this Agreement shall be deemed covenants running with the land and shall be applicable to Developer's successors and assigns and all other persons or entities acquiring any interest in the Property during the term of the District.

**3.3 Progress and Quality of Work.** Upon commencement of the Developer Improvements, Developer shall proceed to the full completion of all of the Developer Improvements with due diligence and without delay or interruption with the exception of Force Majeure Events and City Delays (as defined below). The completion of the Project shall occur on or before the Completion Date. All work to be performed by or on behalf of Developer related to the Project shall be performed in a good and workmanlike manner, consistent with the prevailing industry standards for such work in the area of the City.

**3.4 Compliance Obligations.** All of the Developer Improvements shall be completed in accordance with all applicable laws, regulations, ordinances and building and zoning codes, and Developer, at Developer's sole cost, shall obtain and maintain all necessary permits and licenses for the Developer Improvements.

**3.5 Indemnification.** Developer hereby expressly agrees to indemnify and hold the City harmless from and against all claims, costs and liability related to any damage to the Property or injury or death to persons caused by Developer's performance of the Developer Improvements or any other work required of Developer under this Agreement, unless the cause is due to the willful misconduct by the City.

**3.6 Compliance with Law.** Developer shall comply with all applicable laws, ordinances, and regulations in effect at the time of final approval and any time thereafter when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, Developer shall be subject to any applicable laws, ordinances and regulations that become effective after approval.

**3.7 Payment of Taxes.** Developer shall timely pay and discharge all taxes, assessments and other governmental charges upon the Property when due.

**3.8 Time is of the Essence.** Time is of the essence with reference to Developer's obligation to commence and complete the Developer Improvements. Developer acknowledges that the timely performance of its respective work under this Agreement is critical to the collection of the tax increment upon which the parties are relying for the performance of their respective obligations under this Agreement.

**3.9 Reconstruction.** Until the District is closed, in the event of any casualty, loss or damage to the improvements on the Property (each a "**Reconstruction Event**"), Developer shall proceed diligently with the repair and replacement of such improvements on the Property affected by such Reconstruction Event and restore such improvements to at least the condition and quality that such improvements were in, and with an equalized value at least equal to the Equalized Value (as defined below), immediately prior to the Reconstruction Event (each an "**Uncured Casualty Loss**"). Except as a result of a subsequent Force Majeure Event after a Reconstruction Event, in

no event shall Developer take longer than one hundred eighty (180) calendar days after the date of such Reconstruction Event to restore the affected improvements. If Developer fails to timely comply with all of the requirements in this Section 3.9, Developer shall be in Default under this Agreement and the City shall be entitled to the remedies set forth in this Agreement and any other remedies available in equity or applicable law.

#### ARTICLE IV– DEVELOPER GUARANTY AND OBLIGATIONS

**4.1 Guaranteed Value.** The parties anticipate that, upon completion, the currently contemplated land and improvements related to the Project will have an equalized value for purposes of real property assessment (“**Equalized Value**”) of not less than Five Million Eight Hundred Thousand Dollars (\$5,800,000.00; the “**Guaranteed Value**”) by December 31, 2026 (the “**Guaranteed Value Date**”). As a condition to entering into this Agreement, the City requires that Developer guaranty a minimum Equalized Value for the land and improvements related to the Project. By executing this Agreement, Developer and Jacob Buswell (the “**Guarantor**”) each hereby jointly and severally guaranties that, on and after the Guaranteed Value Date, the Equalized Value of the land and improvements on the Property shall at all times during the life of the District be at least the Guaranteed Value. If the Equalized Value of the Property is less than the Guaranteed Value any time on or after the Guaranteed Value Date, the Developer shall be in Default under this Agreement.

**4.2 Failure to Construct.** If Developer provides a Commencement Notice as required by Section 3.1 above but does not timely complete construction of the Project as herein provided, then Developer and Guarantor shall pay to the City all sums incurred by the City with regard to the preparation and drafting of this Agreement and all other costs or expenses related to the Project that are not recoverable from Tax Increments (as defined below). All repayments shall be completed within thirty (30) calendar days after Developer’s non-performance or Default under this Agreement.

**4.3 Guaranty Obligations.** If on or any time after the Guaranteed Value Date, whether as a result of a Reconstruction Event or otherwise, the Equalized Value of the Property is less than the Guaranteed Value (each a “**Shortfall Event**”), then Developer and Guarantor shall jointly and severally owe the City an amount equal to the difference between (a) the Tax Increment the City otherwise would have received on the Property if the Property’s Equalized Value equaled the Guaranteed Value, and (b) the Tax Increment received by the City in the year a Shortfall Event occurs (such difference between (a) and (b) being referred to herein as the “**Tax Increment Shortfall**”). If a Tax Increment Shortfall is owed to the City, then unless and until the Equalized Value of the Property increases to at least the Guaranteed Value, for each January 1 following a Shortfall Event, that the Equalized Value of the Property is less than the Guaranteed Value, Developer and the Guarantor, shall pay to the City an amount equal to the Tax Increment Shortfall for such calendar year. If and when the Equalized Value of the Property as of any January 1 is equal to or greater than the Guaranteed Value: (i) the Default related to non-compliance with the Guaranteed Value requirement shall be deemed cured, (ii) no further January 1 assessment valuations shall occur or be required, and (iii) no Tax Increment Shortfall payment obligation shall be incurred for such year or any year thereafter, unless a new Shortfall Event occurs. If a Tax Increment Shortfall continues through the closing of the District, no further Equalized Value assessment calculations shall occur and no further Tax Increment Shortfall

payment obligations of Developer or the Guarantor shall arise after the District is closed. Developer agrees that it shall not, and hereby waives any right to, during the life of the District, challenge the assessed value of the Property, if such assessed value is at or below the Guaranteed Value.

**4.4 Payment of Tax Increment Shortfall.** Any Tax Increment Shortfall payment due to the City shall be deducted from any MRO payment (otherwise due Developer but for the Default) from the City during the year in which the Tax Increment Shortfall payment obligation arises. If the Tax Increment Shortfall payment exceeds the amount of such MRO payment, Developer and Guarantor shall pay to the City an amount equal to the difference between such MRO payment and the Tax Increment Shortfall. If there is no MRO payment due Developer for such year, Developer shall pay to the City the full amount of the Tax Increment Shortfall for such year. Any Tax Increment Shortfall payment due to the City from Developer pursuant to this ARTICLE IV shall be made within ten (10) days of written request for payment by the City.

## **ARTICLE V – ACCESS, INSPECTIONS AND CONTRACTORS**

**5.1 Access and Inspections.** Developer hereby grants to the City, its agents, employees, officials, representatives, contractors and consultants the right to enter upon the Property at all reasonable times (upon at least twenty-four (24) hours' advance written notice to Developer) for the City to inspect the Property and the Project.

**5.2 Inspections for City's Benefit Only.** Each inspection conducted by the City or the City's agents shall be deemed to have been for the City's own benefit and shall in no way be construed to be for the benefit of or on behalf of Developer. Developer shall not (and hereby each waives any right to) rely in any way upon such inspections, appraisals or determinations of the City.

**5.3 Contractors and Consulting Engineers.** At any time, the City shall have the right to retain consulting engineers and architects to perform services for the City (which shall be at the City's expense, unless the City must perform inspections as a result of Developer's failure to meet the Final Plans then such expenses will be at Developer's expense) including, without limitation:

- (a) to make periodic inspections with reasonable advance notice to Developer for the purpose of assuring that construction is in accordance with the Final Plans and the requirements of this Agreement;
- (b) to advise the City of the anticipated cost of, and a time for, the completion of construction work; and
- (c) to review and advise the City of any proposed changes in the construction of the Project.

The City's selection of, and reliance upon, the consulting engineers and architects shall not give rise to any liability on the part of the City for the acts or omissions of the consulting engineers or architects or their employees or agents.



Contractors selected for the Project shall be qualified in the City to perform the work, shall be licensed to do business in the State of Wisconsin, shall have experience in providing the type of work and materials required of Developer Improvements, and shall have a good reputation for diligent performance of their obligations under their respective contracts.

## ARTICLE VI – MUNICIPAL REVENUE OBLIGATION

**6.1 Municipal Revenue Obligation.** Pursuant to the terms of this Agreement, the City agrees to issue to Developer, within ninety (90) calendar days after the City’s receipt of the Commencement Notice, a non-interest-bearing municipal revenue obligation (the “**MRO**”). The amount paid under the MRO shall equal the lesser of: (a) One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00), and (b) the sum of all payments made by the City on the MRO during the life of the District but in no event after the Final Payment Date (as defined below).

Except as otherwise provided herein, payments on the MRO will equal the Available Tax Increment in each year appropriated by the City’s Common Council until and including the earlier of the date this Agreement is terminated, the date the District is terminated, the Final Payment Date and the date the MRO is paid in full. “**Available Tax Increment**” means an amount equal to seventy-five percent (75%) of the Tax Increment actually received by the City and appropriated by the City’s Common Council in each year less the following (collectively, the “**Priority Project Costs**”): (i) all debt service payments incurred or to be incurred by the City in a given year for work performed or to be performed with regard to the Project or the Property; (ii) the amount of the City’s administrative expenses, including, but not limited to, reasonable charges for the time spent by City employees in connection with the negotiation and implementation of this Agreement, (iii) professional service costs, including, but not limited to, those costs incurred by the City for outside architectural, planning, engineering, inspections, financial consulting and legal advice (including, without limitation, attorneys’ costs and fees) and services related to the negotiation and implementation of this Agreement, and (iv) other eligible project costs previously incurred by the City in preparation for this Project or to be incurred by the City under the Project Plan, including, without limitation, site preparation and costs and expenses related to the Property or the Project provided such eligible project costs are not financed by the debt service referenced in (i) above. Any Priority Project Cost not paid due to insufficient Tax Increment shall be carried forward and paid from Tax Increment in the next year, or if necessary, following years until fully paid. “**Tax Increment**” shall have the meaning given under Wis. Stat. § 66.1105(2)(i) but shall be limited to the Tax Increment attributable to the Project and the land and improvements on the Property.

Provided that Developer is not in Default under this Agreement, the City shall, subject to annual appropriation of such payment by the City’s Common Council, pay the Available Tax Increment, if any, to the holder of the MRO in one annual payment, on or before October 31<sup>st</sup> of each year commencing on October 31, 2027, and continuing to (and including) the earlier of the date the MRO is paid in full or October 31, 2051 (each, a “**Payment Date**”). Notwithstanding the previous sentence, in the event that Developer is in Default on a Payment Date, payment by the City may be suspended until all outstanding Defaults are cured.

To the extent that on any Payment Date the City is unable to make all or part of a payment of principal due on the MRO from such Available Tax Increment due to an absence of adequate Available Tax Increment, non-appropriation by the City’s Common Council or otherwise, such

failure shall not constitute a default by the City under the MRO. The amount of any such deficiency shall be deferred without interest. The deferred principal shall be due on the next Payment Date on which the City has the ability to payout Available Tax Increment. The term of the MRO and the City’s obligation to make payments hereunder shall not extend beyond the earlier of October 31, 2051 (the “**Final Payment Date**”) or the date the MRO is paid in full. If the MRO has not been paid in full by the Final Payment Date, then the City shall have no obligation to make further payments on the MRO. Upon the earlier of the date the MRO is paid in full and the Final Payment Date, the MRO shall terminate and the City’s obligation to make any payments under the MRO shall be fully discharged, and the City shall have no obligation and incur no liability to make any payments hereunder or under the MRO, after such date.

The MRO shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability thereon or be deemed to have obligated itself to pay thereon from any funds except the Available Tax Increment which has been appropriated for that purpose, and then only to the extent and in the manner herein specified. The MRO is a special, limited revenue obligation of the City and shall not constitute a general obligation of the City. The City will use good faith efforts to annually appropriate the Available Tax Increment for the MRO, until the earlier of the Final Payment Date, the termination of this Agreement or the MRO, or the payment in full of the MRO as provided herein. If Available Tax Increment is received by the City earlier than the first Payment Date, the applicable portion of such increment shall be retained by the City and applied to the first payment subject to appropriation by the City Common Council. Developer shall not have the right to assign the MRO except as set forth therein. Interests in the MRO may not be split, divided or apportioned.

**6.2 MRO Form.** The MRO shall be substantially in the form attached to this Agreement as Exhibit E (which is incorporated herein by reference) and shall be payable in accordance with the terms and conditions set forth in this Agreement and such MRO. In the event of a conflict between the terms of this Agreement and the terms of the MRO, the terms in this Agreement shall prevail. The principal payments shall be payable solely from the Available Tax Increment appropriated by the City. On or about each Payment Date under the MRO, the City shall provide to Developer an accounting identifying the Available Tax Increment, the amount of the payment being made on such Payment Date, and, if applicable, the remaining principal balance due on the MRO after the application of such payment.

**6.3 Issuance of MRO and Payment Limitation.** Provided that Developer is not in Default under this Agreement beyond the applicable cure period (if any), the City will deliver the MRO to Developer within ninety (90) calendar days after the City’s receipt of the Commencement Notice. Notwithstanding the previous sentence, in the event that Developer is in Default prior to the City’s issuance of the MRO, the City shall not be required to deliver the MRO to Developer until a reasonable time after, but in no event less than thirty (30) calendar days after, all such Defaults are cured, provided each Default is cured within the applicable cure period for such Default. If the City does not timely provide the MRO to Developer, the Developer shall make a written request to the City to deliver the executed MRO within thirty (30) calendar days after the date of such written request by the Developer. The total amount of principal to be paid under the MRO shall in no event exceed the lesser of:

- (a) One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00); and

(b) The sum of all payments made by the City on the MRO during the life of the District but in no event after the Final Payment Date.

The City's obligation to make payments on the MRO is conditioned on the requirement that Developer is not in Default under this Agreement. For the avoidance of any doubt, upon the occurrence of a Default, the City may suspend all payments until the Default is cured and, upon the expiration of all applicable cure periods for such Default, the City may exercise any and all available remedies.

**6.4 Payment of Priority Project Costs and Repayment Schedule.** From the Tax Increment received by the City each year, the City shall first pay the outstanding Priority Project Costs. The estimated repayment schedule of the MRO shall be set forth in Schedule 1 to the MRO. The City reserves the right to modify the MRO repayment schedule based upon market conditions, applicable Priority Project Costs and the actual and projected Available Tax Increment generated from the Project. The Available Tax Increment held by the City each year shall be applied to the payment of principal due on the MRO in accordance with the terms of the MRO until a maximum payout has been made (which equals the Available Tax Increment for a given year or when, in the aggregate, all payments made on the MRO equal the face amount of the MRO), subject to appropriation by the City Common Council.

## **ARTICLE VII- ZONING, LAND USE AND RESTRICTIVE COVENANT**

**7.1 Zoning Compliance.** The Project shall be in compliance with the applicable zoning ordinance and land use guidelines applicable to the Property and shall be subject to the payment of any applicable impact fees in the amounts applicable at the time each required permit is issued, unless otherwise provided herein. Nothing in this Agreement shall obligate the City to grant variances, re-zoning, exceptions or conditional use permits related to the Project.

**7.2 Tax Status/Restrictive Covenant.** Without the prior written consent of the City (which may be withheld for any reason), Developer shall not use or permit the use of any of the Property in any manner which would render any portion of the Property exempt from property taxation during the life of the District. Further, Developer will not challenge or contest any assessment on the Property by the City if such assessment is at or below the Guaranteed Value, including, but not limited to, filing any objection under Wis. Stat. Section 70.47, Wis. Stat. Section 74.37, or any Department of Revenue related assessment proceeding. Prior to the conveyance of all or any portion of the Property, Developer agrees to record on the Property with the Sheboygan County Register of Deeds a deed restriction or restrictive covenant evidencing the restrictions on the Property set forth in this Section 7.2. The foregoing deed restrictions or restrictive covenants shall permit, but shall not obligate, the City to enforce such deed restrictions or restrictive covenants and shall be in form and in substance acceptable to the City. This provision and the deed restrictions or restrictive covenants shall continue to be applicable until the termination of the District. However, Developer shall not have a continuing obligation for compliance with this provision as to any portion of the Property in which Developer no longer maintains any interest (whether as owner, tenant, occupant or otherwise) provided that Developer has timely recorded the deed restriction or restrictive covenant as approved by the City.

**7.3 Land Dedications, Transfers and Easements for the Project.** Developer agrees to make such land dedications and to grant such temporary or permanent easements as are required by the City for the construction and maintenance of the Project. All documentation for such dedications or easements shall be in form and substance acceptable to the City and Developer. Developer agrees to cooperate with the City if the City desires to prepare certified survey maps or other documentation as deemed appropriate by the City to facilitate the implementation and documentation of such dedications and easements and to adjust the lot lines of the Property in a manner reasonably acceptable to the City and Developer.

## ARTICLE VIII – ASSIGNMENTS AND CHANGES OF CONTROL

**8.1 Assignments and Change of Control.** Except as otherwise permitted in this Section 8.1 and subject to Section 14.1 below, this Agreement and the MRO shall not be assignable by Developer without the prior written consent of the City and the RDA (which may be withheld by the City or the RDA for any reason). The ownership or control of Developer shall not be transferred to any person or entity without the prior written consent of the City and the RDA (which may be withheld by the City or the RDA for any reason). The prohibition on the transfer of ownership or control shall not be applicable in the event of the death of a member and the interest being transferred is the deceased member's interest. The term "ownership or control" shall mean twenty percent (20%) or more of the Ownership Interests in Developer. For the purposes of this Agreement, "**Ownership Interests**" shall mean the members' rights to share in distributions and other economic benefits of Developer, the members' rights to participate in decision making, or both. The current members of Developer are identified on Exhibit F attached hereto and incorporated herein by reference.

If the City and the RDA consents to an assignment of this Agreement by the then current Developer (the "**Assigning Developer**") to an assignee (an "**Approved Assignee**"), in order to effectuate the contemplated assignment of this Agreement, such Approved Assignee shall execute any and all documents required by the City and the RDA (in form and substance acceptable to the City and the RDA and in the City's and the RDA's discretion) to confirm that the Approved Assignee is bound by the terms of this Agreement and agrees to perform all of Developer's obligations set forth in this Agreement (the "**Approved Assignee Documents**"). Upon the City and the RDA confirming receipt of such Approved Assignee Documents, such Approved Assignee shall become Developer (replacing such Assigning Developer) for purposes of this Agreement and responsible for all Developer obligations under this Agreement as of the date of such Approved Assignee Documents (the "**Assignment Date**"). The Assigning Developer shall remain liable for all obligations, costs, expenses, liabilities or otherwise of the Developer under this Agreement that arise out of, are due or owing or result from any act or omission of the Assigning Developer prior to the Assignment Date, and the Assigning Developer shall be released from all further liabilities and obligations under this Agreement arising on or after the Assignment Date. The Assigning Developer shall not assign this Agreement to any other party or person other than an Approved Assignee. Any assignment to a party or person other than an Approved Assignee shall be null and void and of no force and effect under the terms of this Agreement and the Assigning Developer shall remain liable as the Developer under this Agreement.

Notwithstanding any provision herein to the contrary, this Agreement and the MRO may be collaterally assigned to a mortgage lender financing the development and completion of the

Project (the “**Lender**”). If Lender intends to foreclose on its collateral and intends to succeed in ownership to any or all of the Property, such Lender shall execute and deliver any and all documents required by the City and the RDA (in form and substance acceptable to the City and the RDA and in the City’s and the RDA’s discretion) to confirm that such Lender is bound by the terms of this Agreement and agrees to perform all of Developer’s obligations set forth in this Agreement.

**ARTICLE IX – DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS**

**9.1 Developer Representations, Warranties and Covenants.** Developer represents, warrants and covenants that:

(a) Developer is a limited liability company duly formed and validly existing in the State of Wisconsin, has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business, and is in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition;

(b) Developer has full authority to execute and perform this Agreement and has obtained all necessary authorizations (whether by official board resolution or action, unanimous written consent in lieu of a meeting or otherwise) to enter into, execute, perform and deliver this Agreement;

(c) the execution, delivery, and performance of Developer’s respective obligations pursuant to this Agreement will not violate or conflict with (i) Developer’s articles of organization, operating agreement or any indenture, instrument or agreement by which it is bound, (ii) any other agreement to which Developer is a party, or (iii) any law applicable to Developer or the Project;

(d) this Agreement constitutes (and any instrument or agreement that Developer is required to give under this Agreement when delivered will constitute) legal, valid, and binding obligations of Developer enforceable against Developer in accordance with their respective terms;

(e) Developer will use commercially reasonable efforts to complete the development and construction of Developer Improvements and the Project in a good and workmanlike manner and in accordance with all applicable statutes, ordinances and regulations, any restrictions of record and the Final Plans provided to the City regarding the Project;

(f) Developer will not make or consent to any material modifications to the Final Plans without the prior written consent of the City;

(g) Developer will discharge all claims for labor performed and materials, equipment, and services furnished in connection with the construction of Developer Improvements and the Project; nothing contained in this Agreement shall require Developer to pay any claims for labor, services or materials which it, in good faith,

disputes and is currently and diligently contesting, provided, however, that Developer shall, within thirty (30) calendar days after the filing (or the assertion) of any claim of lien that is disputed or contested by Developer, obtain and record (if required by the City) a surety bond sufficient to release said claim or lien or provide the City with other such assurances that the City may require;

(h) Developer will take all commercially reasonable steps to forestall claims of lien against the Property (any part thereof or right or interest appurtenant thereto) or any personal property and fixtures located or used in connection with the Property;

(i) Developer will maintain, at all times during construction, a policy of builder's risk completed value and contractor's multiple perils and public liability, extended coverage, vandalism and malicious mischief hazard insurance covering the Property in at least the amount of the full replacement, completed value of the Project improvements on the Property;

(j) Developer will timely pay and discharge all taxes, assessments and other governmental charges upon the Property when due, as well as claims for labor and materials which, if unpaid, may become a lien or charge upon the Property;

(k) Developer will promptly furnish to the City, during the term of this Agreement, written notice of any litigation affecting Developer and any claims or disputes which involve a material risk of litigation against Developer that could impact Developer being able to timely commence, timely continue or timely complete the Project;

(l) Developer shall deliver to the City revised statements of estimated costs of the construction for Developer Improvements showing material changes in or variations from the original cost statement provided to the City within a reasonable time after such changes are known to Developer;

(m) Developer shall provide to the City, promptly upon the City's request, any information or evidence deemed reasonably necessary by the City related to performance of Developer under this Agreement to enable the City to timely and accurately complete any accounting or reporting requirements applicable to the City related to the transactions under this Agreement;

(n) to Developer's actual knowledge, no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Developer is pending or threatened, and no other event has occurred which may materially adversely affect Developer's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by the City in writing;

(o) subject to the terms of this Agreement, it shall not at any time challenge or contest any assessment on the Property by the City including, but not limited to, filing any objection under Wis. Stat. Section 70.47, Wis. Stat. Section 74.37, or any Department of Revenue related assessment proceeding, if such assessment is at or below the Guaranteed Value;

(p) at all times during the life of the District, the rents charged on each housing unit comprising the Project will not be more than the Affordable Rental Rates then in effect as of the date of the lease (and as of the date of each extension thereto) for the applicable housing unit type (e.g., one-bedroom unit, two-bedroom unit or three-bedroom unit); and

(q) on or before February 15 of each calendar year during the life of the District, Developer shall provide the City with certified rent rolls of all leases on the Property as of December 31 of the immediately preceding calendar year.

For purposes of this Agreement, “**Affordable Rental Rates**” means affordable rental rates by applicable housing unit type (e.g., one-bedroom unit, two-bedroom unit or three-bedroom unit) as published on the City of Sheboygan Planning and Development Department’s website (<https://www.sheboyganwi.gov/departments/planning-development/>).

**9.2 Execution Representations and Warranties.** The person(s) signing this Agreement on behalf of Developer represent(s) and warrant(s) that he/she/they have full power and authority to execute this Agreement on behalf of Developer and to bind Developer to the terms and conditions of this Agreement.

**9.3 Cooperation.** Developer warrants that it shall exercise all commercially reasonable diligence and expend all commercially reasonable efforts to undertake its obligations under this Agreement.

## ARTICLE X – CITY REPRESENTATIONS

**10.1 City Representations.** The City represents that:

(a) The City is a body politic of the State of Wisconsin with full power and authority to enter into this Agreement and that all statutory procedures and requirements have been followed, fulfilled and satisfied in connection with the approval of this Agreement and the authorization of all City obligations required by this Agreement; and

(b) The individuals signing this Agreement on behalf of the City have full authority to do so and upon such execution by such individuals, this Agreement will constitute (and any instrument or agreement that the City is required to give under this Agreement when executed and delivered will constitute) legal, valid and binding obligations of the City enforceable against it in accordance with their respective terms.

## ARTICLE XI – RDA REPRESENTATIONS

**11.1 RDA Representations.** The RDA represents that:

(a) The RDA is a corporation created under the laws of the State of Wisconsin with full power and authority to enter into this Agreement and that all statutory procedures and requirements have been followed, fulfilled and satisfied in connection with the approval of this Agreement and the authorization of all RDA obligations

required by this Agreement (including, without limitation, the conveyance of the City Property and the Property as proposed herein); and

(b) The individuals signing this Agreement on behalf of the RDA have full authority to do so and upon such execution by such individuals, this Agreement will constitute (and any instrument or agreement that the RDA is required to give under this Agreement when executed and delivered will constitute) legal, valid and binding obligations of the RDA enforceable against it in accordance with their respective terms.

## ARTICLE XII – DEFAULTS

**12.1 Default.** Any one or more of the following shall constitute a “**Default**” under this Agreement.

(a) Developer fails to timely or fully perform, or comply with, any one or more of its obligations or any of the terms or conditions of this Agreement or any document related hereto or referenced herein that is applicable to Developer (including, without limitation, a/an (i) untimely delivery of the Required Information, (ii) untimely completion of the Developer Improvements, (iii) untimely delivery of the rent rolls, or (v) default under any other agreement related to the Project) and Developer does not cure such failure within thirty (30) calendar days after receiving a written notice of such failure from the City or the RDA.

(b) Any representation or warranty made by Developer in this Agreement (including, without limitation, charging rent on any housing unit in excess of the Affordable Rental Rates for such housing unit type), any document related hereto or referenced herein or any financial statement, budget or Project cost delivered by Developer pursuant to this Agreement shall prove to have been false or misleading in any material respect as of the time when made or given.

(c) Developer (or any permitted successor or assign of Developer) shall:

(i) become insolvent or generally not pay, or be unable to pay, or admit in writing its inability to pay, its debts as they mature,

(ii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets,

(iii) become the subject of an “order for relief” within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan, or other arrangement with creditors,

(iv) have a petition or application filed against it in bankruptcy or any similar proceeding, or have such a proceeding commenced against it, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) calendar days or more, or such party, shall file an answer to such a petition or application, admitting the material allegations thereof,



(v) apply to a court for the appointment of a receiver or custodian for any of its assets or properties, or have a receiver or custodian appointed for any of its assets or properties, with or without consent, and such receiver shall not be discharged within sixty (60) calendar days after his appointment, or

(vi) adopt a plan of complete liquidation of its assets.

(d) The City fails to timely or fully perform, or comply with, any one or more of its obligations or any of the terms or conditions of this Agreement or any document related hereto or referenced herein that is applicable to the City; or any representation made by the City in this Agreement shall prove to have been false or misleading in any material respect as of the time when made or given.

(e) The RDA fails to timely or fully perform, or comply with, any one or more of its obligations or any of the terms or conditions of this Agreement or any document related hereto or referenced herein that is applicable to the RDA; or any representation made by the RDA in this Agreement shall prove to have been false or misleading in any material respect as of the time when made or given.

### ARTICLE XIII – REMEDIES

**13.1 Remedies.** In the event of a Default, a non-defaulting party shall provide written notice to the defaulting party of the Default (the “**Default Notice**”); however, Developer shall not be entitled to a Default Notice or a right to cure in the event the Default occurs under Subsection 12.1(c) above.

(a) The Default Notice shall provide the defaulting party at least thirty (30) calendar days to cure a Default; however, the 30-day period shall be extended to the period of time reasonably necessary to cure the Default (in the event that such 30-day period is not sufficient time to reasonably cure such Default), if the defaulting party promptly commences activities to cure the Default in good faith and diligently pursues such activities to fully cure the Default, but, in no event, shall the period of time to cure the Default exceed ninety (90) calendar days from the date of the Default Notice, unless otherwise agreed to by the parties in writing.

(b) In the event a Default is not fully and timely cured by Developer, the City and the RDA shall have all of the rights and remedies available in law or in equity, including, but not limited to, all or any of the following rights and remedies, and the exercise or implementation of any one or more of these rights and remedies shall not bar the exercise or implementation of any other rights or remedies of the City or the RDA provided for under this Agreement:

(i) The City may refuse to issue any permits to Developer for the construction of Developer Improvements or any other improvements on the Property;

(ii) The City or the RDA may recover from Developer all damages, costs and expenses, including, but not limited to, attorneys’ fees incurred by the

City or the RDA related to or arising out of each Default and the drafting and negotiation of this Agreement;

(iii) The City or the RDA may terminate or postpone its obligation to perform any one or more of its obligations under this Agreement, including, but not limited to, any payment obligations under the MRO or the conveyance of the Property, as applicable; or

(iv) The City or the RDA may terminate this Agreement.

(c) In the event the Default is not fully and timely cured by the City or the RDA, subject to Section 18.11 below, Developer shall have all of the rights and remedies available in law or in equity, which may include, without limitation, the recovery of all costs and expenses (including reasonable attorneys' fees), however, the City or the RDA, as applicable, shall not be liable for any punitive or consequential damages, the MRO shall only be paid out of Available Tax Increment and Developer may not perform any acts required to be performed by the City or the RDA under applicable law.

#### ARTICLE XIV– SUCCESSORS AND ASSIGNS

**14.1 Successors and Assigns; Assignment.** This Agreement, and all agreements, instruments and Exhibits entered into herewith, shall run with the Property and be binding upon and inure to the benefit of and be enforceable by the permitted successors and assigns of the parties hereto; however, this provision shall not constitute an authorization of Developer to assign or transfer its rights and obligations under this Agreement. Except as expressly provided for in Section 8.1 above, this Agreement shall not be assigned by Developer without the prior written consent of the City and the RDA, which consent may be withheld for any reason.

#### ARTICLE XV – TERMINATION

**15.1 Termination.** This Agreement shall not terminate until the earlier of:

- (a) termination by the City of the District pursuant to §66.1105(7) of the TI Act,
- (b) the date the MRO is paid in full, or
- (c) termination of this Agreement by the City, the RDA or the Developer pursuant to the terms of this Agreement;

however, the parties hereto each agrees that the termination of this Agreement shall not cause a termination of the rights and remedies of the parties, respectively, under this Agreement as such rights and remedies expressly survive such termination.

#### ARTICLE XVI – NOTICES

**16.1 Notices.** Any notice given under this Agreement shall be deemed effective when:  
(a) personally delivered in writing; (b) a commercially recognized overnight delivery service

provides confirmation of delivery; or (c) the third calendar day after notice is deposited with the United States Postal Service (postage prepaid, certified with return receipt requested) and addressed as follows:

If to the City:

City of Sheboygan  
Attention: City Administrator  
828 Center Avenue, Suite 300  
Sheboygan, WI 53081

City of Sheboygan  
Attention: City Attorney  
828 Center Avenue, Suite 210  
Sheboygan, WI 53081

with a copy to:

Brion T. Winters, Esq.  
von Briesen & Roper, s.c.  
411 E. Wisconsin Ave., Suite 1000  
Milwaukee, WI 53202

If to RDA:

Redevelopment Authority of the  
City of Sheboygan  
Attn: Executive Director  
828 Center Avenue, Suite 208  
Sheboygan, WI 53081

If to Developer:

with a copy to:

## ARTICLE XVII – APPLICABLE LAW

**17.1 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wisconsin. Any litigation related to this Agreement shall be brought in the state courts of the State of Wisconsin and the parties hereto agree to submit to the jurisdiction and venue of the Circuit Court for Sheboygan County, Wisconsin.

## ARTICLE XVIII – MISCELLENEOUS

**18.1 Entire Agreement.** This Agreement and all of the documents referenced herein or related hereto (and as any of the aforementioned documents have been or may be amended, extended or modified) embody the entire agreement between the parties relating to the transactions contemplated under this Agreement and all agreements, representations or understanding, whether oral or written, that are prior or contemporaneous to this Agreement are superseded by this Agreement.

**18.2 Amendment.** No amendment, modification or waiver of any provision of this Agreement, nor consent to any departure by a party from any provision of this Agreement shall in

any event be effective unless it is in writing and signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purposes for which it is given by the respective party.

**18.3 No Vested Rights Granted.** Except as provided by law, or as expressly provided in this Agreement, no vested rights in connection with the Project shall inure to Developer nor does the City warrant by this Agreement that Developer is entitled to any required approvals, permits or the like with regard to the Project.

**18.4 Invalid Provisions.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**18.5 Headings.** The article and section headings of this Agreement are inserted for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**18.6 No Waiver; Remedies.** No failure on the part of the City to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of the right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

**18.7 No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the named parties hereto and their permitted assignees, and nothing contained in this Agreement shall confer upon anyone other than such parties any right to insist upon or enforce the performance or observance of any of the obligations contained in this Agreement.

**18.8 No Joint Venture.** The City is not a partner, agent or joint venture of or with Developer.

**18.9 Recording of a Memorandum of this Agreement Permitted.** A memorandum of this Agreement may be recorded by the City on the Property in the office of the Register of Deeds for Sheboygan County, Wisconsin, and, upon request of the City, Developer shall execute and deliver to the City a memorandum of this Agreement in form reasonably acceptable to the parties for recording purposes.

**18.10 Force Majeure.** If any party is delayed or prevented from timely performing any act required under this Agreement by reason of extraordinary and uncommon matters beyond the reasonable control of the party obligated to perform, including (but not limited to) fire, earthquake, war, terrorist act, pandemic, epidemic, flood, riot, quarantine restrictions, strike, lockout, supply shortages, freight embargo, power outages, extreme weather or other similar causes or acts of God (each, a “**Force Majeure Event**”), such act shall be excused for the period of such delay, and the time for the performance of any such act shall be extended for a period equivalent to such delay; provided, however, that the time for performance shall not be extended by more than ninety (90) calendar days unless agreed to in writing by the parties hereto. Notwithstanding any provision herein to the contrary, the City, in its sole and absolute discretion, may allow up to a one hundred eighty (180) calendar day extension on the deadlines set forth in Sections 1.1, 3.1 and 3.2 above

should reasonable delays occur as a result of environmental remediation issues, supply chain issues or material cost increases. Any such approved delay by the City will be evidenced in writing and provided to Developer, and without any written evidence approving such delay, the other provisions of this Agreement shall control and the immediately preceding sentence shall not apply. For the avoidance of any doubt, if a Force Majeure Event causes a delay in the performance of any obligation or satisfaction of any condition of this Agreement, the party delayed by such a Force Majeure Event shall not be in Default under this Agreement for failure to timely perform such affected obligation or condition within the timeframe originally provided (but must timely complete such obligation or condition within the extended timeframe provided in this Section 18.10), and this Section 18.10 shall apply to each of the obligations of each of the parties to this Agreement.

**18.11 Immunity.** Nothing contained in this Agreement constitutes a waiver of any immunity available to the City under applicable law.

**18.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, it being understood that all parties need not sign the same counterpart. This Agreement may also be executed by remote electronic means, via DocuSign, Eversign, or similar platform. The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“.pdf”), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of an original Agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes. Upon request by a party, the parties hereto shall provide a wet-ink, original signed version of this Agreement to such party for its records.

**18.13 Recitals.** The RECITALS set forth above are true, accurate and incorporated herein by reference.

**18.14 Authority.** The parties represent that the execution of this Agreement has been properly authorized and that the persons signing this Agreement have been properly authorized to sign this Agreement on behalf of their respective party.

*[The remainder of this page is intentionally left blank with signature pages to follow.]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**CITY: CITY OF SHEBOYGAN**

By: \_\_\_\_\_  
Name: Ryan Sorenson, City Mayor

Attest: \_\_\_\_\_  
Name: Meredith DeBruin, City Clerk

Approved:

By: \_\_\_\_\_  
Name: Evan Grossen, Deputy Finance Director/Comptroller

Approved as to Form:

By: \_\_\_\_\_  
Name: Charles Adams, City Attorney

This document is authorized by and in accordance with Resolution No. \_\_\_\_\_.

STATE OF WISCONSIN    )  
  ) SS  
SHEBOYGAN COUNTY    )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, the above-named Ryan Sorenson, Meredith DeBruin, Evan Grossen and Charles Adams, the City Mayor, the City Clerk, the Deputy Finance Director/Comptroller and the City Attorney of the City of Sheboygan, respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, Wisconsin  
My commission \_\_\_\_\_







ACKNOWLEDGED AND AGREED TO BY THE UNDERSIGNED GUARANTOR FOR PURPOSES OF THE GUARANTY PROVIDED IN ARTICLE IV OF THIS AGREEMENT AND I AGREE THAT SUCH GUARANTY IS DONE IN THE INTEREST OF MY MARRIAGE AND FAMILY.

**GUARANTORS:**

---

Jacob Buswell

**MARITAL PURPOSE STATEMENT AND SPOUSAL CONSENT:**

My spouse, Jacob Buswell, has agreed to personally guarantee obligations under this Agreement to the City. I consent to this act by my spouse and acknowledge that such act was done in the interests of our marriage and family, but by signing below I am not becoming personally liable as a guarantor.

---

Mary Elizabeth Buswell, Spouse of Jacob Buswell

**EXHIBIT A**  
**PROPERTY**

[SEE ATTACHED]

**EXHIBIT B**  
**SPECIAL WARRANTY DEED**

[SEE ATTACHED]

DOCUMENT NO.	<b>SPECIAL WARRANTY DEED</b>
--------------	------------------------------

This Special Warranty Deed is made between the Redevelopment Authority of the City of Sheboygan, Wisconsin (“Grantor”) and [\_\_\_\_\_] (“Grantee”).

WITNESSETH:

Grantor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, conveys to Grantee and its successors and assigns forever the following described real estate:

All of Grantor’s right, title and interest in and to the real property described in Schedule A attached hereto and incorporated herein by reference, together with all hereditaments and appurtenances thereunto belonging or in any way appertaining.

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

Brion T. Winters, Esq.  
 von Briesen & Roper, s.c.  
 411 E. Wisconsin Ave., Suite #1000  
 Milwaukee, WI 53202

**This is not homestead property.**

\_\_\_\_\_  
**Parcel Identification Number**

**EXEMPT FROM REAL ESTATE TRANSFER TAX  
 PER WIS. STATS. § 77.25 (2).**

Grantor warrants that title is good, indefeasible in fee simple and free and clear of encumbrances, arising by, through or under Grantor, except municipal and zoning ordinances (and agreements entered into under them), recorded easements, recorded building and use restrictions, covenants and the restrictions set forth in a “Tax Incremental District Development Agreement” between Grantor, Grantee and the City of Sheboygan, Wisconsin dated as of [\_\_\_\_\_], 2024, taxes and assessments levied in 202[\_\_\_] which are not yet due and payable and subsequent years and those encumbrances set forth on Schedule B, attached hereto and incorporated herein by this reference.

As additional consideration for the conveyance evidenced by this Special Warranty Deed, Grantor and Grantee agree that, prior to the termination of the City of Sheboygan’s Tax Incremental District No. 24, all current and future owners or users of (including any other party with an interest – whether ownership, leasehold or otherwise – in) all or any portion of the real property conveyed by this Special Warranty Deed shall not be used in such a way as to exempt such real property from property taxation. The foregoing covenant shall run with the land until the termination of the City of Sheboygan’s Tax Incremental District No. 24.

Dated as of [\_\_\_\_\_], 202[\_\_\_].

*[The remainder of this page is intentionally left blank with a signature page to follow.]*

**THE REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN, WISCONSIN**

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title: City Clerk

STATE OF WISCONSIN    )  
  ) SS  
COUNTY OF SHEBOYGAN)

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 202[\_\_\_], [\_\_\_\_\_] and [\_\_\_\_\_] as [\_\_\_\_\_] and [\_\_\_\_\_] respectively, of the Redevelopment Authority of the City of Sheboygan, Wisconsin, and to me known to be the person who executed the foregoing instrument and acknowledged the same in such capacity.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: \_\_\_\_\_

This document was drafted by:  
Brion T. Winters, Esq.  
von Briesen & Roper, s.c.  
411 E. Wisconsin Avenue, Suite 1000  
Milwaukee, WI 53202

**Schedule A**

**Legal Description of Real Property**

[LEGAL DESCRIPTION]

EXHIBIT B

**Schedule B**

**Permitted Encumbrances**

The following items are permitted encumbrances in addition to the items identified on the Special Warranty Deed. The number references are for tracking and convenience purposes only and identify the exceptions noted on Schedule B Section Two in the Title Insurance Commitment issued by [\_\_\_\_\_] Title Insurance Company as Commitment Number [\_\_\_\_\_].

**EXHIBIT C**  
**PERMITTED ENCUMBRANCES**

[SEE ATTACHED]



**EXHIBIT D**

**SITE PLAN**

**[SEE ATTACHED]**

**EXHIBIT E**

**MRO**

UNITED STATES OF AMERICA  
STATE OF WISCONSIN  
COUNTY OF SHEBOYGAN  
CITY OF SHEBOYGAN

TAXABLE TAX INCREMENT PROJECT MUNICIPAL REVENUE OBLIGATION (“**MRO**”)

<u>Number</u>	<u>Date of Original Issuance</u>	<u>Amount</u>
_____	_____	Up to \$1,160,000.00

FOR VALUE RECEIVED, the City of Sheboygan, Sheboygan County, Wisconsin (the “**City**”), promises to pay to [\_\_\_\_\_] (the “**Developer**”), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the Revenues described below, without interest.

This MRO shall be payable in installments of principal due on October 31 (the “**Payment Dates**”) in each of the years and in the amounts set forth on the debt service schedule attached hereto as Schedule 1.

This MRO has been issued to finance projects within the City’s Tax Incremental District No. 24, pursuant to Article XI, Section 3 of the Wisconsin Constitution and Section 66.0621, Wisconsin Statutes and acts supplementary thereto, and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the “Special Redemption Fund” provided for under the resolution adopted on \_\_\_\_\_, 20\_\_\_\_, by the Common Council of the City (the “**Resolution**”). This MRO is issued pursuant to the Resolution and pursuant to the terms and conditions of the Tax Incremental District Development Agreement dated as of November [\_\_\_\_], 2024 by and between the City, Developer, and the Redevelopment Authority of the City of Sheboygan, Wisconsin (the “**Development Agreement**”). All capitalized but undefined terms herein shall take on the meaning given to such terms in the Development Agreement.

This MRO does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation or provision. This MRO shall be payable solely from Available Tax Increment generated by the Property and appropriated by the City’s Common Council to the payment of this MRO (the “**Revenues**”). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this MRO is payable and the general covenants and provisions pursuant to which this MRO has been issued. The Resolution and Development Agreement are incorporated herein by this reference.

If on any Payment Date there shall be insufficient Revenues appropriated to pay the principal due on this MRO, the amount due but not paid shall be deferred. The deferred principal shall be payable on the next Payment Date until *the earlier of*: (a) the date this MRO is paid in full, and (b) the Final Payment Date (as defined below). The City shall have no obligation to pay any amount of this MRO which remains unpaid after the Final Payment Date. The owners of this MRO shall have no right to receive payment of any deferred amounts, unless there are available Revenues which are appropriated by the City's Common Council to payment of this MRO. The "**Final Payment Date**" is October 31, 20\_\_.

At the option of the City, this MRO is subject to prepayment in whole or in part at any time.

The City makes no representation or covenant (express or implied) that the Available Tax Increment or other Revenues will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder are subject to appropriation, by the City's Common Council, of Tax Increments or other amounts to make payments due on this MRO. In addition, as provided in Section 6.3 of the Development Agreement, the total amount of principal to be paid shall in no event exceed *the lesser of*:

- (a) One Million One Hundred Sixty Thousand Dollars (\$1,160,000.00) and
- (b) The sum of all payments made by the City on this MRO during the life of the District but in no event after the Final Payment Date.

When such amount of Revenues has been appropriated and applied to payment of this MRO, the MRO shall be deemed to be paid in full and discharged, and the City shall have no further obligation with respect hereto. Further, as provided in Sections 6.1, 6.3 and 13.1 of the Development Agreement or otherwise, the City's obligations to make payments on this MRO may be suspended or terminated in the event Developer is in Default under any of the terms and conditions of the Development Agreement, provided payments may be resumed when any such Default is timely cured and any payments missed due to an uncured Default also shall be paid from Available Tax Increment upon timely cure of such Default.

**THIS MRO IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF THE CITY AND IS PAYABLE BY THE CITY ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS MRO IS NOT 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 THE PRINCIPAL OR INTEREST OF THIS MRO. FURTHER, NO PROPERTY OR OTHER ASSET OF THE CITY, EXCEPT THE ABOVE-REFERENCED REVENUES, IS OR SHALL BE A SOURCE OF PAYMENT OF THE CITY'S OBLIGATIONS HEREUNDER.**

This MRO is issued by the City pursuant to, and in full conformity with, the Constitution and laws of the State of Wisconsin.

Except as otherwise expressly provided for in the Development Agreement, this MRO may be transferred or assigned, in whole or in part, only upon prior written consent of the City which may be withheld, conditioned or delayed for any reason. Interests in this MRO may not be split, divided or apportioned, except as set forth in the Development Agreement. In order to transfer or assign the MRO, if permitted by the City, the transferee or assignee shall surrender the same to the City either in exchange for a new, fully-registered municipal revenue obligation or for transfer of this MRO on the registration records for the MRO maintained by the City. Each permitted transferee or assignee shall take this MRO subject to the foregoing conditions and subject to all provisions stated or referenced herein.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this MRO have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Common Council of the City of Sheboygan has caused this MRO to be signed on behalf of the City by its duly qualified and acting City Administrator and City Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

**CITY OF SHEBOYGAN**

By: EXHIBIT  
Name: \_\_\_\_\_, City Mayor

(SEAL)

Attest: EXHIBIT  
Name: \_\_\_\_\_, City Clerk

Schedule 1

Payment Schedule

Subject to the City’s actual receipt and appropriation of Available Tax Increment and the terms and conditions of the Development Agreement (including, without limitation, the City’s right to modify this payment schedule based upon market conditions and the actual and projected Available Tax Increment generated from the Project), the City shall make the following payments on the MRO to Developer:

<u>Payment Date</u>	<u>Payment Amount</u>
October 31, 2027	\$ _____
October 31, 2028	\$ _____
October 31, 2029	\$ _____
October 31, 2030	\$ _____
October 31, 2031	\$ _____
October 31, 2032	\$ _____
October 31, 2033	\$ _____
October 31, 2034	\$ _____
October 31, 2035	\$ _____
October 31, 2036	\$ _____
October 31, 2037	\$ _____
October 31, 2038	\$ _____
October 31, 2039	\$ _____
October 31, 2040	\$ _____
October 31, 2041	\$ _____
October 31, 2042	\$ _____
October 31, 2043	\$ _____
October 31, 2044	\$ _____
October 31, 2045	\$ _____
October 31, 2046	\$ _____
October 31, 2047	\$ _____
October 31, 2048	\$ _____
October 31, 2049	\$ _____
October 31, 2050	\$ _____
October 31, 2051	\$ _____

Total	=====	Up to \$1,160,000.00
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**REGISTRATION PROVISIONS**

This MRO shall be registered in registration records kept by the Clerk of the City of Sheboygan, Sheboygan County, Wisconsin, such registration to be noted in the registration blank below and upon said registration records, and this MRO may thereafter be transferred only upon presentation of this MRO together with a written instrument of transfer in form and substance acceptable to the City and duly executed by the registered owner or his/her/its attorney, such transfer to be made on such records and endorsed hereon.

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of [City Clerk]</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**EXHIBIT F**

**Members of Developer**

**MEMBERS OF DEVELOPER (WITH OWNERSHIP PERCENTAGE):**

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_