

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF TWO RIVERS, AND
Athens Development LLC**

SECTION 1: PREAMBLE

This Agreement (“Agreement”) is made as of the ____ day of December 2023 between the City of Two Rivers, Wisconsin, a Wisconsin municipal corporation (hereinafter “City”) and Athens Development, LLC, a Wisconsin limited liability company (hereinafter “Developer”). The parties are collectively referenced hereinafter as “The Parties.”

City wishes to assist in the successful development of the Woodland Industrial Park, located on Woodland Drive at STH 310, to create new tax base and job opportunities in the community. To that end, City created, Tax Incremental District No. 14 (“TID 14”) has adopted Amendment No. 1 to TID 14

Amendment No. 1 to TID 14 amends the Project Plan for TID 14 which identifies an expenditure for a cash grant of \$450,000 to Developer to assist in financing the “Project,” as described herein.

Developer has entered into an agreement with City to purchase 9.6 acres of real property located in said industrial park, which is described in Exhibit A attached hereto (the “Development Site” as defined herein). The Development Site is located within the boundaries of TID 14.

Developer proposes to construct improvements on the Development Site—the “Project” as defined herein—to include an approximately 28,000 square foot building, related site improvements, and equipment that is consistent with the Project Site Plan and Elevations attached hereto as Exhibit B. Developer estimates the total cost of the Development Site and the proposed site improvements and equipment to be \$2,050,000, as further detailed in the Project Budget provided by Developer, attached hereto as Exhibit C.

Developer has represented and hereby affirms, that the Project is contingent upon certain City assistance, in the form of the “TID 14 Cash Grant” as defined herein.

By Wisconsin State Statute, Section 66.1105(2)(f)(2)d, the terms for any TID-funded cash grant to a developer must be addressed in a written economic development grant agreement. Such agreement is subject to approval by the Two Rivers City Council.

This Agreement constitutes such an economic development grant agreement subject to approval by the Two Rivers City Council. City confirms no other consent or approval of this Agreement is needed to make it fully enforceable.

This Agreement is null and void if Developer’s purchase of the Development Site is not closed by December 31, 2023. Developer may request an extension on the closing timeline.

SECTION 2: DEFINITIONS

- (1) **"Available Tax Increment"** means, for any given Revenue Year, an amount equal to the Tax Increment attributable to the Development Site.
- (2) **"Base Taxes"** means the real property taxes payable for Tax Year 2025 based on the assessed value of the Development Site as of January 1, 2024.
- (3) **"City Assistance"** means the TIF Grant, described herein.
- (4) **"Development Site"** means the location for the project and consists of one parcel of property in the City's Woodland Industrial Park, as described in Exhibit A.
- (5) **"Memorandum"** means a short form memorandum of this Agreement recorded in the real estate records. The parties agree that the form of memorandum attached hereto as Exhibit D is acceptable to both parties.
- (6) **"Private Financing"** means private equity, bank loans or financing from other, non-City sources necessary to fully fund the Project Budget attached hereto as Exhibit C.
- (7) **"Project Cost Breakdown"** means the Development Site, improved with the improvements identified in the reflected in the Project Site Plan and Elevations (Exhibit B) and Project Budget (Exhibit C).
- (8) **"Project Commencement Deadline"** means the date by which construction of the Project on the Development Site must commence. That date is July 1, 2024 .
- (9) **"Project Completion Deadline"** means December 31, 2024.
- (10) **"Revenue Year"** means any calendar year in which the City is reasonably expected to receive the revenue for such calendar year by reason of the actual payment of real estate taxes. By way of example, 2026 is the Revenue Year for the 2025 Tax Year based on the real estate valuation as of January 1, 2025.
- (11) **"Tax Increment"** means the difference between the Base Taxes and the total property taxes attributable to the Development Site in any Revenue Year during the term of this Agreement.
- (12) **"Tax Year"** means each calendar year for which real and personal property taxes are levied.
- (13) **"TIF Grant"** means a "pay as you go" grant of the Available Tax Increment for development of the Project in an amount not to exceed Four Hundred and Fifty Thousand Dollars (\$450,000). Said TIF Grant is to be paid in annual installments to the Developer starting in the year 2026 from the Available Tax Increment.

(14) **“TIF Grant Installment Amount”** for each Revenue Year means the Available Tax Increment for such Revenue Year which has been appropriated by the City Council to make a payment of the TIF Grant; provided, however, that in no event shall the cumulative total of all such TIF Grant Installment Amount payments exceed the total TIF Grant plus applicable interest.

(15) **“TIF Grant Payment Deadline”** means September 30, 2026, for Revenue Year 2026, and on each anniversary thereof for each subsequent Revenue Year.

SECTION 3: OBLIGATIONS OF DEVELOPER

The Developer is required by this Agreement to:

- A. Secure all necessary Private Financing for the Project (including a firm commitment for permanent take-out financing for any construction financing) as defined herein and shall provide proof of such financing to the City, not later than December 31, 2023.
- B. Obtain all necessary zoning, site and architectural plan approvals, building plan approvals and all required permits for the Project no later than April 1, 2024.
- C. Commence construction of the Project not later than July 1, 2024, and complete the approximately 28,000 square foot building and the "Project" not later than December 31, 2024. Project completion shall include completion of the building, purchase, and installation of equipment, as identified in the Project Budget in **Exhibit C**.
- D. Continue to own and operate the Project in the City of Two Rivers throughout the term of this Agreement.
- E. Make timely payment of City property taxes, City special assessments and special charges, as well as City utility bills, throughout the term of this Agreement.
- F. Make timely payment of all payments required and otherwise comply with all provisions of any Loan Agreement between Developer and the Business and Industrial Development Authority of the City of Two Rivers and/or the City of Two Rivers, and the Promissory Note executed by Developer pursuant to that Loan Agreement.

Developer must comply with Obligations A–through F above to qualify for the grant assistance addressed in this Agreement. Failure to do so may result in the City declaring Developer in default of this Agreement and withholding TID 14 grant payments pending such default being cured. Failure by Developer to cure such defaults in a timely manner may result in the City terminating this Agreement, in which case any TID 14 grant funds already paid to Developer by the City, subsequent to the default, shall be immediately due and payable by Developer to the City.

SECTION 4: OBLIGATIONS OF THE CITY

TIF Grant

- A. The Two_Rivers_City Council has adopted the Two Rivers Tax Incremental District 14. Amendment No.1 to the Project Plan for TIF 14 which identifies the Project within the Woodland Industrial Park.
- B. City hereby agrees to provide a TIF Grant in the amount of \$450,000 in the form of a pay-as-you-go grant to be paid in annual installments resulting in payments to Developer starting in the Revenue Year 2026 until Revenue Year 2045, subject the Developer's continued compliance with the conditions set forth herein. Such payments shall be made only to the extent that there is an Available Tax Increment in any Revenue Year.

The TIF Grant shall be payable solely from each Available Tax Increment which has been received and retained by the City in accordance with the provisions of Section 66.1105 of the Wisconsin Statutes and appropriated by the City Council to payment of the TIF Grant. The TIF Grant shall be payable in annual installments on or before the TIF Grant Payment Deadline of each Revenue Year, commencing with Revenue Year 2026 (based on the Available Tax Increment generated in 2025) and on or before each TIF Grant Payment Deadline thereafter (based on Available Tax Increment generated in the immediately preceding Tax Year) in an amount equal to the TIF Grant for the respective Revenue Year; provided, however, that the City may, at its option and in its sole discretion, prepay the TIF Grant in whole or in part at any time.

- C. If the total TIF Grant payments have been insufficient to pay the full TIF Grant after the scheduled installment payable on or before the TIF Grant Payment deadline in Revenue Year 2045 (based on the Available Tax Increments generated in 2044), then the TIF Grant and all interest shall be deemed paid in full, the obligation of the City to make any further payment shall terminate, and Developer shall have no right to receive any additional payments.

City makes no representation or covenant, express or implied, that Available Tax Increments will be generated or that they will be sufficient to pay, in whole or in part, the TIF Grant and any applicable interest. No tax increments are pledged to the payment of the TIF Grant. All City payments of tax incremental revenue received by City from TID No. 14 shall be subject to annual appropriation.

As stated above, the application of Available Tax Increments to payment of the TIF Grant each year is subject to future annual appropriation by the Two Rivers City Council. City makes no representation or covenant, express or implied, that any Available Tax Increment will be generated and/or appropriated in any given year, nor does City make any representation or covenant as to any aggregate amount of Available Tax Increments to be paid to Developer.

SECTION 5: DEFAULT; REMEDIES; FORCE MAJEURE

- A.** Notice of Default and Right to Cure. In the event of any default in or any breach of this Agreement or any of its terms or conditions by any Party hereto, the non- defaulting Party shall give written notice of the default to the defaulting Party. The defaulting Party may then cure such default or breach within ten (10) business days in the event of a monetary default or within thirty (30) calendar days in the event of a non-monetary default after receipt of such notice. In the event the non-monetary breach or default cannot reasonably be cured within said thirty calendar day period, the defaulting -Party shall not be in default hereunder if it timely commences to cure such default within said period and diligently pursues the cure and cures the same within a reasonable time thereafter. If the default or breach is not timely cured under this subsection, the non-defaulting Party may exercise any right or remedy provided for herein.
- B.** Remedies. Subject to the notice of default and opportunity to cure provisions above, the Parties may exercise any rights or remedies provided for by law or equity in the event of any default in or breach of this Agreement by the other Party, including but not limited to termination of this Agreement, an action for specific performance and an action for the recovery of damages. All rights and remedies may be exercised independently or concurrently. The election of one remedy does not preclude the pursuit of other remedies, unless otherwise provided for by law.
- C.** Waiver. Any delay by Party in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or to limit such rights in any way. The parties intend by this provision that no Party should be constrained in its efforts to resolve any issues that may arise, and hereby intend to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches or otherwise, or to be compelled to exercise such remedy at a time when it may still hope otherwise to resolve the issue created by the default involved. No waiver in fact made by either Party with respect to any specific default by the other Party under this Agreement shall be considered or treated as the waiver of the rights of the non- defaulting Party with respect to any other defaults by such defaulting Party under this Agreement, or with respect to the default except to the extent specifically waived in writing.
- D.** Rights Cumulative. The rights and remedies of each Party, whether provided by law, equity or this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default or breach or of any remedies for any other event of default or breach by either Party.
- E.** Enforcement Costs. In the event any proceeding is commenced because of a default under this Agreement, the prevailing Party shall be entitled to recover its reasonable costs and expenses (including but not limited to reasonable attorneys' fees) incurred in enforcing the terms and provisions of this Agreement.

F. Force Majeure. For the purposes of any provisions of this Agreement, a Party shall not be considered in breach or default of its obligations in the event of enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, acts of adjoining property owners, governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unavailable materials, and unusually severe weather; it being the Parties' purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times of performance of any of the obligations of the particular Party shall be extended for the period of the enforced delay.

SECTION 6: TERM

Unless terminated early in accordance with this Agreement, the term of this Agreement (the "Term") shall be for a period commencing upon the Effective Date of this Agreement and expiring on December 31, 2045

SECTION 7: NOTICES AND DEMANDS

A notice, demand or other communication under this Agreement by either Party to the other Party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally.
as follows:

For the City:

City of Two Rivers
Attn: City Clerk
1717 East Park Street
Two Rivers, WI 54241

For Developer:

Athens Development , LLC.
Attn: Paul Braun
1330_Bentwood_Lane
Manitowoc, WI 54220

SECTION 8: PUBLIC RECORDS RESPONSIBILITIES

To ensure that applicable laws are followed, both with regard to private rights, and with regard to public records laws, Developer agrees as follows: If the City receives public records requests for records that the City believes might be in the possession of Developer, the City will notify Developer of the request. Within three (3) days of such notification (subject to extension of time upon mutual written agreement), Developer shall either provide the City with the record that is requested, for release to the requestor; or Developer shall advise the City that it objects to the release of the requested information because it considers such information confidential or proprietary and provide the basis for the objection.

Regardless of any objection by Developer, however, if for any reason the City reasonably and in good faith concludes that the City is obligated to provide a record to a requestor that is in Developer's possession, Developer shall provide such records to the City promptly upon the City's request. Developer shall not charge for work performed under this section, except for the "actual, necessary and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law

SECTION 9: MISCELLANEOUS

- A. **Approvals.** Whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the Party's duly authorized representative. Except as otherwise set forth herein, wherever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld.
- B. **Waiver; Amendment.** No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing.
- C. **Entire Agreement.** This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the Parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the Parties with respect to the subject matter hereof.
- D. **No Third-Party Beneficiaries.** This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the subject matter of this Agreement.
- E. **Severability.** If any provision of this Agreement is held invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement, which shall continue in full force and effect.
- F. **Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, as well as their respective successors, transferees and permitted assigns. The obligations of Developer hereunder run with the land and bind any subsequent owners in title to the Development Site.
- G. **Municipal Approvals; Compliance with Law.** The provisions of this Agreement shall not vest any rights in Developer to any municipal approvals required under applicable law. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with any applicable laws, rules, regulations and ordinances, including the obligation to secure usual and customary building permits and approvals, in addition to compliance with all terms, conditions and covenants contained in this Agreement.

- H. **City's Right of Immunity.** Nothing contained in this Agreement constitutes a waiver of City's ability to assert its rights of immunity to tort claims under applicable law. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of City have any personal liability arising out of this Agreement, and no Party shall seek or claim any such personal liability.
- I. **Governing Law.** This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Manitowoc County, Wisconsin.
- J. **Time is of the Essence; Deadlines.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.
- K. **Relationship of Parties.** This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between City and Developer.
- L. **Captions and Interpretation.** The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural, and the plural includes the singular.
- M. **Counterparts/Electronic Signature.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.
- N. **Exhibits.** All exhibits reference herein are incorporated by reference.

Dated as of the date first listed above.

City of Two Rivers, Wisconsin
A Municipal Corporation

By: _____
Gregory E. Buckley, City Manager

By: _____
Amanda Baryenbruch, City Clerk

Athens Development, LLC

By: _____

Name: Paul Braun

ACKNOWLEDGEMENTS

STATE OF WISCONSIN)
) SS.
COUNTY OF MANITOWOC)

Personally appeared before me this _____ day of _____, 2023, the above-named Gregory E. Buckley as City Manager of the City of Two Rivers and Amanda Baryenbruch as City Clerk of the City of Two Rivers, to me known to be such City Manager and City Clerk of the City, by its authority, and acknowledge the same.

Notary Public, State of Wisconsin

STATE OF WISCONSIN)
) SS.
COUNTY OF MANITOWOC)

Personally appeared before me this ___ day of _____, 2023, the above-named_Paul_Braun,
of Athens Development, LLC to me known to be such person, and acknowledge the same.

Notary Public, State of Wisconsin

Exhibit A

Legal Description of the Development Site

Part of Tract 3 of a Certified Survey Map Recorded in Volume 19, Page 25, Document No. 848244, being located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 4, Township 19 North, Range 24 East, City of Two Rivers, Manitowoc County, Wisconsin

CERTIFIED SURVEY MAP

PART OF TRACT 3 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 19, PAGE 25, DOCUMENT NO. 848244, BEING LOCATED IN THE NE 1/4 OF THE NE 1/4 OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 24 EAST, CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN



NORTH IS REFERENCED TO THE MANITOWOC COUNTY COORDINATE SYSTEM. (PER THE COUNTRY PUBLISHED SECTION SUMMARY)



LEGEND

- = 3/4" x 18" IRON REBAR SET WEIGHING 1.13 LBS/FT
- = EXISTING 3/4" IRON ROD
- (000) = "RECORDED AS" DIMENSIONS

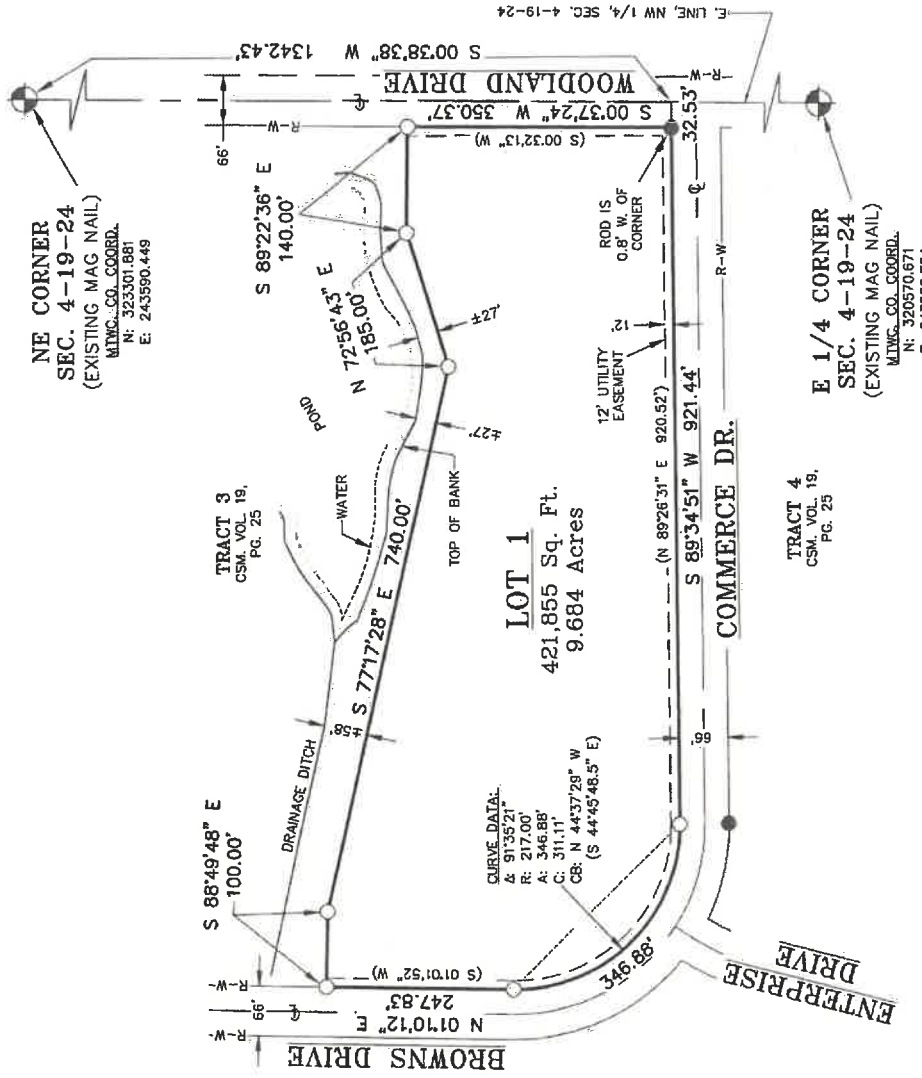
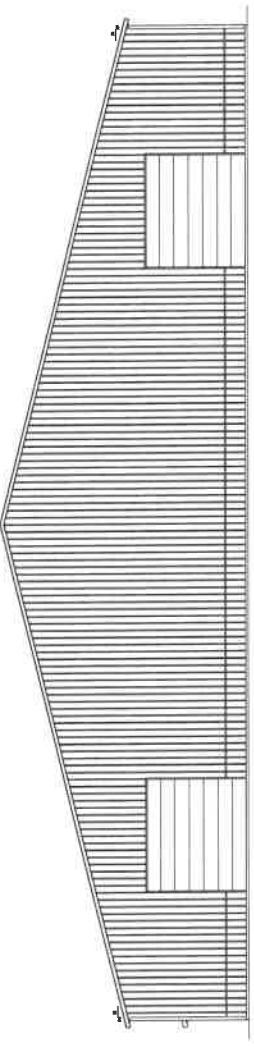


Exhibit B

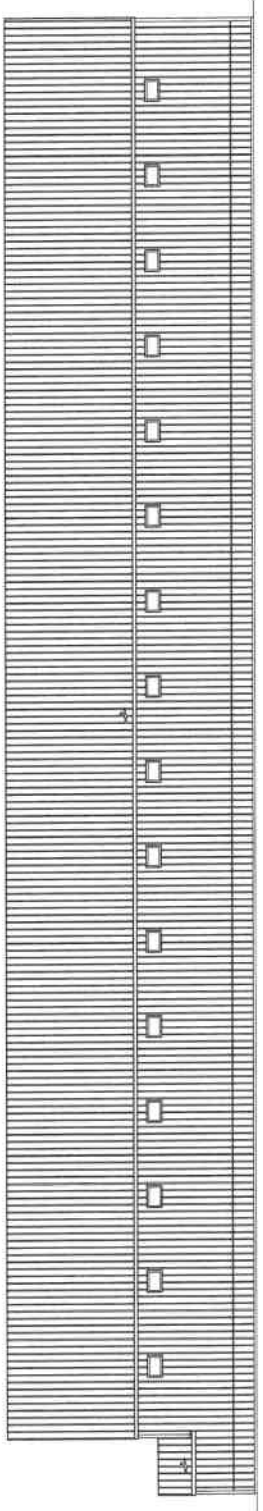
Preliminary Building and Site Plan



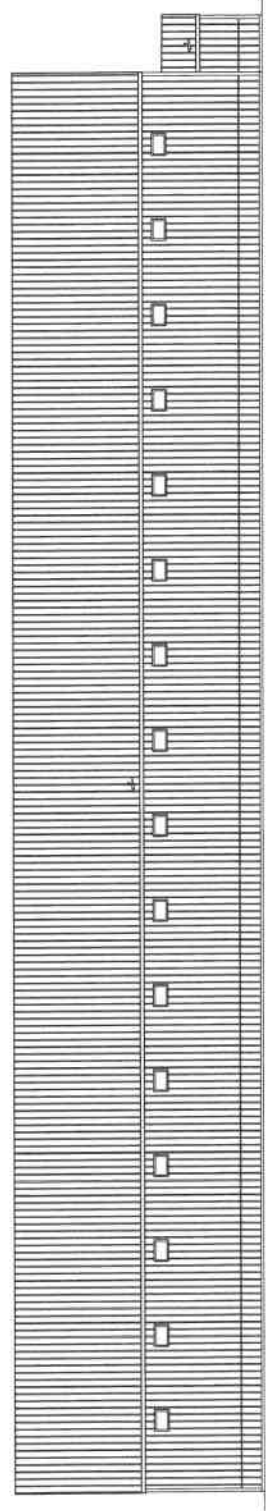
FRONT ELEVATION
 SCALE: 1/8" = 1'-0"



REAR ELEVATION
 SCALE: 1/8" = 1'-0"



RIGHT ELEVATION
 SCALE: 1/8" = 1'-0"



LEFT ELEVATION
 SCALE: 1/8" = 1'-0"

PRELIMINARY PLAN
NOT FOR CONSTRUCTION

Exhibit C

Project Budget

City Loan: \$500,000

TID: Pay GO \$450,000

Private Financing: \$1,100,000

Total Project Cost: \$2,050,000

Exhibit D

Memorandum of Agreement

**MEMORANDUM OF
DEVELOPMENT AGREEMENT**

Document Number

Document Name

THIS MEMORANDUM OF DEVELOPMENT AGREEMENT (this “Memorandum”) is made and entered into as of the ____ day of _____, 2023, by and between the CITY OF TWO RIVERS, WISCONSIN, a Wisconsin municipal corporation (the “City”), on the one hand, and ATHENS DEVELOPMENT LLC, a Wisconsin limited liability company (“Developer”), on the other hand (the City and Developer are referred to herein, collectively, as the “Parties”).

WHEREAS, the Parties entered into a certain Tax Incremental Financing Cash Grant and Developer Agreement, dated as of [____], 2023 (as may be amended from time to time, the “Development Agreement”); and

WHEREAS, the Development Agreement relates to certain real estate [a portion of which is] described on Exhibit A attached hereto (the “Property”); and

WHEREAS, the Parties desire to place this Memorandum of record in the real estate records for Manitowoc County, Wisconsin to provide notice to third parties of the Development Agreement

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

1. Notice is hereby given that the Parties have entered into the Development Agreement affecting the Property. Until termination of the Development Agreement, the Development Agreement runs with the Property and is binding upon, benefits and burdens the Property, Developer and any subsequent owner and/or mortgagee of all or any portion of the Property and each of their successors an assigns.
2. The Development Agreement imposes certain obligations, liabilities and restrictions on the owners and/or mortgagees of all or any portion of the Property.
3. The term of the Development Agreement commenced as of [____], 2023, and terminates as provided therein.
4. The terms, conditions and other provisions of the Development Agreement are set forth in the Development Agreement, express reference to which is made for greater particularity as to the

Name and Return Address

City of Two Rivers
1717 East Park Street
Two Rivers, WI 54241
Attn: City Clerk

See Exhibit A attached
Parcel Identification Number (PIN)

This is not homestead property.

terms, conditions and provisions thereof. A copy of the Development Agreement is available upon request from the City at the offices of the City Clerk.

5. This Memorandum is not a complete summary of the Development Agreement. Provisions in this Memorandum shall not be used to interpret the provisions of the Development Agreement. In the event of conflict between this Memorandum and the unrecorded Development Agreement, the unrecorded Development Agreement shall control.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date first set forth above.

DEVELOPER:

ATHENS DEVELOPMENT LLC

By: _____

Name: Paul Braun

Title: _____

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me this ____ day of _____, 2023, _____, to me known to be the person who executed the foregoing instrument and to me known to be the _____ of Athens Development LLC, a Wisconsin limited liability company, and acknowledged that s/he executed the foregoing instrument as such authorized representative of said entity and with its authority.

Notary Public, State of Wisconsin

My commission: _____

THE CITY:

THE CITY OF TWO RIVERS, WISCONSIN

By: _____
Name: Gregory E. Buckley
Title: City Manager

By: _____
Name: Amanda Baryenbruch
Title: City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF MANITOWOC)

Personally came before me this ___ day of _____, 2023, Gregory E. Buckley and Amanda Baryenbruch, of the above-named City of Two Rivers, Wisconsin, to me known to be the persons who executed the foregoing instrument and to me known to be such City Manager and City Clerk, respectively, and acknowledged that they executed the foregoing instrument as such officers as the deed of said City of Two Rivers, Wisconsin, by its authority.

Notary Public, State of Wisconsin
My commission: _____