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MEMO TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: February 16, 2024

SUBJECT: Proposed Amendment to Development Agreement With YBR properties, LLC

In follow-up to discussion with Kip Golden of CR Structures/YBR Properties, LLC at the November 27, 2023 Council work session, I am requesting that the Council consider approval of an amendment—the third such amendment—to the Tax Incremental Financing, Property Sale, Cash Grant and Developer’s Performance Agreement with YBR Properties, LLC.

That Agreement, originally approved by the City Council in November 22, 2022, includes terms for YBR Properties, LLC to purchase from the City a portion of the former Eggers Industries downtown plant site on the East Twin River for construction of “The Confluence,” a proposed 71-unit market rate apartment building. The Agreement also provides terms for City Assistance for this project from Tax Incremental District No. 16.

The proposed amendment does not change the financial terms contained in the original Agreement, but does extend several deadline dates contained in the Agreement to reflect the need for additional time to get final financing in place and to get construction underway. The proposed changes are summarized in the attached table. I am also attaching a copy of the Original Agreement, with deadline dates highlighted.

If this amendment is approved, there are a couple of significant deadline dates that will come up in the near future:

- Deadline of March 31, 2024 for submittal of final project cost breakdown and proof of financing (purchase of the Phase 1 development site needs to closed within 30 days following completion of this requirement)
- Deadline of May 15, 2024 for project commencement

Based on the revised project timeline, I also recommend extending by about one year the deadline for the Developer to exercise its option on the balance of the development site (Phase 2 area). The original Agreement provided for this to be accomplished within three years following the signing of the Agreement, which would be December 22, 2025. I am recommending that be extended to December 31, 2026.

We are all eager to see development on this site. But there is no question that increased interest rates and construction costs over the past several years have posed some real challenges to the developer. And the scope of the proposed project (Phase 1) has grown, from a 50-unit building with an estimated cost of at least \$10 million to a 71 unit building with an estimated \$20 million price tag. Based on these challenges, staff believes that requested extensions are warranted.

So, while I do recommend City Council approval of these changes, as requested by the Developer, I have also advised the Developer that I will not recommend any further extensions to the City Council unless the Developer is willing to make a significant non-refundable deposit to secure its ability to purchase and develop the site. Otherwise, the City needs to resume marketing of this prime waterfront property.

<u>Deadline for:</u>	<u>Location(s) in Agreement</u>	<u>January 23, 2023 Amendment No. 1</u>	<u>June 5, 2023 Amendment No. 2</u>	<u>February 19, 2024 Amendment No. 3</u>
Developer's Submission of Site and Architectural Plans to the City	Section 2.A., pages 4-5 Section 3.B., pages 11-12	March 1, 2023	September 1, 2023	No change; complete
Design Plans for Estimating Purposes and Land Division	N/A—Not in original Agreement or Amendment No. 1	N/A	July 1, 2023	No change; complete
Developer's Submission of Project Cost Breakdown	Section 2.A., page 5 Section 3.A., page 11	May 1, 2023	August 1, 2023	March 31, 2024
Developer's Submission Of Proof of Project Financing	Section 2.A., page 5 Section 3.A., page 11	May 1, 2023	September 1, 2023	March 31, 2024
Project Commencement	Definitions, page 3	July 1, 2023	October 1, 2023	May 15, 2024
Project Completion	Definitions, page 3	December 31, 2024	May 1, 2025	December 1, 2025
Purchase of Second Parcel Of Development Site (Originally 3 years following signing of Agreement, or December 22, 2025)	Section 2.B., pages 6-7	Not Changed	Not Changed	December 31, 2026

TAX INCREMENTAL FINANCING PROPERTY SALE,
CASH GRANT AND DEVELOPER'S PERFORMANCE AGREEMENT

RE: MULTI-FAMILY DEVELOPMENT YBR PROPERTIES, LLC AT THE EAST TWIN
RIVER, CITY OF TWO RIVERS, WISCONSIN

This TAX INCREMENTAL FINANCING PROPERTY SALE, CASH GRANT AND DEVELOPER'S PERFORMANCE AGREEMENT (this "**Agreement**") is entered into as of the 22nd day of December, 2022 (the "**Effective Date**"), by and between THE CITY OF TWO RIVERS, WISCONSIN, a Wisconsin municipal corporation (the "**City**"), having offices located at 1717 East Park Street, Two Rivers, Wisconsin 54241, and The Confluence, LLC, a Wisconsin limited liability company, having offices at 327 Randolph Drive, Appleton, WI 54913 ("**Developer**").

WITNESSETH:

WHEREAS, the Developer desires to purchase a parcel of real property located on East River Street from the City of Two Rivers, Wisconsin; said parcel is to be created by a division of the parcel identified as Lot 2 of a certified survey map filed January 10, 2022 with the Manitowoc County Register of Deeds and recorded as Document Number 1246403, Volume 35, Page 311, such certified survey map is attached hereto as **Exhibit A** (the "**Development Site**"); and

WHEREAS, the City desires to sell said Development Site and to encourage the development of the Development Site as set forth in a resolution of the City Council dated August 2, 2021 (the "**TID Comfort Resolution**"); and

WHEREAS, the City Council has by resolution dated, September 27, 2021 (the "**TID 16 Creation Resolutions**"), adopted the City of Two Rivers Tax Incremental District (TID) No. 16 and *TID 16 Project Plan*, which includes the goal of blight elimination and redevelopment of the Development Site as well as providing for certain other expenditures within one-half mile of the boundaries of TID 16; and

WHEREAS, Developer has proposed to construct the "**Project**" described herein on the Development Site and has represented, and hereby affirms, that the Project is contingent upon certain "**City Assistance**" described herein; and

WHEREAS, Section 66.1105 Wis. Stats., authorizes the City to incur project costs in the discretion of its City Council, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans; and

WHEREAS, the City believes that the Project, more fully described in this Agreement, will promote the revitalization and economic stability of the City.

NOW, THEREFORE, the parties hereto agree as follows:

1. PRELIMINARY MATTERS

A. Recitals. The above recitals are hereby incorporated by reference.

B. Certain Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms as used herein shall have the following meanings:

(1) **"Annual Cost of Funds Payment"** means \$ 84,732. Such amount is the City's good faith estimate of its cost of funds for providing the Developer Grant, assuming a 20-year borrowing at 7.0% annual interest.

(2) **"Available Tax Increment"** means, for any given Revenue Year, an amount equal to: (a) the Tax Increment attributable to the Development Site minus (b) any past-due Shortfall Payment amounts (or unpaid interest owed on any Shortfall Payment) as of January 1 of such Revenue Year, minus (c) Annual Cost of Funds Payment. In the event of a negative number, the Available Tax Increment for such Revenue Year shall be \$0.

(3) **"Base Taxes"** means the real property taxes payable for Tax Year ~~2023~~2024 based on the assessed value of the Development Site as of January 1, ~~2023~~2024. The base taxes are \$0 as the Development Site ~~was is~~ a City owned property ~~will still be owned by the City~~ on January 1, 2023.

(4) **"City Assistance"** means the Developer Grant, the TIF Grant and the Performance Incentive, all as more particularly described herein.

(5) **"Development Site"** is defined in the Recitals above, attached hereto as **Exhibit A**.

(6) **"Developer Grant"** means a cash grant from the City to the Developer from TID 16, in the amount of \$900,000 as described herein.

(7) **"Guaranteed Revenue"** means, for Revenue Year ~~2026~~2027 through Revenue Year 2048, annual receipt by the City of net property taxes attributable to the Development Site equal to the sum of (i) the Base Taxes PLUS (ii) the Annual Cost of Funds Payment. The parties agree that the Guaranteed Revenue bears a rational relationship to the City's estimated costs in connection with this Agreement. The Annual Cost of Funds Payment portion of the Guaranteed Revenue is only applicable until the City has been made whole for the Developer Grant (inclusive of borrowing costs) and other costs incurred by TID 16.

- (8) **"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 B** is acceptable to both parties.
- (9) **"Mortgage"** means a mortgage of the Development Site by Developer to secure the Shortfall Payments and Clawback Payment in the form attached hereto as **Exhibit C**.
- (10) **"Performance Incentive"** means an addition to the TIF Grant, subject to terms further set forth herein.
- (11) **"Private Financing"** means funding available to Developer for purposes of constructing the Project, from equity investors, conventional loan financing through a financial institution licensed to do business in the State of Wisconsin and any other non-City sourced construction financing, as well as permanent phase financing to take-out any sources of financing limited to the construction-phase of the Project.
- (12) **"Project"** means the construction of a market rate multi-family development on the Development Site, along with related site improvements, public walkway, shoreline restoration, and landscaped areas, on the Development Site.
- (13) **"Project Commencement Deadline"** means ~~May 1, 2023~~ May 15, 2024.
- (14) **"Project Completion"** means Substantial Completion of the Project, in accordance with the plans and specifications previously approved by the City, except for minor punch list items. "Substantial Completion" shall include certification by the Project's architect of substantial completion and full authorization for occupancy of the building(s) by the City's building inspector.
- (15) **"Project Completion Deadline"** means December 31, 2024 ~~2025~~.
- (16) **"Project Cost Breakdown"** means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect costs of development, construction and installation of the Project in accordance with the Project plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.
- (17) **"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.
- (18) **"Shortfall Payment"** means a payment, if any, to be made by Developer to the City, in the amount of the shortfall of the actual net property taxes received by the City as compared with the Guaranteed Revenue amount for any Revenue Year. The Shortfall Payment is only applicable in Revenue Years ~~2026~~ 2027 through 2048.
- (19) **"Shortfall Payment Deadline"** means June 1 of each Revenue Year.

(20) **“Tax Year”** means each calendar year for which real and personal property taxes are levied.

(21) **“TIF Grant”** means a “pay as you go” grant of the Available Tax Increment for development of the Project in the amount of \$900,000.

(22) **“TIF Grant Installment Amount”** for each Revenue Year (commencing in Revenue Year ~~2026~~2027) means the Available Tax Increment for such Revenue Year which has been appropriated by the City Council to 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.

(23) **“TIF Grant Payment Deadline”** means December 1, ~~2026~~2027, for Revenue Year 2026, and on each anniversary thereof for each subsequent Revenue Year.

C. Effectiveness of this Agreement. This Agreement shall be effective and its terms binding upon the approval by the City Council, signature by the City Manager and City Clerk and the approval of all other agreements and/or transactions that require approval by the City, and approval by the Developer and signature by Developer’s authorized representatives. This Agreement shall be null and void if it has not been signed by authorized representatives of the City and the Developer and a fully -signed copy of the Agreement provided back to back to the City by December 23, 2023, unless the City and the Developer agree in writing to the contrary. All of the City’s obligations under this Agreement are contingent upon the occurrence of all of the City approvals referenced herein and the City shall have no obligation to make the Developer Grant or the TIF Grant if all City Approvals have not occurred. In the event the required City approvals have not been received by the Project Commencement Deadline, this Agreement shall automatically terminate.

2. OBLIGATIONS OF THE CITY

A. Sale of Development Site to the Developer

Development Site is a portion of a parcel identified as Lot 2 of a certified survey map filed January 10, 2022 with the Manitowoc County Register of Deeds and recorded as Document Number 1246403, Volume 35, Page 311, attached hereto as Exhibit A (hereinafter, said Lot 2 is referenced as the “Parent Parcel”).

Developer shall, not later than January 1, 2023, submit Site and Architectural Plans for the Project for review and approval by the City’s Plan Commission as provided in Section 11-1-10 of City Ordinances. Said Site and Architectural Plans shall also be subject to the approval of the City Council. Approval by the City Council shall not only be contingent upon the City Council determining that design of the building(s), building materials and color, site layout and access to the proposed development from public right-of ways are acceptable to the City, but also a determination there is an area proposed for retention by the City for public access and shoreline improvements per condition (1.) below that is deemed, in the City Council’s sole discretion, to adequately allow for such public access and shoreline improvements.

That portion of the Parent parcel to be conveyed by the City to the Developer as the Development Site shall be identified on said Site and Architectural Plans and must comply with the following conditions:

(1.) Parent Parcel shall first be divided to exclude a strip of land abutting the East Twin River, which shall be retained by the City for public access and shoreline improvements, and determined by the City Council to be adequate for such purposes, as previously described. That strip of land shall be combined with Lot 1 of CSM, the site of a municipal storm water pond which is owned by the City

(2.) The remainder of the Parent Parcel, after excluding the riverfront strip of land to be retained by the City, shall be divided into two parcels in a manner proposed by the Developer in its Site and Architectural Plans, provided:

- a. The dividing line between said parcels shall be perpendicular to the East River Street right-of-way.
- b. The parcel to be purchased by the Developer (Development Site) shall abut Lot 1 of CSM and its area shall not exceed 60 percent of land area of the Parent Parcel as reduced by the area of the riverfront strip of land addressed in (1.) above.

The purchase price for said Development Site shall be determined by calculating its land area, then dividing that figure by the land area the Parent Parcel as modified per (1.) above, and multiplying the result by \$200,000. By way of example, if the Development Site's land area comprises 55 percent of the Parent Parcel (after first subtracting the area of the riverfront strip from the area of the Parent parcel), the purchase price shall be \$110,000.

The City shall convey the Development Site to the Developer within 30 days after the Developer has obtained the following City approvals with respect to the Project:

A, Approval of Site and Architectural Plans by the Plan Commission and City Council, as further described in Section 3.B. of this Agreement. Such Site and Architectural Plans must be provided to the City by the Developer not later than January 1, 2023; and

B. Approval of the Project Cost Breakdown and Proof of Project financing, as further described in Section 3.A. of this Agreement, by the City Council, The Project Cost Breakdown and Proof Project Financing must be provided to the City by the Developer not later than ~~March 1, 2023~~ March 31, 2024.

Conveyance shall be by special warranty deed for the purpose identified herein. Conveyance will be pursuant to a Purchase Agreement substantially similar to the sample Purchase Agreement attached hereto as **Exhibit D**. The transfer of the City Property will

be "AS-IS" without any representations or warranties from the City, other than warranty of title via a special warranty deed. Developer shall, at its sole expense, complete such studies, testing, surveys and other due diligence as Developer deems necessary to determine the condition of the Development Site and its suitability for the Project. Any reports, surveys or studies provided by the City with respect to the Development Site were solely for the Developer's convenience and provided without warranty or assurances as to their accuracy. DEVELOPER ACKNOWLEDGES AND AGREES THAT DEVELOPER WILL HAVE SUFFICIENT OPPORTUNITY TO INSPECT THE DEVELOPMENT SITE PRIOR TO CLOSING AND THAT THE CITY IS CONVEYING AND THE DEVELOPER IS ACCEPTING THE DEVELOPMENT SITE ON AS "AS-IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE DEVELOPMENT SITE. AS A PART OF ITS AGREEMENT TO ACCEPT THE DEVELOPMENT SITE IN ITS "AS IS" CONDITION, DEVELOPER, FOR ITSELF AND ITS SUCCESSORS, ASSIGNS, AGENTS, EMPLOYEES, CONTRACTORS, AND INVITEES, HEREBY WAIVES, DISCHARGES AND RELEASES THE CITY FROM ANY AND ALL DEMANDS, CLAIMS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, DAMAGES, PENALTIES, FINES, LIENS, JUDGEMENTS, COSTS OR EXPENSES WHATSOEVER, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY MAY BE CONNECTED WITH OR RELATED TO THE PHYSICAL GEOLOGICAL OR ENVIRONMENTAL CONDITION OF THE DEVELOPMENT SITE, INCLUDING, WITHOUT LIMITATION, ANY PAST OR PRESENT CONDITION OF OR ACTION ON OR ABOUT THE DEVELOPMENT SITE (INCLUDING, WITHOUT LIMITATIONS THE PRESENCE OF HAZARDOUS OR TOXIC MATERIALS AT, UNDER OR IN THE GENERAL VICINITY OF THE DEVELOPMENT SITE OR THE CURRENT OR PREVIOUS VIOLATION OF ENVIRONMENTAL LAWS AT THE DEVELOPMENT SITE, IF ANY.

Developer agrees that the Memorandum shall be recorded immediately after the deed from the City is recorded and prior to any mortgage, including the Mortgage.

Developer shall also execute the Mortgage at Closing and promptly record the Mortgage as a lien against the Development Site before any other mortgage (except as otherwise agreed herein).

B. Option for Developer to Purchase Remainder of Parent Parcel

(1) The City of Two Rivers shall maintain ownership that portion of the Parent Parcel not purchased by Developer as the Development Site (hereinafter the "Remainder Parcel"). The Developer shall have an exclusive option to purchase the Remainder Parcel (less the strip of riverfront land retained by the City) from the City, provided that Developer notifies the City of its intent to exercise such option by December 31, 2026 ~~within three~~

~~(3) years following the date of this Agreement~~ and further provided that closing on said purchase shall occur within 60 days following such notice.

(2) Sale of said Remainder Parcel shall be contingent upon Developer having commenced construction of the Project on the Development Site and upon Developer being in full compliance with the terms of this Agreement.

(3) Purchase price for the Remainder Parcel shall be \$200,000, minus the amount paid to the City by the Developer for the Development Site.

(4) Conveyance of the Remainder Parcel to the Developer shall include provision for the City to buy back the Remainder Parcel from Developer for the sale price paid by the Developer, if Developer has not within 18 months following Developer's closing on the Remainder Parcel obtained all necessary approvals and permits, secured all necessary project financing and commenced construction of a second multi-family residential structure with floor area of at least 25,000 square feet on said Remainder Parcel. Closing on the sale of the Remainder Parcel back to the City shall occur within 30 days of the City providing written notice to the Developer of the City's intent to exercise this provision.

(5) The City agrees to provide as a part of this land purchase, all testing data and studies that have been completed to date for said Remainder Parcel.

The sale of the Remainder Parcel will be "AS-IS" without any representations or warranties from the City, in kind, expressed or implied, including, without limitations, as to its condition or suitability for development. Developer shall, at its sole expense, complete such studies, testing, surveys, and any other due diligence as developer deems necessary to determine the condition of the Remainder Parcel and its suitability for the any uses planned by Developer. Any reports, surveys or studies provided by the City with respect to the Remainder Parcel were solely for the Developer's convenience and provided without warranty or assurances as to their accuracy. DEVELOPER ACKNOWLEDGES AND AGREES THAT DEVELOPER WILL HAVE SUFFICIENT OPPORTUNITY TO INSPECT THE REMAINDER PARCEL PRIOR TO CLOSING AND THAT THE CITY IS CONVEYING AND THE DEVELOPER IS ACCEPTING THE REMAINDER PARCEL ON AS "AS-IS WITH ALL FAULTS" BASIS AND THAT DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE REMAINDER PARCEL. AS A PART OF ITS AGREEMENT TO ACCEPT THE REMAINDER PARCEL IN ITS "AS IS" CONDITION, DEVELOPER, FOR ITSELF AND ITS SUCCESSORS, ASSIGNS, AGENTS, EMPLOYEES, CONTRACTORS, AND INVITEES, HEREBY WAIVES, DISCHARGES AND RELEASES THE CITY FROM ANY AND ALL DEMANDS, CLAIMS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, LOSSES, LIABILITIES, DAMAGES, PENALTIES, FINES, LIENS, JUDGEMENTS, COSTS OR EXPENSES WHATSOEVER, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT

OF OR IN ANY WAY MAY BE CONNECTED WITH OR RELATED TO THE PHYSICAL GEOLOGICAL OR ENVIRONMENTAL CONDITION OF THE REMAINDER PARCEL, INCLUDING, WITHOUT LIMITATION, ANY PAST OR PRESENT CONDITION OF OR ACTION ON OR ABOUT THE REMAINDER PARCEL (INCLUDING, WITHOUT LIMITATIONS THE PRESENCE OF HAZARDOUS OR TOXIC MATERIALS AT, UNDER OR IN THE GENERAL VICINITY OF THE REMAINDER PARCEL OR THE CURRENT OF PREVIOUS VIOLATION OF ENVIRONMENTAL LAWS AT THE REMAINDER PARCEL, IF ANY.

(6) The City makes no representations regarding any financial assistance to Developer for development of the Remainder Parcel. The City reserves the right to pursue an amendment to the boundaries of TID 16, to remove the Remainder Parcel from TID 16.

C. Developer Grant from Tax Incremental District 16

(1) The City has, by Resolution dated September 27, 2021, approved the TID 16 Project Plan. The purpose of TID 16 is to eliminate blight and support redevelopment of the Development Site. Eligible project costs identified in the TID 16 Project Plan include a developer cash grant to assist in construction of multi-family housing on the Development Site.

(2) The City hereby agrees to provide Developer with such cash grant from TID 16, in the amount of \$900,000 (the Developer Grant as defined above), subject to the conditions set forth herein. Disbursement of said Developer Grant. It is subject to the Developer's continued compliance with all terms and conditions herein. Further, the Developer Grant shall be disbursed in four (4) equal installments of \$225,000 each as follows:

Installment One disbursed within ten (10) days following the completion of a, b, c, d, and e below:

- a. Developer providing a complete and accurate Project Cost Breakdown and proforma to the City and acceptance of same by the City.
- b. Approval of Site and Architectural Plans for the project by the City's Plan Commission as provided in Section 11-1-10 of City Ordinances. This shall include design of the building(s), approval of building materials and color, site layout and access to the proposed development from public right-of ways, and to the future public access waterfront easement along the East Twin River.
- c. City Council approval of said Site and Architectural Plans.
- d. Developer closing on the purchase of the Development Site.
- e. Developer recording the Memorandum and Mortgage with respect to the parcel that constitutes the Development Site.

Installment Two disbursed within ten (10) days following the completion of item f. below:

f. Developer providing documentation, to the City's satisfaction, that Developer has paid at least \$2,500,000 in project costs from equity or private loan funds. Developer shall provide invoices and documentation of paid receipts to the City for proof of expenditures applied toward the construction of the project, along with appropriate contractor lien waivers or releases.

Installment Three disbursed within ten (10) days following completion of g:

g. Developer providing documentation, to the City's satisfaction, that Developer has paid at least \$5,000,000 in project costs from equity or private loan funds. Developer shall provide invoices and documentation of paid receipts to the City for proof of expenditures applied toward the construction of the project, along with appropriate contractor lien waivers or releases.

Installment Four disbursed within ten (10) days following completion of h, i, and j:

h. Upon completion of construction of the Project, meeting all requirements for Project Completion as defined herein.

i. Developer shall have paid all costs associated with such construction and obtained waivers or releases of any contractor liens related to such construction.

j. Developer shall have provided satisfactory documentation of all the foregoing to the City as determined by the City in its sole discretion.

(3) If Project Completion is not achieved on or prior to the Project Completion Deadline or if the Project is not constructed in substantial compliance, as determined by the City in its sole discretion, with the plans and specifications that Developer provided to the City pursuant to the Agreement or the consents, approvals or permits issued by any governmental authority with respect to the construction of the Project, then the City may demand payment from the Developer of the entire amount of the Developer Grant paid to the Developer hereunder (the "**Clawback Payment**"), which Developer shall pay to the City within ten (10) days after such demand. The City's right to the Clawback Payment shall survive the termination of the Agreement, the transfer of the Development Site, or any portion thereof, or the assignment of the Agreement. Any portion of the Clawback Payment not paid when due shall bear interest at the rate of 12.0% per annum from due date until paid.

D. TIF Grant.

(1) Provided that: (a) Developer is not in default of its obligations under this Agreement; (b) Project Completion was achieved on or prior to the Project Completion Deadline; and (c) the Project is constructed in substantial compliance, as determined by the City in its sole discretion, with the plans and specifications that Developer provided to the City pursuant to this Agreement and the consents, approvals or permits issued by

any governmental authority with respect to the construction of the Project, the City shall pay to Developer the TIF Grant in installments each Revenue Year beginning in ~~2026~~2027 based on the Available Tax Increment for such Revenue Year and subject to the terms and conditions below and in the remainder of this Agreement.

(2) 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~~2027 (based on the Available Tax Increment generated in Tax Year ~~2025~~2026) and on 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 Installment Amount 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. If the total TIF Grant Installment Amount 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 2048 (based on the Available Tax Increments generated in 2047), then the TIF Grant 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. .

(3) The amount of the TIF Grant shall not exceed \$900,000. No interest rate shall be applied to the amount owed the Developer under the TIF Grant.

(4) The 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. All Tax Increments received by the City which are not appropriated to pay the TIF Grant may be used by the City for any legally permitted purpose, in its sole discretion. The application of Available Tax Increments to payment of the TIF Grant each year is subject to future annual appropriation by the City Council. The City makes no representation or covenant, express or implied, that any non-zero Available Tax Increment will be generated and/or appropriated in any given year, nor does the City make any representation or covenant as to any aggregate amount of Available Tax Increments to be paid to Developer. Any Tax Increment which is not appropriated and allocated toward the Available Tax Increment may be used by the City for any legally permitted purpose, in its sole discretion.

E. Performance Incentive

A Performance Incentive will be paid to the Developer within the parameters defined below and if the conditions defined herein are met.

The City agrees to pay the Developer annually, starting in Revenue Year ~~2026~~2027, a Performance Incentive payment equal to 50% of annual tax increment revenue received by the City and attributable to the Project that is in excess of the amount shown in

Column e of the Tax Increment District No. 16 Cash Flow Proforma Analysis that is attached hereto as Exhibit E. For Revenue Year ~~2026~~2027 and all subsequent years, this amount is \$145,318. Said Performance Incentive Payment shall be an addition to the amount of the TIF Grant.

Total Performance Incentive payments shall not in aggregate exceed \$450,000.

The Performance Incentive, if any, shall be paid to the Developer on or before December 1, ~~2026~~2027 and continuing on or before each December 1 thereafter for a period of time not to exceed 10 years, or until the total of such payments equals \$450,000, whichever comes first.

The 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 Performance incentive payments. All Tax Increments received by the City which are not appropriated to pay the Performance Incentive payments may be used by the City for any legally permitted purpose, in its sole discretion. The application of Available Tax Increments to payment of the Performance Incentive payments each year is subject to future annual appropriation by the City Council. The City makes no representation or covenant, express or implied, that any non-zero Available Tax Increment will be generated and/or appropriated in any given year, nor does the City make any representation or covenant as to any aggregate amount of Available Tax Increments to be paid to Developer. Any Tax Increment which is not appropriated and allocated toward the Available Tax Increment may be used by the City for any legally permitted purpose, in its sole discretion.

F. No Additional Assistance. Developer understands and agrees that the City's assistance with the Project is limited to the City Assistance described herein and other matters expressly provided herein. Developer shall be responsible for and shall pay directly all other costs associated with the development, construction and operation of the Project.

3. **OBLIGATIONS OF DEVELOPER**

A. Securing Private Financing. Developer shall secure all necessary Private Financing for the Project (including a firm commitment for permanent take-out financing for any construction financing), as defined herein, than the date of closing on the purchase of the Development Site and shall provide proof of such financing to the City along with the Project Cost Breakdown, not later than ~~March 1, 2023~~ March 31, 2024. For reference, Developer's preliminary Project budget is attached hereto as **Exhibit F**.

B. Site and Architectural Plan Approval

In addition to the Site and Architectural Plan Approval by the City's Plan Commission as provided in Section 11-1-10-C of City Ordinances, final design and site plans for the Project are subject to review and approval by the City Council, prior to issuance of the

building permit for the Project. This approval shall not be unreasonably withheld. Per Section 2, Paragraph A of this Agreement, such Site and Architectural Plans are to be provided to the City by the Developer not later than ~~January 1, 2023~~September 1, 2023.

C. Construction and Operation of the Project

(1) Developer shall: (a) promptly and reasonably proceed to contract with a general contractor to commence construction of the Project following the approvals described in this Agreement and not later than the Project Commencement Deadline; (b) subject to the force majeure provisions contained herein, achieve Project Completion in a manner consistent with this Agreement and with all federal, state and local plan approvals.

(2) Developer shall expend on the Project an amount equal to not less than ~~\$1318~~ million, including land acquisition and preparation, architectural and engineering services, building construction and site improvements, and fixtures, furnishings and equipment and shall provide the City with documentation reasonably acceptable to the City of all Project construction costs, including construction lien releases or waivers.

(3) Developer will conform and comply with, will cause the Project to be in conformance and compliance with, and shall operate the Project in conformance and compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, all environmental laws, rules, regulations and ordinances. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority in connection with the development, construction and operation of the Project.

(4) After Project Completion, the Project shall be a market rate multi-family development containing at least ~~5070~~ residential units and the Developer shall not modify the use of the Project without the City's prior written consent. Developer shall maintain the physical condition of the Project and the Property in a reasonable manner. Developer shall not change the design of the project without the City's prior review. This subsection shall be in effect until the completion of the Guaranteed Revenue requirement.

(5) Building Property Maintenance. For operation of the completed project, the Developer shall provide the City with the identity and provide contact information of the management company that will serve this property when it is completed.

D. Payment of Annual Property Taxes; Shortfall Payment.

The parties hereto anticipate that the Project and the Development Site will be subject to property taxes, and Developer agrees to pay property taxes on the Project and the Development Site in full, in a timely manner but in no event later than June 1 of any Revenue Year in which property taxes are due. In the event that the City does not receive the full Guaranteed Revenue amount for any applicable Tax Year, then Developer shall make any applicable Shortfall Payment no later than the Shortfall Payment Deadline

(June 1, as stated herein) of such Revenue Year. Such Shortfall Payments shall be required regardless of whether all or a portion of the Development Site should ever become exempt from property taxes. Any Shortfall Payment or portion thereof not paid when due shall bear interest at the rate of 12.0% per annum from due date until paid.

E. Memorandum.

Developer agrees to promptly record the Memorandum with respect to the parcel of the Development Site at the closing of its purchase and acquisition of the Development Site. Developer shall provide the City with evidence of the relative priority of the Memorandum which is reasonably acceptable to the City.

F. Tax Exemption Forbearance.

Developer agrees that commencing with the first calendar year in which the Project is fully assessed, neither Developer nor any existing or future Affiliate or related entity of Developer will pursue, assist, support, or be involved in any federal, state, or local, judicial, legislative, or regulatory action or process that seeks, directly or indirectly, to prohibit, set aside, or limit the taxability of all or any portion of the Properties on any basis whatsoever, and Developer for itself and on behalf of Developer Affiliates, and each of their respective successors in interest, waives any and all rights thereto for the life of TID 16. In addition, during the period of time that commences upon the date of this Agreement and terminates at the end of the TID 16, neither the Property(ies), the Project nor any part thereof or interest therein will be sold, transferred, leased, assigned, gifted, owned, used, or conveyed in any way to any person, partnership, organization, or entity that is all or partially exempt from federal, State of Wisconsin, or local real or personal property taxes, without the express prior consent of the City, which such consent may be withheld in the City's sole and absolute discretion (collectively, the "Restrictive Covenant"). This Restrictive Covenant will be recorded with the Register of Deeds for Manitowoc County and will permit the City to have enforcement rights. Notwithstanding anything to the contrary contained herein, the Restrictive Covenant will automatically terminate upon the termination of TID 16.

G. Mortgage

Developer shall execute and record the Mortgage with respect to the entirety of the Development Site prior to commencement of construction of the Project. The Mortgage shall be superior to all other mortgages recorded with respect to the Development Site and Developer shall provide the City with evidence of the same which is reasonably acceptable to the City.

4. REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City has the requisite power and authority and legal right to enter into this Agreement and to perform the transactions contemplated hereby.

(2) The individuals executing this Agreement on behalf of the City are duly empowered and authorized to execute this Agreement on behalf of the City and to deliver the same. Once this Agreement has been duly executed and delivered by all parties hereto, and becomes effective as set forth in accordance with this Agreement, it will constitute a binding obligation on behalf of the City subject to the terms and provisions hereof.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of the City's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting the City or by which it is bound.

B. Representations and Warranties of Developer.

Developer makes the following representations and warranties:

(1.) The Developer has the full power and authority to enter into this Agreement and to perform its obligations hereunder.

(2) The Developer is a Wisconsin limited liability company, duly organized, validly existing and in active status under the laws of that state. The execution of this Agreement as well as the performance of its obligations contained herein are not in violation of its organizational documentation. The individual executing this Agreement on behalf of the Developer is duly authorized to do so. This Agreement constitutes a binding obligation on behalf of the Developer subject to the terms and provisions hereof.

(3) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein or the performance of Developer's obligations hereunder, will not result in a breach of any terms, provisions or conditions of any agreement, written or otherwise, affecting Developer or by which it is bound.

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 fifteen (15) 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 particular 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 of time 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 a 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 particular 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 as a result 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 the 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.

If the Developer assigns this Agreement or the Development site to another limited liability company prior to the Project Completion Date, it shall provide verification reasonably satisfactory to the City that the members of that limited liability company are the same as that of the Developer. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement. After the Project Completion Date, the Developer man assign its interest in this Agreement or convey the Development Site without obtaining the consent of the City.

9. 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 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. If the Developer fails to comply with its obligations under this Section, Developer agrees that it shall indemnify and hold the City harmless for any and all claims, costs, damages, liabilities or judgments ("claims") against the City arising therefrom, including but not limited to costs and attorneys fees incurred by the City in defending itself from any such claims.

10. MISCELLANEOUS

A. Recording. Recording of this Agreement is prohibited except for the Memorandum.

B. 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. All submissions given to the City to satisfy the conditions

contained in this Agreement must be satisfactory in form and content to the City, in its reasonable discretion.

C. 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.

D. 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.

E. 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 Project.

F. 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.

G. 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 the City and the Developer, including, without limitation, Developer's obligation to provide City with Guaranteed Revenue or the Clawback Payment as addressed herein, shall survive any sale transfer, assignment or conveyance of the Development Site (or a portion thereof), and shall survive mortgage foreclosure, and bind any subsequent owners in title to the Development Site.

H. Municipal Approvals; Compliance with Law. The provisions of this Agreement shall not vest any rights on the 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 all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

I. City's Right of Immunity. Nothing contained in this Agreement constitutes a waiver of the 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 the City have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

J. 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.

K. Time is of the Essence; Deadlines. Time is of the essence with respect to this 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.

L. 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 the City and Developer.

M. 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.

N. Joint and Several Obligations. If Developer consists of more than one person/entity, each such person/entity shall be jointly and severally liable for the payment and performance of all obligations of Developer under this Agreement and the City may bring suit against each such person/entity, jointly or severally, or against any one or more of them.

O. 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.

P. Good Faith and Fair Dealing. Each party to this Agreement agrees that it has an enforceable duty and obligation to act in good faith in connection with all rights, duties, and obligations under the terms of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

DEVELOPER:

THE CONFLUENCE, LLC

By: _____

Name: _____

Title: _____

CITY:

THE CITY OF TWO RIVERS, WISCONSIN

By: _____

Name: Gregory E. Buckley

Title: City Manager

By: _____

Name: Jamie Jackson

Title: City Clerk

EXHIBIT A

MAP OF DEVELOPMENT SITE

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EXHIBIT B

FORM OF MEMORANDUM

EXHIBIT C

FORM OF MORTGAGE

EXHIBIT D

SAMPLE PURCHASE AGREEMENT

EXHIBIT E

**TAX INCREMENTAL DISTRICT #16
CASH FLOW PROFORMA ANALYSIS**

EXHIBIT F

DEVELOPER'S PRELIMINARY PROJECT BUDGET