

DEVELOPMENT AGREEMENT  
111 SOUTH WATER STREET

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Watertown, WI 53094

**291-0815-0421-120**

Parcel Identification Number (PIN)

*Drafted by: William Cole*

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**TAX INCREMENT DISTRICT NO. 8**  
**DEVELOPMENT AGREEMENT**  
**111 SOUTH WATER STREET, WATERTOWN, WISCONSIN**

THIS DEVELOPMENT AGREEMENT is dated as of the 17 day of August, 2021 (the "Effective Date") by and between **MAIN STREET WATERTOWN, LLC**, a Wisconsin domestic limited liability company, or its assigns (the "**Developer**" also referred to as the "**Buyer**"), and the **CITY OF WATERTOWN**, a Wisconsin municipal corporation (the "**City**" also referred to as the "**Seller**").

**RECITALS**

City and Developer acknowledge the following:

- A. The City undertook the redevelopment of the former 100 block of West Main Street and adjacent parcel to the south.
- B. The City owns the property described on Exhibit A hereto (the "**Property**").
- C. The City desires to have Developer construct a mixed-use development with approximately 87 residential apartment units, approximately 2,825 square feet of commercial space, approximately 36 covered at-grade parking stalls, and approximately 61 under-building stalls for parking on the Property (the "**Development Project**" or "**Project**").
- D. The City has created Tax Increment District No. 8 (the "**District**") pursuant to Wis Stat. § 66.1105, (the "**Tax Increment Law**") that includes the Property. The Property also is included in City of Watertown Redevelopment District No. 2 adopted under Wis. Stat. § 66.1333.
- E. Subject to obtaining the financial assistance set forth herein, Developer intends to undertake the Development Project that will increase the value of the Property and the District and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole. The Development Project is consistent with the adopted project plan for the District.
- F. The City desires to encourage economic development including the elimination of slum and blight, expand its tax base, provide new housing, and create new jobs within the City of Watertown, the District, and the Property. The City finds that the development of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents and serve a public purpose in accordance with state and local law.
- G. The Development Project would not occur without the use of Tax Incremental Financing.



NOW THEREFORE, in consideration of the above recitals, which are contractual, and the mutual promises contained herein, the parties agree to the following terms and conditions.

## **ARTICLE 1**

### **PURPOSES-DEFINITIONS**

1.1 Purpose of Agreement. The parties have agreed upon a general plan for the Development Project. The purpose of this Agreement is to formalize and record the understandings and undertakings of the parties and to provide a framework within which the redevelopment of the land will take place.

1.2 Definitions. The terms listed below shall be defined for the purposes of this Agreement as follows. All terms that are in upper case but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

1.2.1 **"City"** means the City of Watertown, a Wisconsin municipal corporation. The City may also be referred to as the City of Watertown.

1.2.2 **"Contribution" or "City Contribution"** means the Total TIF Increment payments made to the Developer by the City pursuant to Section 4.4.1 upon the satisfactory completion, on the part of all parties, of all undertakings as specified in Articles 3 and 4 as related to the Development Project.

1.2.3 **"Developer"** means Main Street Watertown, LLC, a Wisconsin domestic limited liability company.

1.2.4 **"Development Project" or "Project"** means the overall construction of a mixed-use Development on the Property as described in Article 2.

1.2.5 **"Property"** means the property described in Exhibit A.

1.2.6 **"Existing Environmental Condition"** means any Hazardous Substance and any other environmental condition existing at, on or under the Property as of the date of this Agreement.

1.2.7 **"Hazardous Substance"** shall mean any substance which is (i) defined under any Environmental Law as a hazardous substance, hazardous waste, hazardous material, pollutant, or contaminant; (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof; (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant; or (iv) otherwise regulated pursuant to any environmental law.



- 1.2.8 **"Height Zone"** means zones established by Chapter 211 of the Code of Ordinances of the City of Watertown, and are as shown on the map dated December 12, 2007, titled "Height Limitation Zone Map, Watertown Municipal Airport, Jefferson County, Wisconsin."
- 1.2.9 **"District Statutory Life"** shall mean the maximum period of time the TIF District may remain in effect per the provisions of Wis. Stat. § 66.1105(6), as may be amended following the Effective Date.
- 1.2.10 **"Minimum Total Tax Value"** means \$8,500,000.00 (Eight Million Five Hundred Thousand Dollars), which is the minimum Tax Increment Value required following completion of the Project.
- 1.2.11 **"Site Plan"** means the specific physical layout of the Property as shown on Exhibit B attached hereto.
- 1.2.12 **"Tax Increment Base Value"** means \$0.00 (Zero Dollars), the equalized value of real and personal property of the Property on January 1, 2021, as certified by the State Department of Revenue.
- 1.2.13 **"Tax Increment Value"** means the amount by which equalized value of real and personal property of the Property exceeds the Tax Increment Base Value established for the Property as determined by the City of Watertown Assessor on January 1 of the year following Developer's receipt of an occupancy permit for the Property/Development Project. The equalized value is calculated by taking the assessed value reported by the City of Watertown Assessor that is certified by the State Department of Revenue times the aggregate ratio.
- 1.2.14 **"Tax Increment Revenue"** means the personal and real property tax revenue (as defined in Wis. Stat. § 66.1105(2)(i) and generated by the Project's Tax Increment Value.
- 1.2.15 **"TID 8"** means Tax Incremental District No. 8 created by City Resolution No. 9189.
- 1.2.16 **"WDNR"** means the Wisconsin Department of Natural Resources.
- 1.2.17 **"Zoning Code"** means Chapter 550 of the Code of Ordinances of the City of Watertown. The Zoning Code may also be referred to as the **"Code"**.

## **ARTICLE 2**

### **DESCRIPTION OF DEVELOPMENT**

2.1 Development Project. The Property will be redeveloped and improved by the Development Project, with a mixed-use development, and site improvements as described herein and depicted in the attached Exhibit B.



- 2.1.1 Generally, the Project shall consist of approximately 87 residential apartment units, approximately 2,825 square of commercial space, approximately 36 at-grade covered parking stalls, and approximately 61 under-building stalls for parking on the Property.
- 2.1.2 The primary structure shall consist of high-quality design elements and architecture that are compatible with existing structures that the Developer has built in other municipalities. High quality shall be understood to generally mean the higher level of finishes and materials that the Developer has used elsewhere, such as approximately six-foot wide hallways, approximately nine-foot-tall ceilings, insulated demising walls[ , luxury vinyl planking, mix of Developer's unique studio floor plan, various development common area amenities, outdoor patio deck, etc.
- 2.1.3 The Development Project shall include improvements which extend beyond the Property, as generally described on the Site Plan attached hereto as Exhibit B. The City agrees to grant the Developer an easement permitting such encroachments which do not encroach upon a right-of-way; and as to those that encroach upon a right-of-way, a permit for such encroachment subject to the provisions of section 86.04, Wis. Stats. The easements described herein shall be governed by easement agreements recorded prior to Closing, which shall be reasonably agreeable between the parties, including indemnification provisions as mutually agreed. The Developer shall maintain liability insurance in an amount of at least two million dollars, naming the City as an additional insured, at all times any encroachments exist. The Developer shall provide the City with a certificate of insurance on an annual basis confirming such insurance. This indemnification and insurance requirement shall survive termination of this Agreement and the District, and shall run with the land and bind all successors in interest to the Developer.

### **ARTICLE 3**

#### **UNDERTAKINGS OF THE DEVELOPER**

The Developer agrees that it shall:

- 3.1 Initiate, or cause to initiate by third parties, the Development Project and complete it in accordance with all applicable City zoning, Height Zone, and building codes, fire codes, ordinances, and regulations. "**Development Costs**", as used herein, shall include, without limitation, costs for the construction of improvements, including hard and soft construction costs, professional fees, architectural fees, construction loan interest, civil engineering fees, general contractor fees, infrastructure improvements, environmental remediation costs, demolition,



parking facilities, and the clearing, grading and construction of the Development Project and other costs permitted pursuant to Wis. Stat. § 66.1105.

3.1.1 Expend as Development Costs for the Project an amount estimated to be of \$19,000,000.00 (Nineteen Million Dollars), but which shall be at least \$18,000,000 or as otherwise agreed by the parties ("**Minimum Development Cost**").

3.1.2 Once the City conveys the Property to Developer per the provisions of Article 5, Developer shall have 90 days to obtain all permits necessary for construction and to initiate construction of the Project. Once construction is initiated, Developer shall have 18 (eighteen) months to receive all occupancy permits associated therewith.

3.2 Developer warrants and represents to the City that but for the assistance to be provided by the City under Article 4, herein, Developer would not be able to proceed with the Project.

3.3 Developer shall prepare site plans, specifications, development timetables, and budgets for redevelopment and construction work to be undertaken for the Development Project.

3.4 Developer will purchase, for the price of \$1.00 (One Dollar), the Property from the City in the form attached as Exhibit C and per the provisions included in Article 5.

3.5 Developer will implement or cause to be implemented the Development Project as provided in Article 2 that will have a Tax Increment Value of at least the Minimum Total Tax Value.

3.6 In addition to the Developer's obligations listed elsewhere in the Agreement:

3.6.1 Developer shall reasonably cooperate with the City to facilitate the City's performance under Article 4.

3.6.2 At Closing, the Developer agrees to grant the City a permanent easement for the portion of the Property within 35 feet of the Rock River shoreline back to the City for purposes of the Riverwalk (the "**Riverwalk**"). The location and configuration of the easement shall be as set forth in Exhibit E. On or before December 31, 2023, Developer shall, at its sole cost, construct the improvements to the Riverwalk on the Property, including but not limited to concrete installation, landscaping, lighting, handrails or fencing, and include a one year warranty against construction defects on all such improvements. Said improvements are subject to City approval and are governed, in part, by Section 550-90 of the Code of Ordinances of the City of Watertown. Upon the completion of the Riverwalk, and payment of all associated costs, Developer shall transfer and dedicate an easement and all such improvements to the City. Following the one-year warranty period following completion of the improvements to the Riverwalk, the City shall maintain the Riverwalk,



including snow clearance, salting, and repairs as necessary. The Developer, and not the City, shall be responsible for any improvements or maintenance that are directly tied to foundational requirements of the Project, and all maintenance of the seawall.

- 3.6.3 Developer agrees to support any grant applications that the City may submit to public or private entities for funding assistance with the Town Square or other public improvements within the District by providing information as may be necessary to submit a complete and competitive application and as may be needed for reporting associated with such grants.
- 3.6.4 Developer shall be solely responsible for obtaining zoning, site plan, building permits, stormwater permits, right of way permits, stormwater maintenance agreement and any and all other necessary approvals from City and fees associated therewith. Developer shall be solely responsible for obtaining any required permits, and fees associated therewith, from the State of Wisconsin or Federal Government prior to constructing any improvements upon the Property.

Developer shall be solely responsible for the costs of the installation and maintenance of private utilities and improvements constructed as part of the Development Project within the Property, including, but not limited to, sewer, storm sewer, water, electricity, gas, phone, internet, and television.

- 3.6.5 Prior to conveyance of the Property by the City to the Developer, Developer shall review with the City's Clerk/Treasurer documentation from the Developer's bank and/or other funding sources confirming that the Developer has the ability to finance the construction of the Development Project in a form reasonably acceptable to the City. The Developer shall provide to the City promptly upon conveyance of the Property a copy of the mortgage in favor of the Developer's lender documenting the financing of the construction.
- 3.6.6 Developer waives its rights to and shall not contest, in any manner or in any forum, the City's assessed value of the Development, to the extent the assessment would result in any assessed value of less than Minimum Total Tax Value.
- 3.6.7 Developer shall maintain the Development, and all additions, improvements, and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Watertown Municipal Code, such that the fair market value of the Development does not decrease as a result of the condition of the Development or a



failure to maintain the Development.

- 3.6.8 Developer shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction, for not less than the actual replacement value of the Development Project and all improvements and lost income. Developer shall provide the City with proof of such coverage upon request.
- 3.6.9 Developer shall provide to the City a Certificate of Good Standing issued by the Wisconsin Department of Financial Institutions, and a valid executed resolution authorizing the Developer to execute of this Agreement by the individuals signing, within 10 days of the execution of this Agreement.
- 3.6.10 Developer shall promptly pay in full all utility bills issued to Developer by the City when due.
- 3.6.11 Developer is aware that this Agreement contemplates the payment to it of project costs under Wis. Stat. § 66.1105(2)(f), and that, pursuant to Wis. Stat. § 66.1105, Developer is required to notify the Wisconsin Department of Workforce Development and the local workforce development board established under 29 USC 2832 of any positions to be filled by Developer in Jefferson County during the period commencing with the date Developer first performs work on the Development and ending one year after receipt of its final payment of project costs. Developer shall fully comply with these requirements and indemnify and hold the City of Watertown harmless against any claims arising from a failure to do so.
- 3.6.12 Developer agrees to promptly pay all annual real and personal property taxes levied against the Property when due for the duration of the District Statutory Life.

#### **ARTICLE 4**

##### **UNTERTAKINGS OF THE CITY**

The City agrees that it shall:

- 4.1 Appropriate sufficient funds for the performance of its obligations under this Agreement as described in this section.
- 4.2 Reasonably cooperate with Developer throughout the implementation of the Development Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.
- 4.3 Undertake the following obligations:
  - 4.3.1 City has created TID #8 and adopted Res. No. 9189 on March 16, 2021, authorizing the



funds from TID #8 to support the Development Projects at the Property.

4.4 Subject to all of the terms, covenants and conditions of the Agreement and applicable provisions of law, and as inducement by the City to Developer to carry out the Development Project, the City will provide payments to the Developer to assist with the Development Costs.

4.4.1 Subject to all of the terms, covenants and conditions of the Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out the Development Project, the City will provide payments to the Developer solely from future tax increments from the Property only to assist with Development Costs. Upon approval of financing as outlined in Section 3.6.5, TIF eligible expenditures incurred subsequent to March 16, 2021, ("**TIF Effective Date**") may be counted as reimbursable expenses. City and Developer agree that there will be no reimbursement for any activities prior to the TIF Effective Date. The City's total contribution for Development Costs shall be limited to a maximum of the Total TIF Increment payable per the provisions of Section 4.4.3, below.

4.4.2 Following completion of and the issuance of occupancy permits for the entire Development, and pursuant to Wis. Stat. § 66.0621, the City shall issue a Municipal Revenue Obligation ("**MRO**"), as and for the City Contribution, in the amount of the Total TIF Increment payable to Developer in the form attached hereto as Exhibit D. The MRO shall be a special and limited obligation of the City subject to annual appropriation by the City, shall not be 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 MRO. As is further provided for in Section 4.4.3., below, the City shall pay amounts due to Developer under the MRO over time from the Tax Increment Revenue.

4.4.3 The City's Contribution for Development Costs shall be limited to a maximum principal amount of \$3,300,000.00 (approximately \$5,880,000.00 total principal and interest assuming 4% simple interest) ("**Total TIF Increment**"), payable in installments over the life of the District, as provided hereunder. Interest shall begin to accrue as of the date of the first payment. The City's Contribution may be prepaid at any time, but until paid in full, the payments will be provided to the Developer as follows: Each year beginning no later than October 15 of the first year for which the Developer pays in full the taxes on the Project's Minimum Total Tax Value following competition have been received by the City and continuing no later than each October 15 thereafter the Developer pays in full the taxes on the Project's Minimum Total Tax Value for a period not to exceed the end of the



life of the District, the City will make payments under the MRO to the Developer in an amount equal to 77% (seventy seven percent) of the Project's Tax Increment Revenue received by the City in that year provided that the Tax Incremental Value of the Development Project also exceeds the Minimum Total Tax Value designated in Section 1.2.10 or Developer enters into a payment in lieu of taxes (PILOT) agreement.

4.4.4 The City shall reasonably cooperate with Developer's lender's requests for collateral assignment of this Agreement and the City Contribution as part of Developer's Project construction loans.

4.5 Upon request by the City, the Developer shall review with the City personnel, and provide copies of original invoice documentation, and other documentation reasonably requested by the City, establishing to the reasonable satisfaction of the City that the Developer has incurred and paid Development Costs in an amount of at least the Minimum Development Costs as described in Section 3.1.1 above for the Project for documentary support of the City's contribution from Tax Increment Revenue. In addition, the Developer shall review with the City personnel, and provide an original fully executed sworn affidavit, from the Project's architect or general contractor certifying that the actual amount spent on eligible Development Costs at the conclusion of construction of the Project equaled or exceeded the Minimum Development Costs as described in Section 3.1.1, and prior to the payment of the first installment of the City Contribution.

4.6 Developer hereby acknowledges that the City Contribution, as evidenced by this Agreement, shall be a special and limited obligation of the City and not a general obligation. As a result of the special and limited nature of the City's obligation to pay the City Contribution, Developer's recovery of the full amount of the City Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of a Development Project, the failure of the Development Project to generate the Tax Increment Revenue at the rate expected by Developer, changes in the Tax Increment Law, and other factors beyond the City's and/or Developer's control.

4.7 City covenants to Developer that:

4.7.1 Until the City Contribution has been paid in full, or a sum sufficient to pay off the City Contribution has been set aside to cover payment of the City Contribution, the City shall not close the District prior to the end of the District's Statutory Life. Upon the end of the District's Statutory Life, or payment in full of (or a sum sufficient set aside to pay in full) the City Contribution, the City will be entitled to close the District and no liability shall remain from the City to the Developer upon expiration of the District.



- 4.8 The City shall be solely responsible prior to July 1, 2021, at the City's expense, to terminate any municipal easements located on the property.
- 4.9 The City shall convey the Property to Developer per the provisions of Article 5.
- 4.10 Lookback. The parties understand that if the Development is successful then the MRO will be repaid sooner and that the total amount of the City's contribution to the Development Project is capped at the Total TIF Increment. Nonetheless, as a condition for the City providing the Total TIF Increment, the parties agree to a lookback review to ensure the Developer's returns do not exceed a reasonable market rate investment return. Accordingly, upon the earlier of: (i) 5 years after the Development Project receives an occupancy permit; or (ii) the date that the Development Project is sold, the Developer shall provide the City an internal rate of return ("IRR") calculation for the Development Project based upon the Development Project's actual cash flow available for distribution to the Development Project's investors. Actual cash flow shall be based on financial statements prepared, reviewed, and certified by Developer's CPA. Up to, but no more than, 20% of the annual operating budget may be held from available cashflow as reserves for overages and capital improvements. The Developer shall cooperate with the City and provide to the City for inspection and review 20%, then the City Contribution to the Developer under the MRO pursuant to section 4.4.3 above shall be reduced by an amount sufficient to cause the IRR to equal 20%. The IRR calculations under this paragraph will take into account any post-completion contributions of equity and/or member (or partner) loans made by the Developer, Developer's Affiliates, or Developer's private investors. In the event of a dispute as to the IRR, the matter shall be resolved by decision of a third party accountant mutually agreed upon by the parties. If the parties are unable to agree upon an accountant within 30 days, the dispute shall be resolved by arbitration in accordance with Chapter 788 of the Wisconsin Statutes.

## **ARTICLE 5**

### **CONVEYANCE OF THE PROPERTY**

- 5.1 The City hereby agrees to sell to Developer, and Developer agrees to purchase from the City, the Property as particularly described in the attached Exhibit A.
- 5.2 The purchase price for the Property shall be \$1.00 (One Dollar) paid in cash to the City at the time of the conveyance. The terms of the sale shall be more particularly described in Exhibit C the Purchase and Sales Agreement.
- 5.3 In the event the Developer fails to apply for and receive a building permit for construction of the



Project within 90 days of conveyance of the Property, upon request of the City the Developer shall convey the Property to the City for the purchase price it paid the City. The Developer shall convey the Property within 60 days of request by the City, by warranty deed, free and clear of all liens and encumbrances created by any act or default of the Developer. The Developer shall be responsible for all expenses related to the Property to the date of conveyance to the City and shall, prior to such conveyance, remove all structures and improvements constructed upon the Property by it and restore the Property to level, vacant condition, clear of all debris. Prior to the date of conveyance to the City, the Developer shall further remove all contamination on the Property which was not present at the time of conveyance to the Developer.

## **ARTICLE 6**

### **TAX STATUS**

6.1 As long as the District is in existence, the Development Project including the land and all buildings and improvements thereon shall be owned and taxable for real estate tax, special assessment purposes and personal property taxes. The City may waive the above restriction upon execution of a payment in lieu of taxes (PILOT) agreement, on a form acceptable to the City, made between the City and the owner or lessee of an exempt Development Project.

## **ARTICLE 7**

### **NO PARTNERSHIP OR VENTURE**

7.1 Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership; venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

## **ARTICLE 8**

### **CONFLICT OF INTEREST**

8.1 No member, officer, or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

## **ARTICLE 9**

### **WATER RELATED PUBLIC IMPROVEMENTS**

9.1 The City has already furnished water to the boundary of the Property. The Developer shall be solely responsible for the installation and maintenance of utility improvements to provide



water service within the Development Project. Water service within the Development Project shall remain a private service.

9.2 All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Property shall be subject to the approval of the City's Engineering Department and Water Department and, where necessary, building, and plumbing inspections, prior to the beginning of construction. Such approval shall not be unreasonably withheld.

9.3 All plans and specifications for the design of the infrastructure relating to private, on-site water service within the boundaries of the Development Project shall be subject to the approval of the City's Plumbing Inspector and where necessary, building inspections, prior to the beginning of construction.

## **ARTICLE 10**

### **SANITARY SEWER**

10.1 The City has already provided sanitary sewer to the boundary of the Property. The Developer shall be solely responsible for installing and maintaining sanitary sewer infrastructure within the Property including any necessary lift stations; force mains and other improvements from the Property to the City's existing infrastructure. Sanitary sewer service within the Property shall remain a private service.

10.2 Under any of the circumstances set forth herein, the City shall permit Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

10.3 All plans and specifications for the design of the infrastructure and sanitary sewer improvements within the boundaries of the Property shall be subject to the approval of the Engineering Department and Water Department and, where necessary, building, and plumbing inspections, prior to the beginning of construction. Such approval shall not be unreasonably withheld.

10.4 All plans and specifications for the design of the infrastructure relating to private, on-site sanitary sewer service within the boundaries of the Development Project shall be subject to the approval of the City's Plumbing Inspector and where necessary, building inspections, prior to the beginning of construction.

## **ARTICLE 11**

### **STORMWATER MANAGEMENT**



- 11.1 The Developer shall follow all applicable State Administrative Codes and City Stormwater Ordinances. Except as further set forth herein, the Developer shall be solely responsible for installing and maintaining all on-site stormwater management facilities. Stormwater management facilities within the Development Area shall remain private. Developer shall provide access easements of adequate width to allow City staff and equipment to access storm water infrastructure.
- 11.2 All plans and specifications for the design of the infrastructure and stormwater sewer improvements within the boundaries of the Development Project shall be subject to the approval of the City's Engineering Department and, where necessary, building inspections, prior to the beginning of construction. Such approval shall not be unreasonably withheld.
- 11.3 The Developer shall be responsible for creation and implementation of a stormwater management plan in accordance with applicable State Administrative Codes and City Stormwater Ordinances. All costs associated, including cost incurred in retaining outside consultants, with this shall be paid by the Developer.

## **ARTICLE 12**

### **PARK IMPROVEMENTS**

- 12.1 The City shall complete the construction of the "Town Square", adjacent the Property, and related improvements in accordance with the City's plans for the park. It is understood by the Parties that the future Town Square improvements were an important factor for Developer selecting to redevelop the Property. Therefore, the Town Square shall commence construction no later than June 1, 2023.
- 12.2 The Developer shall issue payment to the City of Watertown in lieu of parkland dedication and provide recreation facilities improvement fees per Section 545-33 of the Code of Ordinances of the City of Watertown

## **ARTICLE 13**

### **ENVIRONMENTAL OBLIGATIONS**

- 13.1 Existing Environmental Conditions. The City represents and warrants to Developer as follows:
- 13.1.1 The City has provided Developer with true and complete copies of all environmental information in the possession of the City and/or its agents, attorneys, consultants or independent contractors, including, but not limited to, any and all environmental Phase I and Phase II environmental reports, soil and groundwater test results, correspondence with and orders or directives from governmental agencies (e.g. the Environmental



Protection Agency, the WDNR and other such agencies), case closure letters, remedial action plans and similar information, and has otherwise disclosed in writing all Existing Environmental Conditions of which it has knowledge (collectively, the “Environmental Reports”).

- 13.1.2 Except for the matters disclosed in the Environmental Reports, the City has no knowledge or any Hazardous Materials at, on or under the Property, the City has no knowledge or any pending or threatened actions or proceedings against City or by the City with regard to any Existing Environmental Condition.

#### **ARTICLE 14**

##### **WRITTEN NOTICES AND MISCELLANEOUS**

14.1 Any written notice required under this Agreement shall be sent to the following individuals:

**FOR THE CITY:**

City of Watertown  
Office of the Clerk/Treasurer  
106 Jones Street  
Watertown, WI 53094  
Attention: Elissa Friedl  
[elissaf@cityofwatertown.org](mailto:elissaf@cityofwatertown.org)

**With a copy to:**

City of Watertown  
City Attorney's Office  
106 Jones Street  
Watertown, WI 53094  
Attention: Attorney Rose Simon-Silva  
[roses@cityofwatertown.org](mailto:roses@cityofwatertown.org)

**TO THE DEVELOPER:**

Mail: Main Street Watertown, LLC  
PO Box 620037  
Middleton, WI 53562  
Attention: Terrence R. Wall

**Personal Delivery:** 1818 Parmenter Street, Suite 400  
Middleton, WI 53562  
Attention: Terrence R. Wall

**Email:** [terrence@twallenterprises.com](mailto:terrence@twallenterprises.com) [legal@twallenterprises.com](mailto:legal@twallenterprises.com)



- 14.2 No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party except as otherwise provided for in this Agreement. Notwithstanding the foregoing, Developer may: (i) assign its rights and obligations under this Agreement to an entity that holds title to the Property and/or that is controlled by Developer or by one or more of the principals of Developer. The City shall not be bound to any such assignment until it has received written notice.
- 14.3 The Developer agrees that neither the Property nor any portion thereof, shall be sold to, leased or used by any party in a manner to permit discrimination or restriction on the basis of race, creed ethnic origin or identity, color, gender, religion, marital status, age, handicap, or national origin and that construction, redevelopment, improvement, and operation of the Development shall be in compliance with all effective laws, ordinances and regulations relating to discrimination or any of the foregoing grounds.
- 14.4 The Developer agrees to maintain records such that actual expenditures, including but not limited to the Development Costs, in the Development Project may be ascertained, and compliance with the requirements of sections 3.6.11 and 4.5 above. Upon reasonable notice from the City, authorized representatives of the City shall be entitled to examine and copy such records at the Development Project to verify the amount of construction expenditures that have been incurred by the Developer.
- 14.5 Except as provided herein, all work, undertakings, or other actions to be taken by a specific party hereto shall be completed at the sole cost and expense of such party. Without limiting the foregoing, all cost overruns of any work, undertaking, or other action to be taken by City hereunder shall be borne by City. Likewise, and without limiting the foregoing, all cost overruns of any work, undertaking, or other action to be taken by the Developer hereunder shall be borne by Developer.
- 14.6 This Agreement is made solely for the benefit of the parties hereto and their permitted assignees, and no other party shall acquire or have any rights under this Agreement or by virtue of this Agreement.
- 14.7 Under no circumstances shall any shareholder, partner, member, officer, director, employee, contractor, or agent of the City or Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability against any such party.
- 14.8 No party shall be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders,



wars, acts of enemies, strikes, fires, floods, acts of God, or by any other cause not within the control of the party whose performance was interfered with, and which, by the exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, (collectively, "events of force majeure") and the time for performance shall be extended by the period of delay occasioned by any such cause.

14.9 The laws of the State of Wisconsin shall govern this Agreement. In the event of a dispute involving this Agreement, the Parties agree that venue shall be in Jefferson County, Wisconsin, Circuit Court.

14.10 This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. No amendment of this Agreement shall be effective unless in writing and signed by the party to be bound thereby.

14.11 If any provision of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of this Agreement or any constitution or statute or rule of public policy, or for any other reason, then such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein invalid, inoperative, or unenforceable to any extent whatever. To the maximum extent possible, this Agreement shall be construed in a manner consistent with the powers of City, including, but not limited to, their powers under the Tax Increment Law, § 66.1105, Wis. Stats, and the Blight Elimination and Slum Clearance Act, Wis. Stat. § 66.1333, to achieve its intended purpose. Reference is made to Chapter 105, Laws of 1975 § 4, and to Wis. Stat. § 66.1333(17), which provide that the Tax Increment Law and the Blight Elimination and Slum Clearance Act should be construed liberally to effectuate their purposes.

14.12 The parties shall enter into all such further agreements and instruments and shall take all such further actions as may be reasonably necessary or desirable to give further force or effect to this Agreement.

14.13 Time is of the essence as to all dates and time periods set forth in this Agreement.

14.14 The City agrees to provide an exclusive period of time ("**Exclusivity Period**") starting from the Effective Date and expiring 12 months following the receipt of an occupancy permit for the Project.

14.14.1 During the Exclusivity Period, the City agrees not to sell, lease, or otherwise transfer property for a multi-family development within half of a mile of the Property for the



purpose of ensuring that the City does not create competition for the Project given the Developer is taking enormous risk.

14.14.2 During the Exclusivity Period, Developer also shall have a right of first refusal to acquire all or a portion of the surface parking lot owned by the City generally located at 204 North First Street (Parcel Number 291-0815-0421-022) for the purposes of constructing a mixed-use project similar to the Project described herein.

14.15 Neither party shall be in default of this Agreement unless written notice of the default has been delivered and 30 days have passed without the default being cured. The City reserves the right to withhold payment under the MRO defined in section 4.4.3 pending an allegation of default. An election by either party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults. Any dispute over the interpretation or application of this Agreement shall go through the following mediation process before any suit may be filed in Circuit Court.

14.15.1 The parties will conduct a mediation using the following process before filing any suit in circuit court.

14.15.2 If the parties cannot agree on a qualified mediator within five (5) business days of the request for mediation, a qualified mediator will be appointed by the American Arbitration Association.

14.15.3 The mediation shall take place within thirty (30) days of the appointment of the mediator.

14.15.4 Each party shall provide the mediator with all information required for the mediator to understand the issue and a memorandum not to exceed ten (10) pages outlining its position with regard to the issue that needs to be resolved at least five (5) business days before the first scheduled mediation.

14.15.5 The mediation sessions shall be private and confidential with only the parties or their representatives attending the sessions.

14.15.6 The expense of a mediator, if any, shall be shared equally by the parties.

14.16 The City shall record this Agreement against the Property with the Register of Deeds for Jefferson County, at the Developer's expense. All the terms and conditions of this Agreement shall run with the land and be binding upon Developer and all of Developer's successors in interest, specifically including the obligation to make payments in lieu of taxes. Every reference to Developer herein shall be a reference to Developer and all of Developer's successors in interest,



including tax-exempt entities. This Agreement shall expire on the date of termination of the District.

14.17 Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stat. § 893.80 or any other law.

14.18 Except as provided by law, or as expressly provided in the Agreement, no vested rights to develop the Project shall inure to Developer by virtue of this Agreement. Nor does the City warrant that Developer is entitled to any other approvals required for the construction of the Project as a result of this Agreement.

14.19 The representations and recitations set forth in Recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this paragraph, subject to all of the terms and conditions in the balance of this Agreement.

14.20 Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

14.21 The Developer acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.

14.22 The individuals executing this Agreement on behalf of the Developer warrant and represent that they are duly authorized to bind the Developer to this Agreement. Developer warrants and represents that the execution of this Agreement is not prohibited by the Developer's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Developer shall provide proof upon request.

14.23 Subject to the limitation described herein and except for any misrepresentation or any misconduct of any of the indemnified parties, Developer shall indemnify, save harmless and defend the City and its respective officer, agents and employees from and against any and all liability, suits, actions, claims, demands, losses, costs, damages and expenses of every kind and description, including reasonable attorney costs and fees, for claims of any kind including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them brought (i) because of any Default or (ii) because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction and/or




operations of the Project and the Property to the extent caused by the negligence or willful misconduct on Developer's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time. This section shall survive termination of this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]



WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF WATERTOWN:

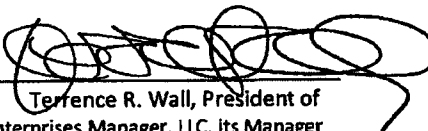
BY:   
Emily McFarland, Mayor

ATTEST:

BY:   
Elissa Friedl, City Clerk/Treasurer

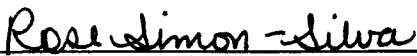
DEVELOPER:

MAIN STREET WATERTOWN, LLC

BY:   
Terrence R. Wall, President of  
T. Wall Enterprises Manager, LLC, its Manager

**AUTHENTICATION**

Signature(s) of Emily McFarland, Mayor and Elissa  
Friedl, City Clerk/Treasurer authenticated this  
13<sup>th</sup> day of October, 2021

  
Rose I. Simon-Silva  
Title: Member State Bar of Wisconsin

I hereby certify that the necessary funds have been  
provided to pay the liability incurred by the City of  
Watertown on the within Agreement.

  
Elissa Friedl, City Clerk/Treasurer

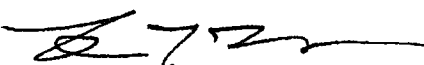
**ACKNOWLEDGMENT**

State of Wisconsin )  
                                  ) ss.  
County of Dane )


Personally came before me this 8<sup>th</sup> day of  
September, 2021 the above-named Terrence

R. Wall, \_\_\_\_\_ who acknowledged that he  
as Pres. of the Manager, being authorized to do so,

executed the foregoing instrument on behalf of  
Main Street Watertown, LLC.

  
Notary Public, Dane County, Wisconsin  
My Commission expires: Per M.

APPROVED AS TO FORM:

  
Rose I. Simon-Silva, City Attorney

FREDERICK TAYLOR BRENGEL  
Notary Public  
State of Wisconsin

*Ashley Brynson / wse  
Special Counsel*







## **SCHEDULE OF EXHIBITS**

- A. Legal Description of the Development (ALTA Survey)
- B. Development Plan
- C. Purchase and Sales Agreement
- D. Municipal Revenue Obligation
- E. Riverwalk Easement
- F. Lookback IRR Formula



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE DEVELOPMENT (ALTA SURVEY)**

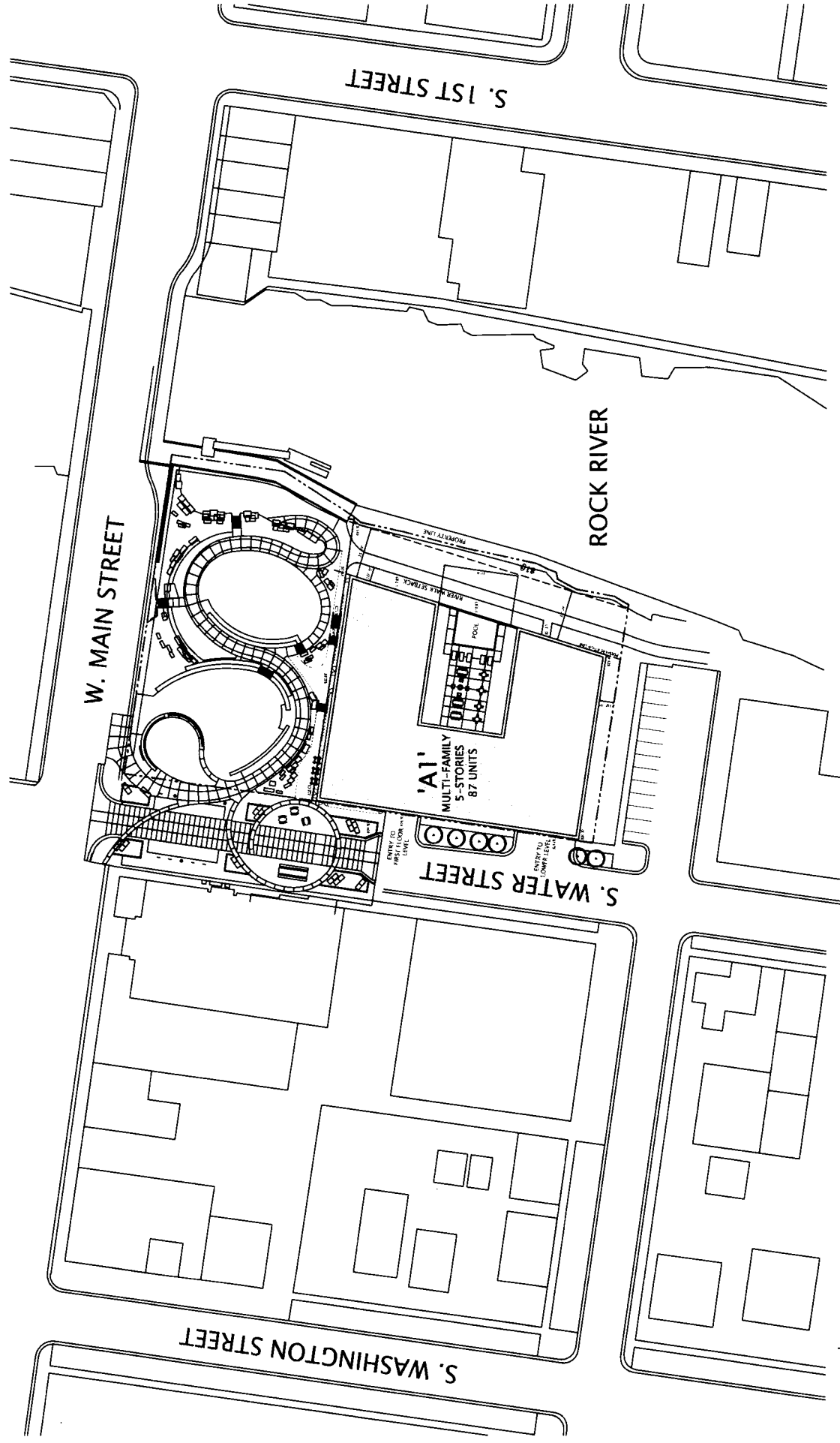






**EXHIBIT B**  
**DEVELOPMENT PLAN**





# WATERTOWN REDEVELOPMENT

**JLA**  
ARCHITECTS

**T Wall Enterprises**  
— 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 —

JUNE 16, 2021  
1"=60' @ 11x17

CONCEPTUAL MASTERPLAN





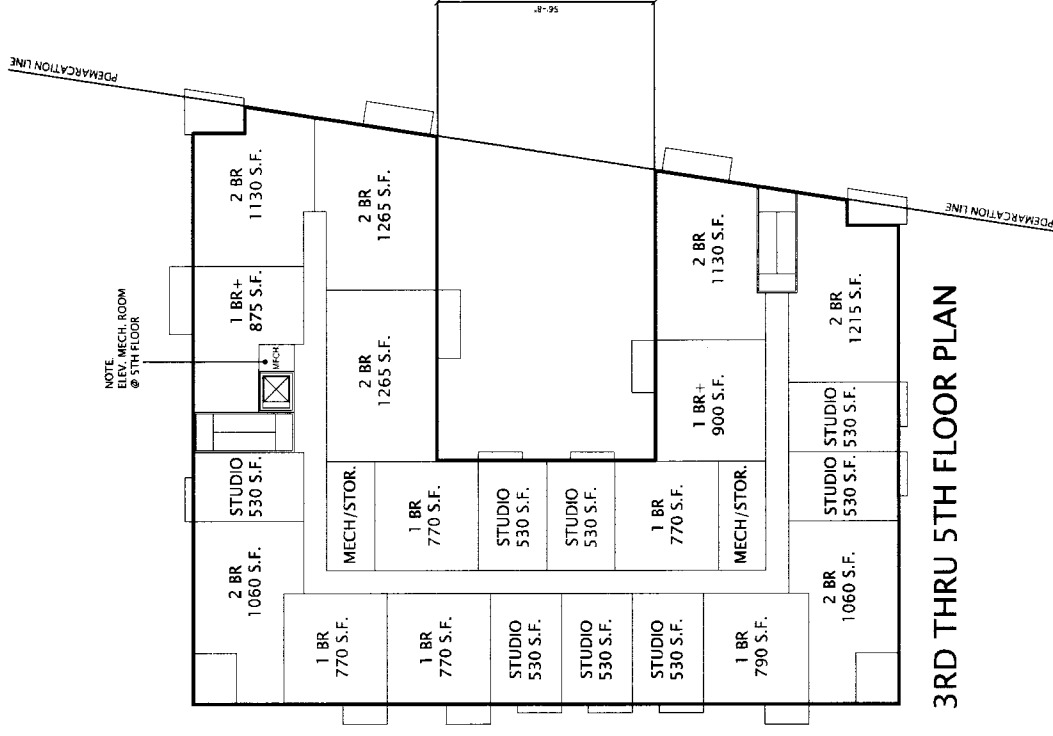
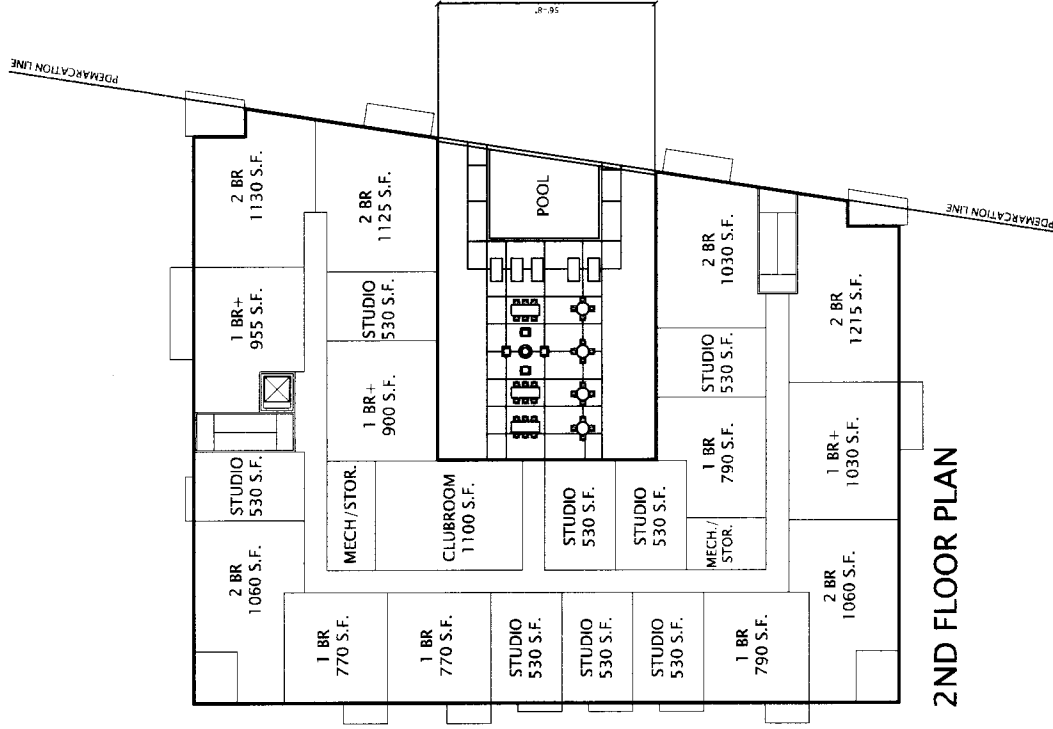
1"=30' @ 17x17

# WATERTOWN REDEVELOPMENT

JLA  
ARCHITECTE

## FLOOR PLANS



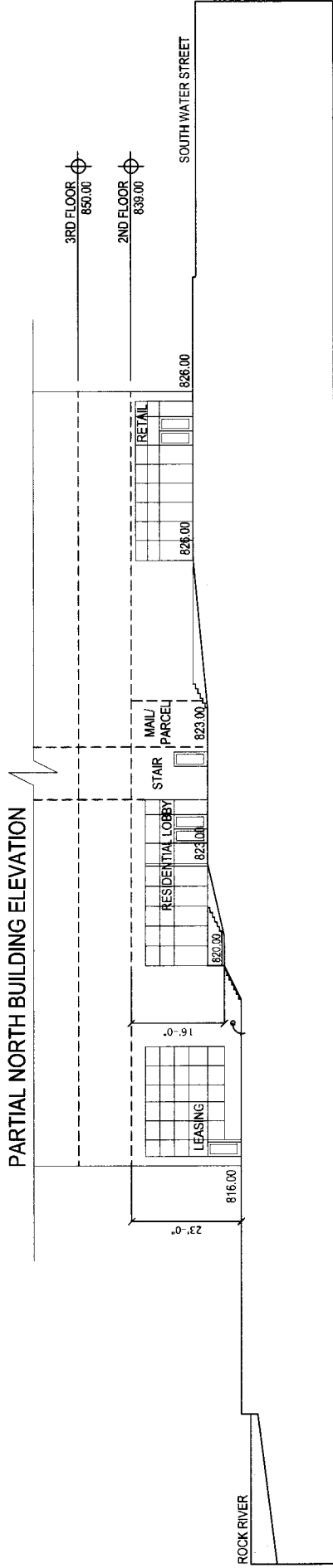


# WATERTOWN REDEVELOPMENT

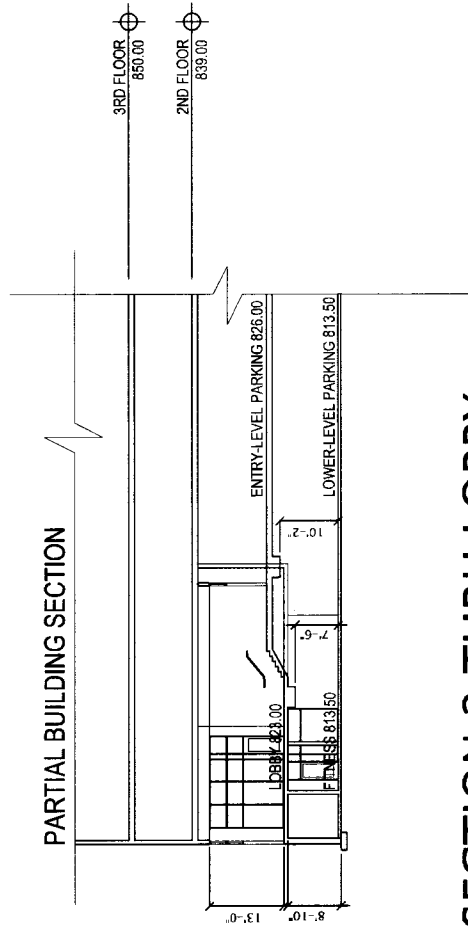


JUNE 16, 2021  
1"=30' @ 11x17





## SECTION 1 THRU PLAZA



## SECTION 2 THRU LOBBY



**EXHIBIT C**  
**PURCHASE AND SALES AGREEMENT**



**EXHIBIT C  
TO  
DEVELOPMENT AGREEMENT**

**Main Street Watertown**

**100 West Main Street,  
Watertown, Wisconsin**

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**THIS PURCHASE AGREEMENT** (the “**Agreement**”), is made and entered into by and between Main Street Watertown, LLC (the “**Developer**” or the “**Buyer**”), and the City of Watertown, a Wisconsin municipal corporation (the “**City**” or “**Seller**”) as of the date this Agreement has been signed by both Developer and City (the “**Effective Date**”). Developer and City individually are each sometimes referred to herein as a “**Party**” and together are referred to herein as the “**Parties**.”

**RECITALS**

**WHEREAS** Developer desires to acquire from City the real property in Jefferson County, Wisconsin, as described on **Exhibit 1**, attached hereto and incorporated herein (the “**Property**”),

**WHEREAS** City owns the Property and desires to sell to Developer the Property on the terms and conditions set forth in this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I  
PURCHASE AND SALE**

City agrees to sell and convey to Developer and Developer agrees to purchase from City, on the terms set forth in this Agreement, all of City's right, title and interest in and to the certain parcels of land located in downtown Watertown in the City of Watertown, County of Jefferson, Wisconsin and legally described on **Exhibit 1** attached hereto (the “**Property**”). The Property, as used in this Agreement, shall include all property interests appurtenant to the area legally described on Exhibit 1 and all easements, rights-of-way, and rights appurtenant thereto.



## **ARTICLE II**

### **PURCHASE PRICE**

Subject to the adjustments and prorations described in Article III below, the total purchase price for the Property shall equal One and 00/100 Dollars (\$1.00) (the “**Purchase Price**”). The Purchase Price shall be paid in the following manner:

- 2.1 **Earnest Money.** No later than fifteen (15) days following the Effective Date, Developer shall deposit (\$1.00) (the “**Earnest Money**”) with First American Title Insurance Company, NCS, 25 West Main Street, Suite 400, Madison, Wisconsin 53703 (the “**Escrowee**”), which Earnest Money shall be credited to Developer at Closing (as defined below) against the Purchase Price pursuant to Section 2.2 below. If the purchase and sale under this Agreement fail to close due to the failure of any contingency under Article V to be either satisfied or waived within the time allotted therefore, or, following the satisfaction or waiver of all such contingencies, due to City’s default, Developer shall be entitled to a refund of all Earnest Money. If, however, such purchase and sale fails to close after all of the contingencies set forth in Article V have been removed or waived, due to Developer’s default, then City shall be entitled to the Earnest Money.
- 2.2 **Payment of Remainder.** On the Closing Date, Developer shall pay to City the remaining balance of the Purchase Price, and subject to the adjustments and prorations set forth in Article III, in the form of a certified check, a title company check or wired funds.

## **ARTICLE III**

### **ADJUSTMENTS AND PRORATIONS**

The following items shall be prorated and adjusted as of 12:01 a.m. on the date of Closing:

- 3.1 **Property Taxes.** City shall pay all real property taxes for the Property for all years prior to the year of Closing. Real property taxes levied for the year of Closing shall be prorated on a daily basis through the date immediately preceding the Closing Date using the actual real property taxes levied for the year of Closing, and Developer shall receive a credit at Closing for City’s pro rata share. If the actual tax levy is not known at the time of Closing, Developer and City shall prorate the real property taxes at the time of Closing on a daily basis based on the actual tax levy for the previous year.
- 3.2 **Special and Area Assessments.** City shall pay, at Closing, all special assessments for work actually commenced, completed, or levied prior to the date of Closing. Developer shall pay all connection charges or interceptor charges payable to any



utility or municipality as a prerequisite to obtaining water or sanitary sewer or storm sewer, gas or electrical service, for Developer's specific use.

- 3.3 **Recording Fees.** Developer shall pay the recording fees for the Deed (defined below). City shall pay the recording fees for any documents required to be recorded in order to cause title to the Property to be in the condition that City is required to provide by this Agreement (i.e. mortgage releases etc).
- 3.4 **Transfer Taxes.** City shall pay all transfer taxes (including the Wisconsin Real Estate Transfer Fee). City shall deliver on the Closing Date any return that may be required in connection with such taxes, duly signed and sworn to by City, together with a check for the payment of such taxes, and Developer shall sign and swear to such return, if necessary, and cause the return and check to be delivered and filed with the appropriate county or municipal officials on or after the Closing Date.
- 3.5 **Closing Prorations.** The following items, if applicable, shall be prorated at Closing based on date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, water and fuel. The Parties agree to make such post-Closing adjustments and readjustments as may be required due to errors and omissions in the Closing adjustments. If information is not available, or if the Parties agree that it is impracticable to make a particular adjustment on the Closing Date, that adjustment shall be made as soon as practicable after such information is available.

#### **ARTICLE IV**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 4.1 **Authority.** At Closing, City shall have the complete power and authority to sell, transfer and convey the Property to Developer.
- 4.2 **Good Title.** Title to the Property shall be, on the Closing Date, free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property previously disclosed to the Developer, and such matters as may affect title which are waived under Article VI hereof.
- 4.3 **Pending Special Assessments.** The City has not received notice of, nor does it have knowledge of, any work pending or contemplated that could result in the levying of a special assessment on the Property.
- 4.4 **Property Condition Representations.** City makes no representations or warranties as it relates to the Property generally or the condition of the improvements. Developer



accepts the Property and all improvements, including all mechanical systems, in "as is", "where is" condition. Developer waives the right to a property condition report, and waives the right to rescind the Agreement, pursuant to Wis. Stat. 709.08.

**4.5 Hazardous Substances.** To Seller's knowledge, no portion of the Property has been used for the generation, storage, transportation, disposal or treatment of Hazardous Substances in violation of Environmental Laws, or of groundwater or soil contamination upon the Property resulting from the presence of Hazardous Substances in violation of the Environmental Laws. Furthermore, Seller has no actual knowledge of any suit, action or other legal proceeding arising out of or relating to any Environmental Laws with respect to the Property which is pending or threatened before any court, agency or governmental authority, and Seller has not received any notice that the Property is in violation of any Environmental Law.

- a. "Hazardous Substances" means any: hazardous waste, substance or material; air or water pollutant (including, without limitation, mold, bacteria, fungi, viruses and spores); asbestos or asbestos containing material pollutant; solid, liquid, gaseous, or thermal irritant or contaminant (such as smoke, vapor, soot, fumes, alkalis, chemicals, oils, solvents or waste, including materials to be recycled in the future, reconditioned or reclaimed); polychlorinated biphenyl (in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils or any other device or form); or urea formaldehyde foamed in place insulation; all as may be defined or included under Environmental Laws.
- b. "Environmental Laws" means any federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations, guidance documents or memoranda and other governmental restrictions and requirements relating to the creation or discharge of solid waste or process wastewater or otherwise relating to the environment or Hazardous Substances (as defined herein) including, but not limited to, Chapters 101, 160, 254, 280, 281, 283, 285, 287, 289, 291 and 299 of the Wisconsin Statutes, the Federal Toxic Substances Control Act, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, regulations of the Federal Environmental Protection Agency or state environmental protection agency or Department of Natural Resources or Environmental Quality now or at any time hereafter in effect.

**4.6 Leases and Contracts.** City covenants that from and after the date of acceptance, if Developer shall not have terminated this Agreement in accordance with this Agreement, City shall not enter into any new leases affecting the Property, or any contract that would survive Closing or amendments to the leases or contracts. Prior



to Closing, City shall, at City's sole expense, terminate or buy out all existing leases and contracts that the Property has with any tenant or any other party. The City also shall not enter into any contractual obligations affecting the Property which shall survive Closing, including but not limited to, easement agreements, shared access agreements, or air-right easement agreements with any adjacent property owners to the Property without written consent from the Developer. The Property shall have no tenants (i.e. vacant) at Closing.

4.7 **Archeological Issues.** City is not aware of any archeological issues concerning the Property.

4.8 **No Pending Litigation or Bankruptcy.** There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against City, and City has no intention of filing or commencing any such action within ninety (90) days following Closing.

## **ARTICLE V**

### **CONTINGENCY & CONDITIONS TO CLOSE**

5.1 **Contingencies.** Developer shall, in accordance with the timelines described in Section 5.2 below, perform all necessary investigation needed to make an informed decision to either proceed or not to proceed with the purchase and development of the Property. City and Developer agree that the performance of the obligations herein set forth are specifically contingent upon the satisfaction and performance of each of the following conditions in this Article V.

5.2 **Contingency Period.** For purposes of this Agreement, the "Contingency Period" shall be defined as that period beginning on the Effective Date and ending at 5:00 P.M. (Central Time) on October 15, 2022. So long as not in default hereunder, Developer may extend the Contingency Period for up to two sixty ( 60) day periods, provided Developer is using best efforts and such approvals, diligence, or financing are in the process of being granted. If Developer elects to extend the Contingency Period as provided herein, Buyer shall give Seller written notice prior to the then current expiration date of the Contingency Period.

#### **5.3 City Disclosure of Documents.**

a) City has provided the documents listed below in this Section 5.2(a) prior to Developer entering this Agreement (the "City Disclosure Documents").



- 1) A copy of all prior environmental audits, archeological studies, soil reports, title and survey documents, in the possession of City, with respect to the Property.
  - 2) Any notices in City's possession regarding Hazardous Substances or violation of Environmental Laws.
  - 3) If applicable, copies of documents regarding the leased premises in City's Property including rent roll, any current and future rental agreements, the lease file (including correspondence with any tenants), and notices of termination and non-renewal.
- b) Developer shall have until 90 days following the Effective Date to review the City Disclosure Documents to ensure no agreement, encumbrance, condition of the Property and any other matter is disagreeable to Developer. If Developer shall notify City in writing that Developer does not approve of the City Disclosure Documents on or before 90 days following the Effective Date then this Agreement shall be null and void and all Earnest Money shall be returned to Developer. If Developer shall fail to notify City that Developer does not approve of the City Disclosure Documents on or before expiration of the aforementioned time period, then the contingency set forth in this Section 5.2 shall be deemed waived. This contingency is for Developer's benefit and may be unilaterally waived by Developer.

**5.4 Environmental Audit.** Buyer obtaining, at Buyer's cost and expense on or before expiration of the Contingency Period any environmental audit concerning the Property that Buyer desires (including, but not limited to, preparation of a Material Management Plan filed with the WDNR). Buyer shall notify Seller in writing on or before expiration of the Contingency Period (defined above) if any environmental audit performed upon the Property is unacceptable to Buyer, as Buyer shall determine in the sole exercise of Buyer's discretion. In the event Buyer gives such notice, Buyer may, in its sole discretion, declare this Agreement null and void and all Earnest Money shall be promptly returned to Buyer. In the event Buyer shall notify Seller that all environmental audits performed upon the Property are acceptable to Buyer, or in the event Buyer shall fail to give any notice to Seller with respect to all environmental audits performed upon the Property, then this contingency shall be deemed waived. Notwithstanding the foregoing, the City agrees to cooperate with Developer in the application for any grants available to either the City or Developer from the Wisconsin Economic Development Corporation, or other body, the funds from which may be used to assist the Developer with identification and remediation of the environmental contamination that has been identified on the Property.

**5.5 Government Approvals.** Buyer obtaining, at Buyer's cost and expense and in Buyer's name, on or before the expiration of the Contingency Period, all necessary government approvals for Buyer's intended development of the Property,



including, but not limited to rezoning, the specific implementation plan as designed by Buyer, the general development plan and other entitlements and approvals required for the intended development by governmental or municipal bodies governing the property, including but not limited to common council approval of Buyer's intended development on the Property, municipal staff signoff thereof and the ability for Buyer to obtain building permits for Buyer's intended development on the Property. Buyer shall notify Seller in writing on or before expiration of the Contingency Period if Buyer is unable to obtain all necessary government approvals. In the event Buyer gives such notice, then this Agreement shall be null and void and all Earnest Money shall be promptly returned to Buyer. In the event Buyer shall notify Seller that all necessary government approvals for the Property have been obtained, or in the event Buyer shall fail to give any notice to Seller with respect to all necessary government approvals, then this contingency shall be deemed waived. This contingency is for Buyer's benefit and may be unilaterally waived by Buyer.

**5.6 Financing Contingency.** Buyer obtaining, at Buyer's cost and expense, on or before the expiration of the Contingency Period, Financing in an amount and upon such terms as Buyer, in Buyer's sole discretion, requires to develop Buyer's intended development on the Property including specifically Loan Financing and or Tax Incremental Financing (collectively "**Financing**");

- a. **Loan Financing.** This Agreement is contingent upon Buyer securing a binding written loan commitment from a financial institution as described below and all conditions to such loan commitment being satisfied to the financial institution's approval. The Financing selected shall be in an amount of not less than 50% of Buyer's intended development on the Property with not more than a fixed interest rate of 4.0% for a term of not less than 3 years. Payments of interest only shall be payable during the construction term, and payments of principal and interest amortized over a 25-year amortization schedule shall be payable during the balance of the loan term. Loan origination or commitment fees shall not exceed one percent (1%) of the original principal balance.
- b. **Tax Incremental Financing (TIF).** This Agreement is contingent upon Buyer receiving a commitment of TIF from the City in a principal amount of at least \$3,300,000.00.

Buyer shall notify Seller in writing on or before expiration of the Contingency Period if Buyer is unable to obtain the Financing. In the event Buyer gives such notice, then this Agreement shall be null and void and all Earnest Money shall be promptly returned to Buyer. In the event Buyer shall notify Seller that the Financing has been obtained, or in the event Buyer shall fail to give notice to Seller with respect to Financing being obtained, then this contingency shall be deemed waived. This contingency is for Buyer's benefit and may be unilaterally waived by Buyer.

**5.7 Easement.** Buyer obtaining, at Buyer's cost and expense, on or before the expiration of the Contingency Period, a various easements from the City, which are



described in the Development Agreement by and between Buyer and Seller (the “**Easements**”). The Easements shall include, at a minimum, the following easements:

- A. Temporary Construction Easement. a 16 month temporary construction easement of 10’ from the North and West of the Property;
- B. Air Rights Easement. 6’ West of the Property;
- C. Pedestrian Access Easement. Approximately 10’ on the North of the Property;
- D. Riverwalk Easement. Approximately 35’ from the edge of the Rock River onto the Property;
- E. Utility Easement. An underground electrical utility easement between the electrical box approximately 10’ from the North side of the Property.

Buyer shall notify Seller in writing on or before expiration of the Contingency Period if Buyer is unable to obtain the Easements. In the event Buyer gives such notice, then this Agreement shall be null and void and all Earnest Money shall be promptly returned to Buyer. In the event Buyer shall notify Seller that the Easements has been completed, or in the event Buyer shall fail to give notice to Seller with respect to the Easements being completed, then this contingency shall be deemed waived. This contingency is for Buyer’s benefit and may be unilaterally waived by Buyer.

**5.8 Effect of Unmet Contingencies.** If any contingency in this Article V is not satisfied or waived by the Party or Parties benefited by the contingency (the “Benefited Party or Parties”) by the deadline prescribed herein for the satisfaction of such contingency, then the Benefited Party or Parties shall then have the option of terminating this Agreement by delivery of written notice to the other within ten (10) days after such deadline, in which case neither Buyer nor Seller shall have any further obligation hereunder and all Earnest Money shall then forthwith be returned to Buyer.

## **ARTICLE VI**

### **TITLE**

6.1 **Title.** City obtaining for examination, at City’s expense, an ALTA commitment (the “**Commitment**”) for marketable title insurance on the Property issued by First American Title Insurance Company (from Escrowee), committing said title insurance company to issue a standard ALTA form owner’s policy of title insurance, including gap coverage, in the full amount of the Purchase Price, naming Developer as the insured and showing all liens, encumbrances and other matters of



record. If the Commitment discloses any matters affecting title to the Property to which Developer objects other than the Permitted Exceptions described in Section 4.2 above, Developer shall have until 60 days following receipt of the Commitment to deliver to City written notice of objection to such matters (“**Developer’s Title Notice**”). If Developer fails to deliver such notice within such period, then Developer shall be deemed to have approved of the condition of title as shown by the Commitment. If, within 30 days following delivery of Developer's Title Notice, City is unable to, or has failed to, cure such defects, Developer shall have the option either to: (a) terminate this Agreement within 30 days after delivery of Developer’s Title Notice, in which case this agreement shall be null and void and Developer shall be entitled to the expeditious return of its Earnest Money; or (b) waive such defects and perform pursuant to the terms of this Agreement, notwithstanding such defects. All costs of issuing the commitment (excluding endorsements which shall be at the cost of City) and the final policy issued thereunder shall be borne by City.

6.2 **Conveyance of Title.** At Closing and upon payment of the Purchase Price, City shall convey the Property by general warranty deed free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, general taxes levied in the year of closing which constitutes merchantable title for purposes of this transaction and the terms of any Developer’s Agreement between the parties. City shall complete and execute the documents necessary to record the conveyance at City’s cost and pay the Wisconsin Real Estate Transfer Fee.

6.3 **Survey.** Buyer acknowledges that Seller has provided to Buyer, at Seller’s expense, an ALTA survey (the “**Survey**”) of the Property certified to Buyer and the Title Company and dated no earlier than the Effective Date prepared by Vierbicher & Associates in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 2011 (the “**Standards**”) and showing the Property to be in a condition acceptable to Buyer.

6.4 **GAP Endorsement.** City shall provide, at City’s expense, a “GAP endorsement” to the title commitment or similar title endorsement, for any title defects that occur after the date of the title commitment but prior to the recording of the deed received by Developer.

## **ARTICLE VII**

### **CLOSING**

The closing of the purchase and sale of the Property (the “**Closing**”) shall be as follows:



7.1 **Time and Place.** The Closing shall take place at the offices of First American Title Insurance Company, NCS, 25 West Main, Suite 400, Madison, Wisconsin 53703 on a date mutually agreed upon by the City and Developer but no later than the last of the following to occur: (i) December 31, 2022; or (ii) Developer's ability to obtain a building permit to construct Developer's intended development on the Property from the City (the "**Closing Date**"). If such date is not a business day, the Closing Date shall be on the first business day thereafter. Developer's election to schedule the Closing before the actual Closing Date, shall not waive its right to the Closing on the later Closing Date for whatever reason, or no reason at all.

7.2 **City's Obligations.** At the Closing, City shall do the following:

- a. **Deed.** Execute, acknowledge and deliver to Developer a general warranty deed conveying title of the Property to Developer, all subject only to the Permitted Exceptions.
- b. **Owner's Affidavit.** Execute, acknowledge and deliver to Developer a First American Title standard owner's affidavit.
- c. **Wisconsin Transfer Tax Return.** Execute and deliver to Developer the Wisconsin Real Estate Transfer Return, together with a check made payable to the register of deeds of the county in which the Property is located in the amount of the transfer tax due.
- d. **Closing Statement.** Execute and deliver to Developer a closing statement setting forth the Purchase Price, all adjustments thereto and all amounts paid at the Closing.
- e. **1099 Report.** Execute and deliver to the title insurer for filing with the Internal Revenue Service a 1099 reporting form describing this transaction.
- f. **Certificate of Non-Foreign Status.** Execute and deliver to Developer a certificate of non-foreign status meeting the requirements of Section 1445 of the Internal Revenue Code.
- g. **Form W-9.** Complete, execute and deliver to Developer Department of the Treasury--Internal Revenue Service Form W-9.

7.3 **Developer's Obligations.** At the Closing, Developer shall do the following:

- a. **Delivery of Purchase Price.** Deliver to City the funds equal to the unpaid balance of the Purchase Price, as adjusted pursuant to Article III.



- b. **Closing Statement.** Execute and deliver to City a counterpart of the statement described at Section 7.2(d).
- c. **1099 Report.** Execute and deliver to the title insurer for filing with the Internal Revenue Service a 1099 reporting form describing this transaction.

## **ARTICLE VIII** **GENERAL PROVISIONS**

- 8.1 **Entire Agreement.** This document contains the entire agreement between Developer and City and it shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns.
- 8.2 **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.
- 8.3 **Survival of Warranties and Representations, Indemnification.** Any warranty, representation or agreement herein contained shall survive the Closing, and City shall indemnify Developer from and against any and all costs, expenses, liabilities and damages, including attorney's fees, arising out of the breach of any such warranty, representation or agreement.
- 8.4 **Modifications.** This Agreement may be amended or modified only by written instrument duly executed by both Developer and City.
- 8.5 **Notices.** Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered; sent by commercial overnight courier, email or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as set forth below:

**FOR THE CITY:**

City of Watertown  
Office of the Clerk/Treasurer  
106 Jones Street  
Watertown, WI 53094  
Attention: Elissa Friedl  
[elissaf@cityofwatertown.org](mailto:elissaf@cityofwatertown.org)

**With a copy to:**

City of Watertown  
City Attorney's Office  
106 Jones Street



Watertown, WI 53094  
Attention: Attorney Rose Simon-Silva  
[roses@cityofwatertown.org](mailto:roses@cityofwatertown.org)

**TO THE DEVELOPER:**

Mail: Main Street Watertown, LLC  
PO Box 620037  
Middleton, WI 53562  
Attention: Terrence R. Wall

**Personal Delivery:** 1818 Parmenter Street, Suite 400  
Middleton, WI 53562  
Attention: Terrence R. Wall

**Email:** [terrence@twallenterprises.com](mailto:terrence@twallenterprises.com) [legal@twallenterprises.com](mailto:legal@twallenterprises.com)

Notices shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; or (b) in the case of certified or registered mail, on the date when deposited in the United States mail with sufficient postage to effect such delivery; or (c) in the case of email transmission, on the date when given, if prior to 5:00 P.M., recipient's local time, on a business day, otherwise on the next occurring business day. . Either Party may change the address to which notice must be given by delivery of written notice to the other Party in accordance with this Section 8.5.

8.6 **Severability of Provisions.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

8.7 **Time of Essence.** Time is of the essence.

8.8 **Cooperation.** City and Developer agree to cooperate in the prosecution of applications made by either Party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property and for financing the construction of the intended project of Developer, provided, however, that City's duty to cooperate shall not require City to expend any funds. City and Developer each agree at any time or from time to time at the written request of the other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.



- 8.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to form one physical document. Signatures transmitted electronically by pdf software shall be deemed to be true and legally binding signatures.
- 8.10 **Litigation.** In the event either Party hereto commences a legal action to enforce the terms of, or to resolve a dispute concerning this Agreement, the non-prevailing Party in such action shall pay to the prevailing Party its actual costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
- 8.11 **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 8.12 **Mutual Indemnification Regarding Brokerage Commissions.** Developer and City each represent and warrant to the other that neither has retained the services of any real estate broker or agent in connection with the purchase and sale under this Agreement, and each agrees to indemnify and hold the other harmless from and against any and all liability or damages, including costs and attorney's fees, resulting from any claim brought by any real estate broker or agent for any real estate commission or finder's fee due, or alleged to be due, as the result of the actions of such person. This Agreement does not constitute a listing agreement between Developer and City. Developer hereby discloses that Terrence R. Wall is a principal of the Developer and is a Wisconsin licensed real estate broker and is entering into this transaction for the purpose of making a profit.
- 8.13 **Survival of Closing.** Any representation or agreement herein contained shall survive the Closing for a period of six (6) months.
- 8.14 **Contingencies Saving Provision.** The parties acknowledge that Buyer will expend material sums of money in reliance on Seller's obligations under this Agreement, in connection with negotiating and executing this Agreement, conducting the inspections contemplated by this Agreement and preparing for Closing, and that Buyer would not have entered into this Agreement without the availability of such contingencies. The parties, therefore, agree that adequate consideration exists to support each of the party's obligations under this Agreement, and Seller and Buyer each waive any and all rights to challenge the enforceability of this Agreement on the basis that any of the conditions or contingencies set forth herein are at Seller's or Buyer's sole discretion or that any of the agreements contained herein are illusory.
- 8.15 **Construction.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both City and



Developer have contributed substantially and materially to the preparation of this Agreement. The submission of this Agreement by one Party to the other shall not constitute an offer to sell or purchase, and this Agreement shall not become effective or binding upon either Party unless and until this Agreement has been executed and delivered by Developer and City.

- 8.16 **Development Agreement.** The Parties hereto have entered a development agreement with regard to the development of the Property by the Developer, which is incorporated herein in full by reference.

[See following page for signatures]



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

**DEVELOPER: MAIN STREET WATERTOWN, LLC**

A Wisconsin limited liability company

By: \_\_\_\_\_

Terrence R. Wall, President of  
T. Wall Enterprises Manager LLC, its  
Manager

Date: \_\_\_\_\_

September 8, 2021

**CITY: CITY OF WATERTOWN, WISCONSIN**

By: \_\_\_\_\_

Emily McFarland, Mayor

Elissa Friedl, City Clerk/Treasurer

APPROVED AS TO FORM: \_\_\_\_\_

~~Rose L. Simon-Silva, City Attorney~~

Auley Boydson / JSC  
Special Counsel

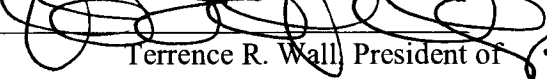
Title: Member State Bar of Wisconsin



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

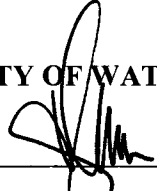
**DEVELOPER: MAIN STREET WATERTOWN, LLC**

A Wisconsin limited liability company

By:   
Terrence R. Wall, President of  
T. Wall Enterprises Manager LLC, its  
Manager

Date: September 8, 2021

**CITY: CITY OF WATERTOWN, WISCONSIN**

By: 

Emily McFarland, Mayor

  
Elissa Fried, City Clerk/Treasurer

APPROVED AS TO FORM:

Rose I. Simon-Silva, City Attorney

Title: Member State Bar of Wisconsin



**EXHIBIT 1**  
Description of Property

LOT 1 OF CERTIFIED SURVEY MAP NO. 5818 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR JEFFERSON COUNTY, WISCONSIN ON AUGUST 31, 2017, IN VOLUME 33, PAGE 132 AS DOCUMENT NO. 1387201, BEING LOTS 2, 3 AND 4 OF BLOCK 46 OF THE ORIGINAL PLAT OF THE WEST SIDE OF ROCK RIVER AS SURVEYED BY J.C. BRAYTON LOCATED IN GOVERNMENT LOT 5 OF SECTION 4, TOWNSHIP 8 NORTH, RANGE 15 EAST, IN THE CITY OF WATERTOWN, JEFFERSON COUNTY, WISCONSIN.



**EXHIBIT D**  
**MUNICIPAL REVENUE OBLIGATION**



**EXHIBIT D**

**AGREEMENT TO UNDERTAKE DEVELOPMENT IN  
TAX INCREMENT DISTRICT NO. 8**

**MUNICIPAL REVENUE OBLIGATION**

**CITY OF WATERTOWN**

**\$3,300,000.00**

THIS MUNICIPAL REVENUE OBLIGATION (the "Obligation") is created pursuant to Wis. Stat. § 66.0621 this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by the City of Watertown, Jefferson County, Wisconsin (the "City") to MAIN STREET WATERTOWN, LLC, its successors and assigns ("Developer").

**WITNESSETH:**

A. The City and Developer have entered into an Agreement to Undertake Development in Tax Increment District No. dated \_\_\_\_\_, 2021, and within the Agreement (the "Development Agreement").

B. This Obligation is issued by the City pursuant to the Development Agreement.

C. Terms that are capitalized in this Obligation that are not defined in this Obligation and that are defined in the Development Agreement shall have the meanings assigned to such terms by the Development Agreement.

1. *Promise to Pay.* The City shall pay to Developer up to, but not to exceed, the principal amount of \$3,300,000.00 solely from Tax Increment Value, and, then, only from a sum limited and equal to exactly 77% of the Project's Tax Increment Value, on an annual basis, minus any and all other debts or obligations otherwise owing to the City by virtue of the Development Agreement or otherwise. To the extent that on any Payment Date the City is unable to make a payment from Tax Increment Value at least equal to the Scheduled Payment due on such date as a result of having received, as of such date, insufficient Tax Increment Value, such failure shall not constitute a default under this Obligation and, except as hereinafter provided, the City shall have no obligation under this Obligation, or otherwise, to subsequently pay any such deficiency. Any payments on the Municipal Revenue Obligation, which are due on any Payment Date, shall be payable solely from and only to the extent that, as of such Payment Date, the City has received Tax Increment Value. The term of this Obligation and the City's obligation are as exclusively and specifically provided in the Agreement. This Obligation shall terminate and the City's obligation to make any payments under this Obligation shall be discharged, and the City shall have no obligation and incur no liability to make any payments hereunder, after the date provided within the Development Agreement.

2. *Limited Obligation of City.* This Obligation shall be payable solely from Tax



Increment Value, and shall not constitute a charge against the City's general credit or taxing power. The City shall not be subject to any liability hereunder, or be deemed to have obligated itself to pay Developer any amounts from any funds, except the Tax Increment Value, and then only to the extent and in the manner herein specified.

3. *Prepayment Option.* To satisfy in full the City's obligations under this Obligation, the City shall have the right to prepay all or a portion of the outstanding principal balance of this Obligation at any time, at par and without penalty.

4. *Miscellaneous.* This Obligation is subject to the Tax Increment Law and to the Development Agreement.

[Signatures on Following Page]

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF WATERTOWN

By: \_\_\_\_\_, Mayor

ATTEST:

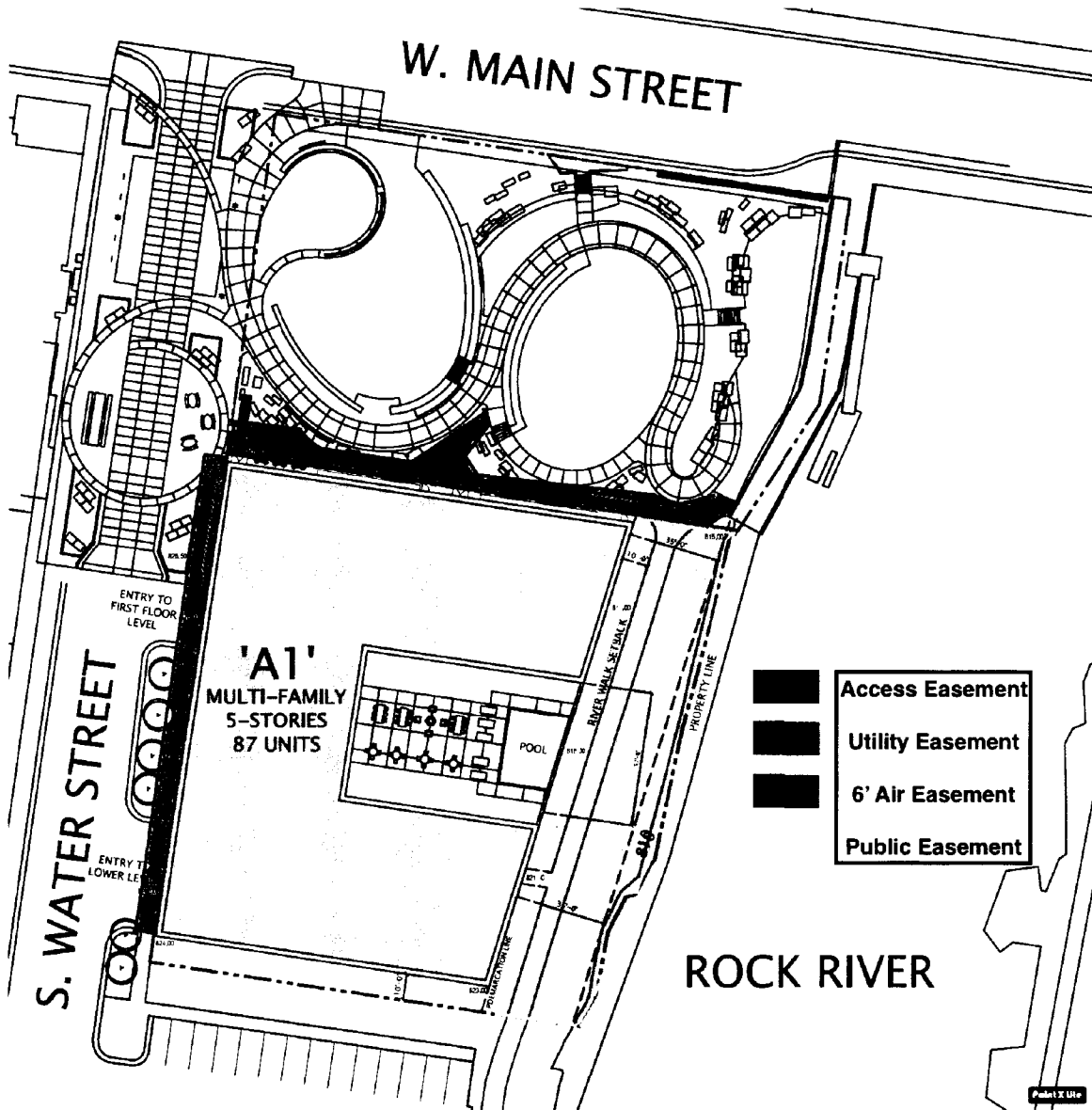
\_\_\_\_\_, City Clerk



**EXHIBIT E**  
**RIVERWALK EASEMENT**



EXHIBIT E  
RIVERWALK EASEMENT





**EXHIBIT F**  
**LOOKBACK IRR FORMULA**



## EXHIBIT F

### Lookback IRR Formula and Definitions

**Internal Rate of Return (IRR):** Interest rate that provides a net present value of zero for a series of cash flows for the project. Included in the IRR calculation for this project is the Initial Investment, Annual Net Cash Flow, and Actual or Deemed Sale Proceeds.

**Initial Investment:** Total investor equity contribution, developer equity contribution, and land equity contributed to the project.

**Annual Net Cash Flow:** For each year, the amount of cash actually distributed or available for distribution to Developer's investors.

**Net Operating Income (NOI):** Total Effective Gross Revenue (EGR) (Residential & Commercial) less Total Expenses.

**Total Expenses:** Shall include, but not be limited to operating expenses, management fees, commercially reasonable annual maintenance reserves not to exceed 20% of the annual operating budget, and property taxes.

**Effective Gross Revenue (EGR):** Rental & Lease Income actually received, CAM Reimbursement, and other income sources, LESS any actual vacancies.

**Actual Sale Proceeds:** Gross Sale Price actually distributed to investors less the payoff of the outstanding balance of property/project mortgage debts, the outstanding balance of the monetized TIF Loan, and the actual sales expenses and closing costs.

#### **Lookback Formula:**

If IRR is greater than 20% in the lookback year [WSC1], the City Contribution to the Developer under the MRO pursuant to section 4.4.3 of the Development Agreement shall be reduced by an amount sufficient to cause the IRR to equal 20%.

