

Development Agreement

Between

City of Watertown, Wisconsin

And

Horizon Development Group, Inc.

92 Unit Lumin Terrace Apartment Development

DEVELOPMENT AGREEMENT

Lot 97 of the Rock River Ridge Subdivision, Watertown Wisconsin

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the _____ day of _____, 202__, by and among the City of Watertown, a Wisconsin municipal corporation, (the “City”) and Horizon Development Group, Inc., a Wisconsin domestic company (“Developer” also referred to as the “Developer”).

WITNESSETH:

WHEREAS, Developer currently has an option to purchase Lot 97 of the Rock River Ridge Subdivision located in the City of Watertown, Jefferson County, Wisconsin, as shown on Exhibit A attached hereto (the “Property”) (PIN: _____); and

WHEREAS, subject to obtaining the financial assistance set forth herein, Developer wishes to undertake development Lumin Terrace Apartments to include 92 rental apartment units in 4 buildings (the “Development Project”) as further described in Exhibit B attached hereto (the “Concept Plan”); and

WHEREAS, the City has created Tax Incremental Finance District No. 9 (the “TIF District”) as enabled under Wis. Ch. 66, which includes the Property; and

WHEREAS, Developer expects that the Development Project will increase the value of the Property and the TIF District and provide other tangible benefits to the surrounding neighborhoods and to the City as a whole; and

WHEREAS, the Development Project is consistent with the adopted project plan for the TIF District; and

WHEREAS, the City desires to encourage economic development including the elimination of slum and blight, expand its tax base, and create quality new residential units and new jobs within the City of Watertown, the TIF District, and the Property; and

WHEREAS, the City finds that the construction of the Development Project and fulfillment, generally, of the terms and conditions of this Agreement, are in the vital and best interests of the City and its residents, by serving public purposes in accordance with State and local law and further consistent with the City’s most recently adopted Project Plan for the TIF District (the “TID Plan”); and

WHEREAS, Developer has represented to the City, and, the City finds and determines that, but for the City’s commitment and willingness to consider financial assistance to Developer, the Development

Project might not take place in the City and the City would not accomplish one or more of the objectives of the TID Plan; and

WHEREAS, the City is authorized to enter into contracts necessary and convenient to implement the purpose of the TIF District, including the ability to issue municipal revenue obligations for the purpose of implementing the TID Plan as provided in Wis. Stat. Section 66.0621; and

NOW THEREFORE, in consideration of the forgoing recitals, which are incorporated into and made a part of this Agreement, the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and the City hereby mutually agree:

**ARTICLE 1
PURPOSES-DEFINITIONS**

Section 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.

Section 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. "Agreement" means this Development Agreement, as the same may hereafter be from time to time modified, amended or supplemented in accordance with its terms.
- 1.2.2. "Base Value" has the meaning set forth in Article 5 of this Agreement.
- 1.2.3. "City" means the City of Watertown, a Wisconsin municipal corporation. The City may also be referred to as the City of Watertown.
- 1.2.4. "City Contribution" means the City's financial support for the Project to be paid to Developer, as set forth in Section 4.4.1. below.
- 1.2.5. "City Payments" means the annual payments to be made by the City to the Developer per the terms of the Municipal Revenue Obligation as described in Article II of this Agreement.
- 1.2.6. "Developer" means Horizon Development Group, Inc. and its successors and assigns.
- 1.2.7. "Development Project" or "Project" means the overall construction of a 92-unit residential apartment complex as generally shown on Exhibit B and as further described in Sections 2.1 and 2.1, below.
- 1.2.8. "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 TIF Effective Date.
- 1.2.9. "Incremental Value" has the meaning set forth in Section 2.3., below.
- 1.2.10. "Plans and Specifications" means the plans and specifications for the Project to be prepared by Developer and approved by the City, which shall generally be consistent with Exhibit B.
- 1.2.11. "Project Costs" means the costs specified in Wis. Stat. § 66.1105(2)(f) 1.a-l inclusive.

- 1.2.12.** "Project's Tax Increment" shall mean the Tax Increment actually received by the City from taxes levied on the Property and as directly and exclusively attributable to increases in the improvement value by way of the Project.
- 1.2.13.** "Projected Value Increment" means twelve million, four hundred twenty thousand, and no/100 dollars (\$12,420,000.00), which is expected tax value of the Property following completion of the Project.
- 1.2.14.** "Property" means the property identified as **Parcel Identification Number** [redacted] in the City of Watertown, Jefferson County, Wisconsin as described on Exhibit A.
- 1.2.15.** "Schedule" means the schedule prepared by the City pursuant to Section 3.9., below.
- 1.2.16.** "Site Plan" means the specific physical layout of the Property as shown on Exhibit B.
- 1.2.17.** "Tax Increment Value" means the amount by which the equalized value of real property of the Property on January 1 of the year following Developer's receipt of an occupancy permit upon completion of the Development Project as determined by the City of Watertown Assessor exceeds the Base Value established for the Property. 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.
- 1.2.18.** "Tax Increment Revenue" means the real property tax revenue (as defined in Wis. Stat. § 66.1105(2)(i)) and generated by the Project's Tax Increment Value.
- 1.2.19.** "Term" means from _____ until the earlier of the termination of TID or December 31, 2045.
- 1.2.20.** "TID District" means Tax Incremental District No. 9 created by City **Resolution No.** [redacted] as may be amended from time to time.
- 1.2.21.** "Value" means full equalized fair market value of the real property.
- 1.2.22.** "Zoning Code" or "Code" means Chapter 550 of the Code of Ordinances of the City of Watertown.

ARTICLE 2

DESCRIPTION OF DEVELOPMENT AND CITY PAYMENTS

Section 2.1. Project Description. Upon the receipt of all necessary governmental approvals, Developer shall build (or cause to be built) 92 rental apartment units in 4 buildings to be constructed in a single phase as shown conceptually in Exhibit B. Each building will be two stories and consist of one-, two-, and three-bedroom unit layouts. Each unit will have a ground floor exterior entrance or shared second floor entry with limited common areas. Surface parking will be provided that will be designed to meet City code. Other site improvements will consist of sidewalks, landscaping, stormwater areas, mail/parcel pickup, and dog run area. The Project will be developed under more detailed Plans and Specifications to be approved by the City Site Plan Review Committee and Plan Commission, such approvals not to be unreasonably withheld or delayed.

Section 2.2. Project Cost. Developer shall construct the Project, at its sole cost, peril and expense in strict accordance with this Agreement and in strict conformity with all City ordinances, resolutions, policies, insurability or bondability requirements, and similarly applicable or impacted governmental regulations. The estimated cost to Developer of the Project (cost of design and construction (all taxes and

incidentals, included)) is, projected upon Developer's representations, to be twenty million two hundred ninety-two thousand dollars (\$20,292,000.00) generally consistent with Exhibit B.

Section 2.3. The parties presently estimate that following completion of the Project, the Property will have a Project Value Increment for real property tax purposes, as of January 1, 2027, of approximately twelve million four hundred twenty thousand dollars (\$12,420,000.00). Developer shall use all reasonable and good faith efforts to substantially complete the Project's construction on or before July 1, 2026.

Section 2.4. City Contribution. In order to induce Developer to undertake the Project, the City agrees to provide an incentive for the Project of up to, but not to exceed a principal amount of two million thirty-one thousand four hundred seventy-four dollars (\$2,031,474.00) plus annual interest as described in Section 2.5., below, towards the payment of the Project's eligible costs in the form of a Municipal Revenue Obligation (MRO) as further provided for herein (the "City Contribution"). The City Contribution shall be used by Developer only to reimburse Developer for the eligible costs and expenses incurred by Developer in connection with the Project as set forth in the attached Exhibit B.

Section 2.5. MRO. Following Project completion and the issuance of occupancy permits and/or similar or related inspection or building and safety approvals with respect to any/all occupiable structure(s) arising by way of the Project, and, pursuant to amount of the City Contribution to Developer in the form substantially similar to Exhibit C, attached hereto (the "MRO"). 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 Sections 2.6. and 2.7., below, the City shall pay amounts due to Developer under the MRO over time from the Project's Tax Increment pursuant and according, exclusively, to the MRO, attached hereto and incorporated by reference. The City Payments of the amounts due under the MRO are subject to annual appropriation by the City. Developer shall receive City Payments on the MRO within ninety (90) days of the City's receipt of full payment of all of the real and personal property taxes levied against the Property, provided such payments are made in a timely manner in accordance with Section 2.6., below.

The MRO annual interest rate shall be the lesser of seven percent (7.0%) or the final interest rate secured by Developer for its first mortgage

Section 2.6. MRO Repayment Schedule. In each calendar year commencing 2028 and ending no later than December 31, 2045, and, then, only, assuming any sums are then owing to Developer pursuant to terms hereunder (or, if earlier, when all of the City Contribution has been repaid by the City), the Project's Tax Increment shall, subject to annual appropriations by the Common Council, be allocated as follows:

2.6.1. If the Project does not generate Tax Increment in any calendar year, the City shall make no payments whatsoever under the MRO for such calendar year and there shall be no deferral of the obligation to pay under the MRO for such calendar year. If the Project generates Tax Increment in any calendar year, Developer shall receive payments under the MRO, subject to the other terms and conditions of this Agreement, in a sum equal to the following:

- a. If the Project's Tax Increment is less than \$260,000, Developer shall receive a payment equaling exactly 95% of the Project's Tax Increment generated for such calendar year.
 - i. In tax years 2027 and 2028, the City shall deduct \$25,000 from the MRO payment in order to recover the costs of creating the TID District and in negotiating this Agreement.
 - b. If the Project's Tax Increment is \$260,000 or greater, Developer shall receive payment of two hundred twenty thousand dollars (\$220,000.00).
 - c. The Schedule of City Payments shown in Exhibit D, attached hereto, is illustrative only. Actual City Payments shall be as described in sub-sections 2.6.1.a. and b., above.
- 2.6.2.** The MRO shall be issued no sooner, nor later, than calendar 2026 and within thirty (30) days of the City's receipt of a written request for the same submitted by Developer, which request shall attest that all of the following contingencies have been satisfied in their entirety: (1) all property taxes for the Property for tax year 2025 (payable in 2025/2026) and all preceding years have been paid in full, and (2) work on the Project as described on Exhibit B has been initiated and on schedule to be completed by August 31, 2026.
- 2.6.3.** The first payment under the MRO shall be due and payable in the year in which taxes are first due and payable on any value increment that has been added.
- 2.6.4.** 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.
- 2.6.5.** Subject to the provisions of this Agreement, the City agrees that it shall take no action to dissolve the TIF District prior to full payment under the MRO, or, December 31, 2045, whichever comes first.

Section 2.7. MRO Payment Restrictions. Only the Project's Tax Increment, and no other property, revenue, or asset of the City, shall be used to pay the MRO. If there is no Project Tax Increment during any year, the City shall have no obligation to pay any amount for that year under the MRO, and same shall not become a deferral of the City's obligation to pay and such amount for that tax year, but, rather, any such monetary obligation that would have otherwise arisen under this Agreement is entirely forgiven and discharged; such failure shall not constitute a default under this Agreement nor under the MRO. Developer acknowledges that, subject to the provisions of this Agreement if, as of December 31, 2045, the amount of the Project's Tax Increment paid under this Agreement proved insufficient to make all the payments due under the MRO, the City shall nevertheless have no obligation or liability for said unpaid amounts otherwise due or anticipated by Developer and said unpaid amounts shall be unconditionally discharged and forgiven.

Section 2.8. Prepayment of MRO. Nothing herein shall prohibit the City from prepaying all or a portion of the outstanding balance of the MRO at any time, at par and without penalty.

Section 2.9. Taxes. Developer covenants and agrees that it shall pay in full all taxes levied on the real property of the Property at the time said taxes are due. Failure to pay said taxes in a timely manner shall constitute an event of default as provided under Article VII, hereof, and, such default may be made curable

only upon the sole and exclusive discretion of the City and, then, only upon writing confirming as such and containing the signature of the Mayor and countersignature of the City Clerk.

Section 2.10. Use of the TIF Grant Proceeds. The proceeds of the City Contribution shall be utilized for reimbursement of eligible project costs (as defined in Wis. Stat. Section 66.1105(2)(f)) in furtherance of the development of the TIF District, as incurred by Developer. Developer agrees to maintain records of the costs and expenses it incurs in connection with the Project’s development for at least five (5) years following the month and year of the Project’s substantial completion as solely and exclusively determined by the City. Subject to any reasonable confidentiality restrictions that Developer may desire, and which are permitted under Wisconsin law, Developer shall make such records available to the City upon the City’s written request and to the public in compliance with Wis. Ch. 19 (Public Records law).

Section 2.11. Obligations/Payments.

- 2.11.1** Developer’s obligations hereunder shall be personal to Developer and shall not be assigned without the prior approval of the City per the provisions of Section 9.3., below.
- 2.11.2** Developer shall spend, in readily verifiable manner, no less than twenty million two hundred ninety-two thousand dollars (\$20,292,000.00) as the estimated cost for the Project prior to, or upon, substantial completion of the Project such that an occupancy permit has been issued for the Project, which shall not be unreasonably delayed by the City, and in full compliance with Article III hereof and the records availability requirements thereunder.
- 2.11.3** Developer unconditionally agrees not to contest, challenge, appeal or protest the Property’s assessed value to an amount less than or equal to fifteen million dollars (\$15,000,000.00).

**ARTICLE 3
UNDERTAKINGS OF THE DEVELOPER**

Section 3.1. Development. Developer shall build (or cause to be built) the Project as described in Sections 2.1 and 2.2, above.

Section 3.2. Minimum Development Cost. Developer’s Cost for constructing the Project shall be a minimum (“Minimum Development Cost”) of twenty million two hundred ninety-two thousand dollars (\$20,292,000.00) in order for Developer to be eligible to receive assistance from the City per the provisions of Article II of this Agreement. Developer and/or outside investors shall provide approximately five million six hundred fifty thousand dollars (\$5,650,000.00) of equity in the project. Developer may seek and utilize \$2.3 million in Project financing assistance from the Thrive Economic Development Live Local Development Fund (the “LLDF”) and agrees to maintain compliance with the requirements of the LLDF.

Section 3.3. Plan Submission. Developer shall submit all plans specifications and documents to the City and state of Wisconsin as necessary to receive a building permit to construct the Project (the “Building Permit”) on or before April 1, 2025.

Section 3.4. Design Standards. Developer shall incorporate high quality design and use of materials into the Project consistent with the Concept Plan contained in Exhibit B.

Section 3.5. Construction Commencement. Developer shall commence construction of the Project on or before June 1, 2025.

Section 3.6. Construction Completion. Developer shall pursue construction activities on the Property and shall complete the Project, so as to obtain occupancy permits by July 31, 2026.

Section 3.7. Incremental Value. Developer agrees the Projected Value Increment shall be as described in Section 2.3, above.

Section 3.8. Construction. Developer agrees to develop the Property and to construct all buildings and structures thereon in accordance with the Plans and Specifications, as filed and approved in final form by the City. However, during the progress of the Project, Developer may make changes to the Plans and Specifications as may be in furtherance of the general objectives of the Plans and Specifications and this Agreement and as site conditions or other issues of feasibility may dictate to further the Developer's development objectives; provided, however, any such change shall comply with all applicable laws of the City and Developer may not make any material change to the size, design or structure without the written consent of the City (not to be unreasonably withheld, conditioned or delayed.) The City agrees to consider and approve or reject any non-material proposed change within ten (10) days after submittal by the Developer to the City or such consideration is deemed rejected. Such requests for approval shall be submitted to the City Clerk, as representative of the City.

Section 3.9. Project Estimates. The Tax Increment Value and Tax Increment Revenue projections delineated on the Schedule attached hereto as Exhibit D are projected to be generated from the Project, pursuant to the current TIF 9 Plan and this Development Agreement. These projections are included for illustrative purposes only. The actual MRO payments to be made by the City for any given tax year shall be as described under Section 4.4.3., below.

Section 3.10. Easements. Easements on the Property for municipally owned storm sewer, water mains, and sanitary sewer shall be granted to the City or its designee where necessary, by mutually agreed upon separate document or pursuant to a CSM, in accordance with detailed utility plans approved by the City Engineer, or designee.

Section 3.11. Restriction on Future Structures. No future structures, including but not limited to fencing, utility buildings and tool sheds, shall be constructed or installed on any portion of the Property without City's approval, which approval shall not be unreasonably withheld or delayed. The definition of structure shall be the definition contained within the City's Zoning Code.

Section 3.12. Property Maintenance. Developer agrees to make improvements to the Project as shown on Exhibit B in accordance with the approved Plans and Specifications. Developer agrees to maintain the Project in compliance with all federal, state and local laws, regulations or codes for as long as it owns the Property.

Section 3.13. Utility Connections. Developer will make connections to existing public water and sewer mains as needed in accordance with detailed utility plans approved by the City Engineer or designee, and according to City specifications. Developer agrees to repair all sidewalk, curb and gutter, and street and restore all landscape areas within the public right-of-way upon making those connections.

Section 3.14. Curb Cuts. Developer will remove curb cuts and aprons where existing driveways will not be utilized as part of the Project and replace the curb cut with a full curb section to match the existing curb detail. Developer will landscape the terraces upon apron removal.

Section 3.15. Storm Sewer Repair. Developer will use due care when constructing near the existing storm sewers. If at any time during Developer's ownership of the Property the structure of the storm sewer is damaged by a driveway over the storm sewer, Developer will restore the storm sewer so as to provide an adequate structure to allow vehicular traffic over the storm sewer without reducing the capacity of the storm sewer.

Section 3.16. Storm Water Management Facilities. Developer shall construct storm water management facilities in accordance with plans, specifications, and storm water management plan approved by the City Engineer or designee.

Section 3.17. Utility and Tax Payments. Developer shall promptly and timely pay all utility bills and its real property taxes levied against the Property when due through December 31, 2045.

Section 3.18. Personal Obligation. Developer's obligations hereunder shall be personal to Developer and shall not be assigned without the prior approval of the City per the provisions of Section 9.3., below.

Section 3.19. Developer Certification. Developer agrees not to seek tax exempt status for any portion of the Property or to convey any portion of the Property to an entity that at the time of conveyance would result in the Property qualifying for tax exempt status without the prior approval of the City per the provisions of Section 9.2., below.

Section 3.20. Restriction on Waste. Developer shall not cause a reduction in the real estate taxes payable on any of the Property through willful destruction of any improvements it makes on the Property.

Section 3.21. Developer's Cooperation. Developer agrees to work in good faith in assisting the City with applications for funds from state and federal agencies and private entities the City may seek to assist with development within the TID and the City's obligations as described in Article 4 hereof.

ARTICLE 4 UNDERTAKINGS OF THE CITY

Section 4.1. Appropriation. The City shall appropriate sufficient funds for the performance of its obligations under this Agreement as described in this section.

Section 4.2. City's Cooperation. The City shall 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.

Section 4.3. TID. The City has created TID 9 and adopted Res. No. 9663 on October 15, 2024, authorizing the funds from TID 9 to support the Development Project at the Property.

Section 4.4. Payments from the City. Subject to all 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 Project Costs as described in Article 2 hereof.

Section 4.5. Developer's Documentation. Upon request by the City, the Developer shall review with 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 Project Costs in an amount of at least the Minimum Development Costs as described in Section 3.2., above, for the Project for documentary support of the City's Contribution from the Project's Tax Increment Revenue. In addition, the Developer shall review with 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 Project Costs at the conclusion of construction of the Project equaled or exceeded the Minimum Development Costs as described in Section 3.2., above, and prior to the payment of the first installment of the City Contribution.

Section 4.6. Limited Obligation. 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.

Section 4.7. City's Covenants. City covenants to Developer that 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 TIF 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 TIF District and no liability shall remain from the City to the Developer upon expiration of the TIF District.

Section 4.8. Lookback. The parties understand that if the Development is successful then the MRO will be repaid sooner. Nonetheless, as a condition for providing the City's Contribution, 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 such information for inspection and review. Should the IRR exceed 25%, then the City Contribution to the Developer under the MRO pursuant to Section 2.7., above, shall be reduced by an amount sufficient to cause the IRR to equal 25%. 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 thirty (30) days, the dispute shall be resolved by arbitration in accordance with Wis. Stat. Ch. 788. The lookback provision is limited to a single review based on the above timing criteria; the City shall not require additional lookback reviews of the Development Project or future owners of the Property.

ARTICLE 5 PROPERTY BASE VALUE

Section 5.1 Base Value. City represents and agrees that the full equalized base value of the Property as of January 1, 2024, is zero dollars (\$0.00) ("Base Value"). Any Value of the Property above zero dollars (\$0.00) is Tax Increment Value. All taxes paid on Tax Increment Value are part of Tax Increment Revenue.

ARTICLE 6 COVENANTS RUNNING WITH THE LAND

Section 6.1 Covenants. This Agreement constitutes the entire Agreement between the Parties, and all provisions of this Agreement shall be deemed to be covenants running with the land described on Exhibit A and shall be binding upon successors and assigns for the Term of this Agreement.

ARTICLE 7 REMEDIES

Section 7.1. Time of the Essence. Time is of the essence as to all dates under this Agreement.

Section 7.2. Event of Default. In the event any Party defaults under this Agreement, which default is not cured within thirty (30) days after written notice thereof to the defaulting Party or within such extended period required to cure the default, provided cure efforts are undertaken in good faith within the thirty (30) period and the defaulting Party is diligently pursuing such cure, the nondefaulting Party shall have all rights and remedies available under law or equity with respect to the default, except as otherwise set forth in this Agreement. In the event of any default by any Party in making a payment required to another Party, the cure period for such monetary default shall be ten (10) days after delivery of notice thereof. In addition, and without limitation, any of the Parties shall have the following specific rights and remedies following such notice and failure to cure:

- a. Injunctive relief;
- b. Withholding or terminating payments under the MRO;

- c. Action for specific performance; and
- d. Action for money damages.

Notwithstanding the foregoing, in no event may City exercise or seek any rights of injunction or specific performance for Developer's failure to commence the Project.

Section 7.3. Reimbursement. Any amounts expended by the nondefaulting Party in enforcing this Agreement including reasonable attorneys' fees, together with interest provided for below, shall be reimbursed or paid to the nondefaulting Party which prevails in any such enforcement.

Section 7.4. Interest. Interest shall accrue on all amounts required to be reimbursed by the defaulting Party to the nondefaulting Party at the Prime Rate as established from time to time by Bank of America, N.A. plus two percent (2%) per annum, from the date of payment by the nondefaulting party until the date reimbursed in full with accrued interest.

Section 7.5. Remedies are Cumulative. Except as specified in this Agreement, all remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

Section 7.6. Failure to Enforce Not Waiver. Failure to enforce any provision contained herein shall not be deemed a waiver of that Party's rights to enforce such provision or any other provision in the event of a subsequent default.

ARTICLE 8 INSURANCE

Section 8.1 Developer, its contractors, lessees, successors and assigns, shall, during their occupancy or ownership of the Property, purchase or cause to be purchased and continuously maintained in effect, insurance against such risks, both generally and specifically, with respect to the private development, as are customarily insured against in developments of like size and character including, but not limited to: Casualty Insurance, Comprehensive General Liability Insurance, Physical Damage Insurance, Builders' Risk Insurance and all other forms of insurance reasonably required generally by the State of Wisconsin for entities such as the Owner and any Lessees from time to time during the construction and operation of the Property. Such insurance shall be maintained in amounts and with terms of coverage generally customary to such Property. Such insurance shall name City as an additional insured as its interest may appear, except on any policy of Liability Insurance.

Section 8.2 In the event the Property is damaged or partially or fully destroyed, Developer shall cause the insurance proceeds from such loss to be used to promptly repair and restore the Property to its original condition.

ARTICLE 9
WRITTEN NOTICES AND MISCELLANEOUS

Section 9.1 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any Party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

FOR THE CITY:

City of Watertown
Office of the Finance Director/Treasurer
106 Jones Street
Watertown, WI 53094
Attention: Mark Stevens
mstevens@cityofwatertown.org

With a copy to:

City of Watertown
City Attorney's Office
106 Jones Street
Watertown, WI 53094
Attention: Attorney Steven T. Chesebro
schesebro@cityofwatertown.org

TO THE DEVELOPER:

Horizon Development Group, Inc.
5201 East Terrace Drive, Suite 300
Madison, Wisconsin 53718
Attention: Scott Kwiecinski
s.kwiecinski@horizondbm.com

With a copy to:

Foley and Lardner LLP
150 E. Gilman St, Suite 5000
Madison, Wisconsin 53703
Attention: Toni Prestigiacomio
aprestigiacomio@foleylaw.com

Section 9.2. Restrictions of Sale, Transfer, Conveyance and Ownership. During the Term of this Agreement, neither Developer nor any future owner shall use, sell, transfer or convey ownership of any of the Property to any person or entity in any manner which would render all or any part of the Property exempt from real property taxation, or would render the personal property located on any of the Property exempt from personal property taxation, without the prior written consent of the City. This obligation

shall survive until the termination and closure of the TID 9 District under this Agreement. In the event Developer receives an exemption from general real estate taxes, such may be deemed an event of default hereunder and City may exercise its rights under the Remedies clauses in Article 7 hereof. Developer shall execute and record deed restrictions effectuating this provision.

Section 9.3. Warranty of Developer; Non-Transferability. The City has entered into this Agreement with Developer, on the basis of the identity of the General Partner(s), and on the strength of their experience. Therefore, Developer hereby warrants and represents to the City that the General Partner(s) of Developer are as shown on Exhibit E, attached hereto. During the Term, Developer may not change General Partner(s) without the prior written consent of the City, which shall not be unreasonably denied, delayed or conditioned. During the Term, Developer shall not change management of the Property from the General Partner(s) without the prior written consent of the City, which consent shall not be unreasonably withheld. Any prohibited transfers under this Section, which have been made without securing the prior written consent of the City shall be considered an event of Default hereunder. In any event, any permitted or subsequent transferee hereunder must agree to be bound by the terms of this Development Agreement.

Section 9.4. Non-Discrimination Agreement. 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.

Section 9.5. No Third-Party Beneficiaries. 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.

Section 9.6. Force Majeure. As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riot, act of terror, act of God or the elements, governmental action (except for governmental action by the City with respect to obligations of the City under this Agreement), alteration, strike or lockout, picketing (whether legal or illegal), inability of a Party or its agents or contractors, as applicable, to obtain fuel or supplies, unusual weather conditions, or any other cause or causes beyond the reasonable control of such Party or its agents or contractors, as applicable. No Party to this Agreement shall be in default hereunder for so long as such Party or its agents and contractors, if applicable, are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence.

Section 9.7. Law Governing. 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.

Section 9.8. Execution in Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 9.9. Amendment. This Agreement may be rescinded, modified or amended, in whole or in part, by mutual agreement of the Parties hereto, their successors and/or assigns, in writing signed by all Parties.

Section 9.10. Severability of Provisions. 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 the City, including, but not limited to, their powers under the Tax Increment Law, § 66.1105, Wis. Stats., to achieve its intended purpose.

Section 9.11. Recording and Survival. 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 survive the execution of this Agreement and the making of grants hereunder. This Agreement shall run with the land and be binding upon Developer and all of Developer's successors in interest. 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 TIF District.

Section 9.12. Reservation of Rights. 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.

Section 9.13. Vested Rights. 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.

Section 9.14. Recitals. 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.

Section 9.15. Construction. The Parties acknowledge and represent that this Agreement has been the subject of negotiation by all Parties and that all Parties together shall be construed to be the drafter hereof and this Agreement shall not be construed against any Party individually as drafter.

Section 9.16. Representation. 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.

Section 9.17. Authority. 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.

Section 9.18. Indemnification. Subject to the limitation described herein and except for any misrepresentation or any misconduct of any of the indemnified Parties, Developer and or its contractors shall indemnify, save harmless and defend the City and its respective officers, 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]

