

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into effective as of April 11, 2022 ("Effective Date"), by and between the City of Whitewater, Wisconsin ("City") and Bower's House LLC, a Wisconsin limited liability company (the "Developer"). Each of the forgoing may also be referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Article XI, Section 3 of the Wisconsin Constitution grants cities the right to determine their local affairs in government, subject to the Constitution and certain enactments of the legislature of the State of Wisconsin;

WHEREAS, the State of Wisconsin legislature adopted Wisconsin Statute Section 62.11(5), which grants to common councils of cities the power to act for the government and good order of the city, for its commercial benefit and for the health, safety and welfare of the general public;

WHEREAS, the City desires to encourage development, eliminate blight and prevent blight with the City;

WHEREAS, the Developer owns the property described on EXHIBIT A attached hereto (the "Property");

WHEREAS, the Developer has filed, or will file, with the City plans, specifications, documents and exhibits if and as required by the City for the development of the Property and for making other improvements (the "Project");

WHEREAS, the City has applied for a Community Development Incentive Grant from the Wisconsin Economic Development Corporation ("WEDC") for Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) related to the improvements to the Property (the "Grant"); and

WHEREAS, as part of the WEDC application, the City has committed to providing a loan (the "Loan") and certain infrastructure improvements described on EXHIBIT B (the "City Improvements") and together with the Loan, the "Commitments").

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the following promises and mutual obligations of the Parties hereto, each of them does hereby covenant and agree as follows:

1. Developer Improvements. Developer shall complete improvements to the Property in accordance with the terms, conditions and requirements of EXHIBIT C ("Developer's Improvements"). The plans, specifications and site plans for Developer's Improvements are subject to City approval and Developer shall not commence construction of Developer's Improvements until such time as the City has approved such plans,

specifications and site plans in writing. After the City's approval of Developer's Improvements, such documents shall not be modified without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. City's approval of Developer's Improvements shall not excuse Developer from complying with any other governmental approvals, permits, ordinances or laws that are applicable to the Property or Developer's Improvements. All work to be performed by the Developer related to Developer's Improvements shall be performed in a good and workmanlike manner and consistent with the prevailing industry standards for such work in the area of the City. Developer shall perform all work in compliance with all applicable laws, regulations, ordinances and buildings codes and shall obtain and maintain all necessary permits and licenses for such work.

2. City Commitments.

(a) Grant. If the WEDC awards the Grant to the City, the City agrees to administer and disburse the Grant funds as set forth herein but shall not be liable to Developer if the City does not receive funds from the WEDC.

(b) Loan. The City and the Developer will enter into that certain loan agreement, a form of which is attached hereto as EXHIBIT D, which is conditioned on the City's receipt of the Grant.

(c) Improvements. In cooperation with Developer, the City will make City Improvements listed on EXHIBIT B, which are conditioned on the City's receipt of the Grant.

3. Conditions. Prior to the City's performance under this Agreement, Developer shall satisfy the following conditions:

(i) Provide the City with evidence reasonably satisfactory to the City that Developer owns fee simple title to the Property.

(ii) Provide City with copies of permits, licenses and other documents as reasonably requested by City to confirm that Developer has complied with all necessary federal and state laws, regulations and ordinances necessary to obtain the governmental approvals required for the intended construction of the Project, including without limitation a building permit for Developer's Improvements.

(iii) Provide City with a copy of all plans and complete specifications for construction of Developer's Improvements, which plans and specifications must be reasonably acceptable to City.

(iv) Provide the City with copies of such organizational documents as City shall reasonably require, as well as an incumbency certificate identifying the parties authorized to act on behalf of the Developer.

(v) Developer shall provide Matching Funds in a ratio of 3:1 as compared to the Grant for Grant Eligible Project Costs. "Matching Funds" means non-Grant funds secured by Developer to fund Grant Eligible Project Costs, which may not be in-kind. "Grant Eligible Project Costs" means building construction expenses for the Project, which do not include soft costs for the construction.

(vi) The Grant dollars shall only be utilized for Grant Eligible Project Costs.

(vii) Developer shall submit documentation to the City of all Grant Eligible Project Costs incurred against the requested disbursement of the Grant funds, as required by WEDC. Such documentation may include, but not be limited to, purchase orders and invoices.

(viii) Developer shall request all Grant funds no later than March 1, 2023.

4. Default.

(a) **Events of Default.** A party shall be in default under this Agreement if such party shall fail to carry out or fulfill one or more of its obligations hereunder and such failure shall continue for a period of thirty (30) days following receipt of written notice from the other party specifying such failure; provided, however, if the nature of the default is such that it cannot be cured within thirty (30) days, a party shall not be in default if it immediately undertakes steps to cure the default after receipt of notice and then diligently and in good faith prosecutes the curing of such default to its conclusion.

(b) **Remedies.** If a party does not cure or undertake to cure a default within the time period set forth above, the non-defaulting party may pursue the remedies provided for in this Agreement or otherwise available at law or in equity. The rights and remedies of the parties, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same time or different times of any such other remedies for the same event of default or breach or of any remedies for any other event of default or breach by Developer. No waiver made by the City with respect to the performance or manner or time of any obligation of Developer under this Agreement shall be considered a waiver of any rights of the City to enforce any other obligations of Developer.

5. Miscellaneous.

(a) **Changes.** Parties to this Agreement may, from time to time, require changes in the scope of this Agreement. Such changes, which are mutually agreed upon by and between the Developer and the City shall be incorporated in written amendments to this Agreement.

(b) Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized representative of the party, and delivered to the party to whom it is directed at the address specified in this Agreement. Whenever under this Agreement the consent, approval or waiver of the City is required or the discretion of the City may be exercised, the City Manager shall have the authority to act, as the case may be. Whenever any approval is required by the terms of this Agreement and request or application for such approval is duly made, such approval shall not be unreasonably withheld.

(c) Notices and Demands. A notice, demand, or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

In the case of the Developer:

Bower' House LLC
Attn: Gregory Aprahamian
S107W30511 Sandy Beach Rd
Mukwonago , WI 53149

In the case of the City:

City of Whitewater
Attn: Cameron Clapper, City Manager
P.O.Box 178
Whitewater, WI 53190

(d) No Liability of City. The City shall have no obligation or liability to the lending institution, architect, contractor, or subcontractor, or any other party retained by Developer in the performance of its obligations and responsibilities under the terms and conditions of this Agreement. Developer specifically agrees that no representations, statements, assurances, or guarantees will be made by Developer to any third party or by any third party which are contrary to this provision.

(e) Completeness of Agreement. This Agreement and any addition of supplementary documents or documentation incorporated herein by specific reference contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part hereof shall have any validity or bind any of the parties hereto.

(f) Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of

reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

(g) Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby.

(h) Recording of Agreement. The Agreement and any and all subsequent modifications thereof or additions thereto may, upon being duly executed, be recorded by either party with the Register of Deeds for Walworth County, Wisconsin.

(i) Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto as well as their respective successors, transferees, and assigns. Any transfer of any party's interest under this Agreement or real property described in EXHIBIT A shall not release the transferor from its obligations hereunder unless specifically agreed to herein.

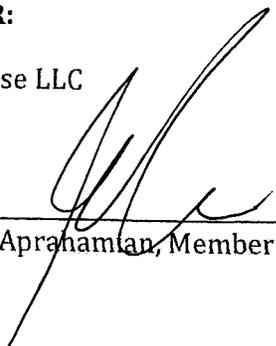
(j) Ambiguities Not Construed. The Developer has had substantial input concerning the terms of this agreement, and therefore, any ambiguities will not be construed against the City on the basis that its attorney drafted this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Development Agreement to be signed as of the Effective Date.

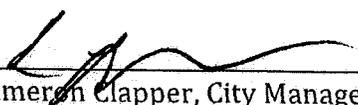
DEVELOPER:

Bower's House LLC

By: 
Gregory Aprahamian, Member

CITY:

CITY OF WHITEWATER

By: 
Cameron Clapper, City Manager

By: Michele R. Smith
Michele R. Smith, City Clerk

STATE OF WISCONSIN)
) ss.
COUNTY OF WALWORTH)

STATE OF WISCONSIN)
) ss.
COUNTY OF WALWORTH)

Personally appeared before me this 11th day of April, 2022, the above-named Gregory Aprahamian, to me known to be the person who executed the foregoing agreement as such officers of said company, by its authority.

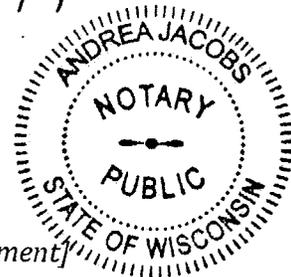
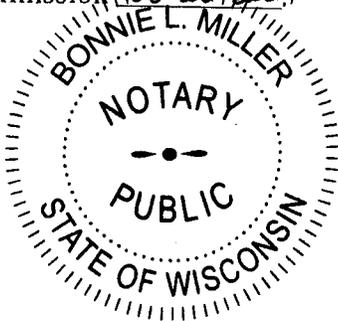
Personally appeared before me this 11th day of April, 2022, the above-named Cameron Clapper, City Manager, and Michele Smith, City Clerk, to me known to be such City Manager and City Clerk of the City of Whitewater, and to me known to be the persons who executed the foregoing agreement as such officers of said City, by its authority.

Bonnie L. Miller

Andrea Jacobs

Notary Public, State of Wisconsin
My commission 08/26/2024

Notary Public, State of Wisconsin
My commission 8/6/23



[Signature Page to Development Agreement]

EXHIBIT A
Property

The West 33 ft. of what is now Lot 3 of Block 8 of Whitewater Village, now City, as Resurveyed, being sometimes known as the Original Town of Whitewater, Walworth County, Wisconsin.

Also, another piece of land adjoining the last mention piece on the S. and described as follows:

So much of the N. 1/3rd part of Lot 2 in said Block 8 as was not sold by Levi Powers to S. Clark by deed dated July 15, 1855, and recorded October 2, 1855, in Volume 21 of Deeds, Page 581, Walworth County Records.

Also, a third piece of land described as follows:

A part of said Lot 3 in said Block 8 bounded as follows:

Beginning on the N. line of said Lot 3, 30 ft. west of the N.E. corner and running W'ly along the N. line of lot 20 ft. thence S'ly at right angles to the N. line of the lot to the S. line thereof; thence E'ly on the S. line 20 ft thence N'ly to the place of beginning; being the property known as the "Bower House" and extending from main Street back to the N. wall of property formerly known as the "Hucker Saloon" Including use of the N. Wall as a part wall.

Tax Key No. /OT 00070
Address: 187 W. Main Street

EXHIBIT B
Infrastructure Improvements

The City will assist with infrastructure updates to the Property and surrounding properties, which together with the Loan will be in an amount of approximately \$150,000.00, including the following: (1) re-routing the rain/roof water to the west at 2nd Street; (2) tie the down spout and then route rainwater into the storm sewer; (3) replace 10' of sidewalk, curb, gutter and concrete paving; (4) upgrade the water laterals for the building in the front of the building on Main Street; and (5) replace approximately 12' of sidewalk, curb, gutter and asphalt paving.

EXHIBIT C
Developer's Improvements

Restore the building on the Property to be closer to its original appearance and prominence, as an important and historical building in Walworth County, including the following:

- Remove stucco covering the front and side elevations.
- Open the window opening and replace windows with modern windows of the same size and appearance of the original window on the upper floors on the front and side elevation.
- Depending on condition found, will repair existing and /or cover façade with material that resembles the original or historical fitting look to the building.
- Repair and replace all structures and update all systems to current code, this includes electrical, plumbing and roofing fire protection systems.

The build out of the lower level will allow for the flexibly to accommodate various commercial tenant(s). The renovated commercial space is estimated to be 4000 to 6000 sq feet. The upper floors will be developed into a mix of different living spaces designed with higher end amenities. The upper residential space will contain 12 separate residential units varying between 1 and 2 bedrooms each. The property owner has based his exterior renovation on the original design rendering provided by the Wisconsin Main Street program.

EXHIBIT D
Form Loan Agreement
(See Attached)

EXHIBIT D

FAÇADE LOAN AGREEMENT
BETWEEN BOWER'S HOUSE LLC AND THE COMMUNITY
DEVELOPMENT AUTHORITY OF THE CITY OF WHITEWATER, WISCONSIN

THIS FAÇADE LOAN AGREEMENT (hereinafter the "Loan Agreement") is entered into by and between THE COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WHITEWATER, WISCONSIN (hereinafter referred to as the "CDA") and BOWER'S HOUSE LLC, a Wisconsin limited liability company ("Owner").

WHEREAS, Owner has acquired the following described real estate located at 183 West Main Street in the City of Whitewater, Walworth County, Wisconsin (hereinafter referred to as the "Property"), to-wit:

The West 33 ft. of what is now Lot 3 of Block 8 of Whitewater Village, now City, as Resurveyed, being sometimes known as the Original Town of Whitewater, Walworth County, Wisconsin.

Also, another piece of land adjoining the last mention piece on the S. and described as follows:

So much of the N. 1/3rd part of Lot 2 in said Block 8 as was not sold by Levi Powers to S. Clark by deed dated July 15, 1855, and recorded October 2, 1855, in Volume 21 of Deeds, Page 581, Walworth County Records.

Also, a third piece of land described as follows:

A part of said Lot 3 in said Block 8 bounded as follows:

Beginning on the N. line of said Lot 3, 30 ft. west of the N.E. corner and running W'ly along the N. line of lot 20 ft. thence S'ly at right angles to the N. line of the lot to the S. line thereof; thence E'ly on the S. line 20 ft thence N'ly to the place of beginning; being the property known as the "Bower House" and extending from main Street back to the N. wall of property formerly known as the "Hucker Saloon" Including use of the N. Wall as a part wall.

WHEREAS, Owner, by its member, Gregory Aprhamian, has caused to be prepared plans and specifications for the renovation and improvement of the Property (said renovations and improvements in accordance with the plans so approved by the City of Whitewater Plan and Architectural Review Commission being hereinafter referred to as the "Improvements"); and

WHEREAS, the Improvements to be made to the Property include exterior alterations and improvements which qualify as façade improvements under the CDA's Façade Loan Program; and

WHEREAS, Owner will be obtaining loans from First Citizens State Bank (the "Senior Mortgage Lender") in the principal sum of approximately \$1,200,000 to provide funds for certain Improvements to the Property, which loan is to be secured by a mortgage on the Property to be executed by Owner in favor of Senior Mortgage Lender, and which loan from the Senior Mortgage Lender is to be further secured by a related assignment of leases and rents in favor of the Senior Mortgage Lender (which loans to Owner by Senior

Mortgage Lender and all extensions or renewals of, and refinancings of, but not increases in the principal amount of, or re-advances of principal with respect to, said loan being hereinafter referred to as the "Senior Mortgage Indebtedness"); and

WHEREAS, the Owner has requested that the CDA loan Owner the sum of \$75,000.00 under the CDA's Façade Loan Program, and the CDA has approved the extension of a \$75,000.00 façade loan to Owner, subject to conditions, and on terms and conditions, set forth below; and

WHEREAS, the parties deem it to be mutually advantageous to enter into this Loan Agreement to set forth the terms and conditions mutually acceptable to them with respect to such façade loan by the CDA to Owner.

NOW, THEREFORE, it is agreed by and between the CDA and Owner as follows:

1. The foregoing recitals are incorporated herein by reference as material terms and provisions of this Agreement.

2. The CDA hereby agrees to loan to Owner, and Owner agrees to borrow from the CDA, the sum of Seventy Five Thousand and no/100 Dollars (\$75,000.00) representing a façade loan by the CDA to Owner to cover certain costs to be incurred by Owner related to the renovation and improvements to the exterior facades of the building located on the Property, with Fifty Thousand and no/100 Dollars (\$50,000.00) being loaned at closing and the remaining amount being loaned on August 1, 2022. The loan shall bear interest prior to maturity at the rate of one percent (1%) per annum on the un-repaid principal balance from time to time outstanding, and principal and interest shall be due and payable in forty-eight (48) equal monthly installments based on said 1% interest rate and an amortization period of five years, including principal and interest, of the amounts listed in the Promissory Notes, with the first such installment being due on the second anniversary from the date of closing of this façade loan transaction, and with subsequent monthly installments being due on the same day of each succeeding month thereafter, with a final installment equal to the full remaining unpaid principal balance plus accrued interest being due and payable five (5) years from the date of the closing of this façade loan transaction. The loan shall be evidenced by two Promissory Notes from Owner to the CDA in the form and on the terms and conditions set forth in Exhibit A attached hereto and incorporated herein by reference which shall be executed and delivered by Owner to the CDA at the time of the closing of this facade loan transaction, or as agreed by the parties. The obligations of Owner to the CDA under the Promissory Notes attached as Exhibit A to be executed and delivered by Owner to the CDA at the time of the loan closing, as well as the obligations of Owner to the CDA under this Loan Agreement, shall be secured by a mortgage, assignment of leases and rents and security agreement establishing a lien on the Property and fixtures in favor of the CDA on the terms and conditions set forth in the Assignment of Leases and Rents and Security Agreement/Fixtures Filing (the "Mortgage") attached hereto as Exhibit B and incorporated herein by reference. The lien of the Mortgage from Owner to the CDA given as security for the façade loan Promissory Notes and the performance of the obligations of Owner under this Loan Agreement shall be subordinate to the lien of the mortgage and assignment of leases and

rents acting as security for, but only to the extent acting as security for, the Senior Mortgage Indebtedness.

3. The obligations of Owner to the CDA, as evidenced by the Promissory Notes attached hereto as Exhibit A and the Mortgage attached hereto as Exhibit B, both of which shall be executed by Owner in favor of the CDA at closing, and the obligations of Owner to the CDA under this Loan Agreement, shall be personally guaranteed by Gregory Aprahamian. The obligation of the CDA to consummate this loan is contingent upon Gregory Aprahamian executing and delivering to the CDA at the time of the loan closing, the Personal Guaranty attached hereto as Exhibit C and incorporated herein by reference.

4. The obligation of the CDA to consummate this facade loan to Owner is further contingent upon Owner causing to be delivered to the CDA, at the time of loan closing, a loan policy of title insurance insuring to the satisfaction of the CDA and its legal counsel, that the lien of the Mortgage from Owner to the CDA is a valid lien against the Property superior to all other liens and encumbrances subordinate only to the lien of the mortgage to the Senior Mortgage Lender securing, but only to the extent securing, the Senior Mortgage Indebtedness. Along with attorney's fees for the CDA, the recording fees for recording of the Mortgage from Owner to the CDA and the title insurance premium for the required loan policy of title insurance in favor of the CDA shall be the responsibility of Owner and shall be paid and disbursed at closing out of the \$75,000.00 facade loan proceeds.

5. The obligation of the CDA to consummate this facade loan to Owner under this Loan Agreement is further contingent upon Owner causing to be delivered to the CDA, at the time of the loan closing, written agreements, approvals, certifications or authorizing actions as legal counsel for the CDA may deem necessary or appropriate to establish and confirm that all actions and approvals on behalf of, and/or by the Members of, the entities comprising Owner have been obtained and/or taken to authorize and approve the borrowing by Owner from the CDA of the facade loan pursuant to the terms of this Agreement and authorizing the execution and delivery of documents on behalf of the entities comprising Owner as anticipated by this Agreement.

6. In the event the Property or any portion of the Property or any interest therein is sold or transferred, directly or indirectly, by Owner prior to payment in full of the facade loan, the facade loan shall, at the option of the CDA, become immediately due and payable.

7. Owner agrees to maintain and provide to the City by not later than March 1, 2023, copies of invoices establishing that Owner has expended for improvements to the façades (defined as the visible exterior of the building and physical structure that supports it) of the building on the Property, including exterior facade redevelopment project architectural expenses, in a sum of not less than the amount received under this loan, and such lien waivers as the CDA or its legal counsel may deem appropriate.

8. Owner agrees that it will not discriminate against any contractor, employee or applicant for employment, nor any tenant or purchaser of all or any portion of the Property, because of age, race, color, national origin, religion, sex, sexual orientation, developmental disability as

defined in Section 51.05(5) of the Wisconsin Statutes, physical condition or handicap with respect to the ownership, redevelopment, improvement or leasing of the Property with respect to which this façade loan is being made by the CDA to Owner.

9. Closing of this facade loan transaction shall occur at the place designated by the CDA on or before April 30, 2022, or on such other date or at such other place as may be mutually agreed upon between the CDA and Owner.

10. No amendment, modification, termination or waiver of any provision of this Agreement, nor consent to any departure from this Agreement, shall in any way be effective unless the same shall be in writing and signed by the duly-authorized officer or officers or representatives of each of the parties to this Agreement.

11. The validity, construction and enforcement of this Agreement and the documents and agreements anticipated hereby shall be governed by the laws of the State of Wisconsin. The terms and provisions of this Agreement and the documents attached hereto as Exhibits shall not be more strictly construed against one party than against the other merely by virtue of the fact that this Agreement or such document has been prepared by legal counsel for one of the parties, it being recognized that both the CDA and Owner and their respective legal counsel have contributed, and/or have had the opportunity to contribute substantially and materially to the preparation and content of this Agreement and the documents attached hereto as Exhibits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly-authorized officers and/or representatives on the date set forth below.

Executed on the dates set forth below, effective as of April 11, 2022.

April 11, 2022

COMMUNITY DEVELOPMENT AUTHORITY OF
THE CITY OF WHITEWATER, WISCONSIN

By: _____
Cathy Anderson, Executive Director

And By: _____
Patrick Singer, Chair

April 11, 2022

BOWER'S HOUSE LLC

By: _____
Gregory Aprahamian, Member

EXHIBIT LISTING

EXHIBIT A Façade Loan Promissory Notes
EXHIBIT B Real Estate Mortgage
EXHIBIT C Personal Guaranty