

TIF DEVELOPMENT AGREEMENT

FOR

DEVELOPMENT OF PROPERTY
LOCATED IN WHITEWATER
TIF DISTRICT NO. 10

501 N. Prospect Drive

BY AND BETWEEN

CITY OF WHITEWATER

"THE CITY"

AND

"BECKER & BOLTON, LLC"

The "DEVELOPER"

**TIF Development Agreement for Re Development
of the Property Located at 501 N. Prospect Drive**

I. PARTIES and OBLIGATIONS

A. The **CITY OF WHITEWATER** is a Wisconsin Municipal Corporation located in the County of WALWORTH, conducting its principal business at 312 W. Whitewater Street, Whitewater, WI 53190 ("**CITY**");

B. **BECKER & BOLTON, LLC** is a Wisconsin limited liability company with a principal address located at 3649 Westminster Rd., Janesville, WI 53546 ("**DEVELOPER**"). It is anticipated, intended, and promised that the **DEVELOPER** shall develop, own, and operate said **PROJECT** to not less than the minimum of the **CITY's** requirements and those set forth in this *Agreement*, whichever are more stringent.

C. The **PROJECT** contains certain real property and related new improvements thereon (described with greater particularity, *infra*). ("**PROPERTY**"), which has space available for commercial development within the **CITY**.

D. **DEVELOPER** is the direct beneficiary and recipient of land and certain TIF Development Incentive funds/monies from the **CITY** a/k/a the "**PROCEEDS**" from a certain **CITY "DEVELOPMENT INCENTIVE,"** all more fully described, *infra*.

E. **DEVELOPER** shall use and/or cause the **DEVELOPMENT INCENTIVE** to be used by **DEVELOPER** solely for construction costs and expenses to further develop said **PROPERTY** by fully constructing commercial buildings to provide leasable spaces for local business tenants ("**FACILITY**" or "**PROJECT**") of not less than One Thousand, One Hundred square feet (1,100 sq. ft.) each upon the **PROPERTY** with actual **DEVELOPMENT** commencing **July 31, 2023**, reaching full completion and the issuance of a final occupancy permit for such commercial/light industrial use no later than **31st day of December, 2025**.

F. To these legitimate and beneficial public ends and purposes, the **CITY** is able to provide to, and **DEVELOPER** shall "receive" and "benefit" from, the **CITY's** progress payments, over the construction period, of a portion of a monetary **DEVELOPMENT INCENTIVE**, which in total shall be in an aggregate amount not to exceed Three Hundred Thousand and 00/100 Dollars (\$300,000.00), which would constitute the **CITY'S "MAXIMUM OBLIGATION"** for purposes of this *Agreement*. The schedule on the attached **Exhibit "C"** is the current projection of such **CITY** payments to the **DEVELOPER** assuming that the **PROPERTY** and **IMPROVEMENTS** perform as identified within this document.

G. Upon completion of the first building, The **CITY** shall make the first of its **DEVELOPMENT INCENTIVE** payments directly to the **DEVELOPER**. The **CITY** shall make any such payment(s) upon completion and **DEVELOPER** receipt of Occupancy permit.

H. The **DEVELOPMENT INCENTIVE** payment by the **CITY** shall never exceed the amount of \$10 per square foot of developed space by building.

I. **DEVELOPER**, shall use the **CITY DEVELOPMENT INCENTIVE** solely for the purpose of payment of the construction of the **PROJECT** and related construction efforts and activities (**FACILITY**) upon the **PROPERTY**.

II. DESCRIPTION of THE PROPERTY

A. The **PROPERTY** is located at and currently addressed as 501 N. Prospect Drive in the City of Whitewater, County of Jefferson, State of Wisconsin 53190 (Tax Parcel Number 292-0515-3434-001) and is contained within the City of Whitewater Tax Increment Financing District No. 10.

B. On the date of this *Agreement*, the **PROPERTY** consisting of 3.7± acres had a real property assessed value in the amount of One Hundred Seven Thousand Six Hundred Forty and 00/100 Dollars (\$107,640.00), or \$29,092 per acre. The current **PROPERTY** full equalized assessed value shall be referred to herein as the **BASE YEAR PROPERTY VALUE** and the existing real property tax bill shall be referred to herein as the **BASE YEAR PROPERTY TAX**.

III. PURPOSE OF AGREEMENT

A. The described **PROPERTY** is located in City of Whitewater TIF District No. 10 and intended to be used by the **DEVELOPER** as a part of an overall development and construction project in the **CITY**. The **DEVELOPMENT INCENTIVE**, **PROJECT**, **FACILITY**, and overall **PROJECT** construction and enhancement are intended and anticipated to provide, foster, and encourage redevelopment of vacant business park land in the **CITY**, enhance the health and welfare of the **CITY**, and be of benefit to the **CITY**, its businesses, residents, and taxpayers; and add significantly to the economic, tax, and real property value of the **CITY**, especially its business park.

B. To these legitimate ends and purposes the **DEVELOPER** is entering into this *Agreement* with the **CITY** and making promises to the **CITY** in order to fully construct the **PROJECT**, and to further develop said **PROPERTY** and **PROJECT**

consistent with such overall and particular **CITY** plans, and in such manner as will produce tax increment, tax, and other revenues to the **CITY** through increased equalized real assessed and actual property value, and tax increments, tax payments, and/or tax equivalent payments individually and/or in aggregate sufficient and required under this *Agreement* to annually repay certain **CITY** TIF expenditures and related costs and expenses within TIF District No 10. Said arrangement is to **DEVELOPER'S** benefit, as evidenced by the TIF taxation mechanism, terms of this *Agreement*, and related business factors. The **DEVELOPER** hereby acknowledges the benefit, sufficiency, and value of the consideration from and by the **CITY**.

C. By approving and entering into this *Agreement*, the governing body of the **CITY** finds the terms of this *Agreement* and the **PROPERTY'S** and **FACILITY'S** construction, and development all in the best interest of the **CITY** and of benefit to the community and its taxpayers, residents, and businesses.

D. The **DEVELOPER** acknowledges that the **CITY** is only able to reimburse certain development costs upon the **PROPERTY** through the TIF District No. 10 Project Plan, pursuant to applicable Wisconsin laws and statutes which enable the **CITY** to receive and utilize specially designated and directed future real property tax revenues from the **PROPERTY** as generated by the **DEVELOPER'S FACILITY** thereon which increase the overall equalized value of TIF District No. 10. But for each party's payments, promises, and agreements herein, and representations herein and otherwise, neither party would enter into this *Agreement*. Each party relied and relies upon such representations, promises, payments, consideration, and agreements of the other party. The **CITY**, by law, must use such increased incremental tax revenues generated by such development project(s) located within TIF District No. 10 to repay its TIF development expenditures including, but not limited to, the **CITY'S DEVELOPMENT INCENTIVES**.

IV. THE AGREEMENT

A. In consideration of **DEVELOPER'S** construction and obtaining occupancy permit of the fully functional **FACILITIES** upon the **PROPERTY**, covenants and promises to timely and fully make the tax increment, and/or other individual and aggregate payments (e.g. Tax Equivalent Payments) annually to the **CITY** thereon the **CITY** shall:

1. Transfer of the property described in Exhibit A, totaling 3.7 acres for the assess value of \$107,640.00. The property will be transferred on an "as is" basis. **DEVELOPER** will be responsible for the payment of any costs associated with the

transfer, including Broker commissions and fees, survey, closing, and recording costs.

2. At closing, a credit equal to the purchase price of \$29,092 per acre, or \$107,640.00 will be granted to the **DEVELOPER**.

3. Upon inspection of completed buildings and issuance of occupancy permit, provide payment to the **DEVELOPER** the approximate estimated amount of Ten Dollars (\$10) per square foot of developed and completed space. As each subsequent building is completed, the CITY shall pay the DEVELOPER \$10 per square foot per building as they are completed, with a combination of square footages as follows: 3 buildings of 2,500 sq. feet each; 2 building of 4,000 each; 2 building of 7,500 sq. feet each, totaling not less than 30,500 square feet when all buildings are constructed. The total cumulative aggregate **CITY INCENTIVE PAYMENTS shall not to exceed** Three Hundred Thousand Dollars and 00/100, (\$300,000.00).

B. **DEVELOPER**, shall:

1. Prior to issuance of any building or other permit, provide to the **CITY** (or its designee) access to financial documentation that satisfactorily to the **CITY** establish that the **DEVELOPER** are jointly and severally financially stable and able to satisfactorily, timely, and successfully construct and operation the construction upon and to the **PROPERTY** and **FACILITIES** thereon, and able to fully pay and make all annual property tax and other payments to the **CITY**, and satisfy all other obligations to the **CITY** made under the provisions of this *Agreement*. Financial documentation may include *pro forma* projections of future incomes and sales and written demonstrations of binding commitments from the **DEVELOPER'S** lender(s) evidencing such lender's commitment to finance the **PROJECT** shall fulfill the foregoing requirement.

2. Prior to the start of any construction, installation of any structure or other improvement, or work upon the **PROPERTY**, seek and obtain from the City Staff approval of the Site Plan and exterior appearance of every structure, improvement, and implementation proposed by the **DEVELOPER** upon and/or for the **PROJECT** and **PROPERTY**.

3. Prior to the start of any building construction work upon the **PROPERTY**, seek and obtain building plan review and approval and a building permit from the City of Whitewater as a delegated municipality in accordance with Wisconsin Department of Safety and Professional Services administrative regulations.

4. Construct all improvements of whatsoever kind or nature upon the **PROPERTY** fully and solely at the expense of the **DEVELOPER**, at no cost or expense whatsoever to the **CITY** except for the **DEVELOPMENT INCENTIVE**, and in compliance and in conformity with:

a. each of the approvals and permits granted and/or issued by the **CITY** pertaining thereto; and

b. every applicable **CITY**, Federal, state, county and other ordinance, directive, statute, code, regulation, and law in effect at the time applicable under law, subject however to any variances in same approved for the **FACILITY** during the permitting process.

5. Fully complete construction of the **PROJECT** consisting of seven (7) multi-tenant buildings, (3 buildings of 2,500 sq. feet each; 2 building of 4,000 each; 2 building of 7,500 sq. feet each) upon the **PROPERTY**.

6. Guarantee a finished assessed value for the entire project, seven (7) buildings totaling not less than 30,500 square feet, of Three million, seven hundred fifty thousand and 00/100 Dollars (\$3,750,000).

C. **DEVELOPER** is obligated to perform hereunder and is jointly and severally obligated to perform under this *Agreement*; such performance is subject to and contingent upon the **DEVELOPER** obtaining and/or receiving, prior to May 1, 2023:

1. Receipt of all required approvals by all governmental agencies necessary for the use, design, renovation, and **DEVELOPMENT** of the **FACILITY** by **DEVELOPER** upon the **PROPERTY** upon terms and conditions satisfactory to the **DEVELOPER**.

D. Should **DEVELOPER** fail to perform, completing seven (7) buildings totaling 30,500 square feet by December 31, 2025, a partial claw back of the land value will occur if the project assessed value falls short of the \$3,750,000 as of 1/1/2026. The percentage of short fall as calculated by the difference by which the 1/1/2026 assessment is less than \$3,750,000 guaranteed amount, it will be that percentage times the total land value at time of closing of \$107,640 which will be paid back to the city by the developer.

E. For buildings completed before full project completion, Developer guarantees a minimum assessed value of \$123.00 per square foot of completed building subject to City Incentive Payments. In the event that the City Assessor values the property for property tax

purposes at less than \$123.00 per square foot of finished buildings, Developer will be liable to make a payment in lieu of property taxes (PILOT) to City in an amount to be calculated as follows: $((123 \times \text{square footage of finished buildings giving rise to City Incentive Payment}) - (\text{Actual Assessed Property Value})) \times \text{annual net property tax rate}$. If actual assessed value is greater than \$123.00 per square foot of finished building, no additional payment is due under this provision. Such payment, when required, shall be made no later than July 1 of each payment year. This PILOT provision will be in force until the 2041 valuation year, payable in 2042.

V. OTHER PROVISIONS

A. The **CITY** warrants and represents that the Common Council for the City of Whitewater have lawfully authorized this transaction and *Agreement*, and have otherwise authorized the City Manager to take such steps, enter into negotiations, and draft, prepare, execute, file and/or record this and related *Agreement* documents, forms and other papers as the City Manager may, from time to time, determine necessary and/or desirable to consummate and/or effectuate the transaction(s) set forth, and intent and purposes of, this *Agreement*.

B. The **CITY** agrees to execute and deliver such other documents as **DEVELOPER** may reasonably request to consummate the transactions contemplated herein.

C. This *Agreement* and all attachments and exhibits hereto constitute the entire *Agreement* between the parties and no modification shall be binding unless amended and agreed to in writing and signed by the affected parties.

D. **DEVELOPER**, by signing below, acknowledges having read, fully understand, and having personally received a copy of this *Agreement*.

E. This *Agreement* is not binding upon the **CITY** until such time as the Common Council for the City of Whitewater lawfully authorize and approve this *Agreement* and authorize and empower the City Manager and such others of the **CITY** administration necessary to execute and enter into this *Agreement* on behalf of the **CITY**. Execution of this *Agreement* by the City Manager or others on the **CITY'S** behalf is evidence of such authorization and approval.

F. This *Agreement* shall remain in full force and effect until such time as Whitewater TIF District No. 10 is terminated and dissolved OR when each and every of the obligations of the **CITY**, and **DEVELOPER** have been fully satisfied and discharged, whichever shall occur later. Also, unless and until the **DEVELOPER** has been paid in

full all amounts from the **CITY** promised to the **DEVELOPER** under this *Agreement*, the **CITY** covenants and agrees not to cause the early termination of Whitewater TIF District No.10 prior to December 31, 2030.

G. All rights and remedies in this *Agreement* for each party are cumulative and not exclusive, and in addition to all other remedies in law and equity.

H. Any notice which is required in connection with this *Agreement* shall be mailed, certified mail with return receipt requested, or delivered by nationally recognized overnight carrier, or hand delivered, if to the **CITY**:

John Weidl, City Manager
City Hall
312 W. Whitewater Street
Whitewater, WI 53190

If to **DEVELOPER**:
Ben Bolton
3649 Westminster Rd.
Janesville, WI 53546


Person or place of notice may be changed from time to time by any party notifying the others in writing duly served of the change.

I. This *Agreement* survives all dates set forth, runs with the land, may be recorded by the **CITY**, and shall be binding upon and inure to the benefit of **DEVELOPER** and each of **DEVELOPER'S** joint and several conveyees, purchasers, assigns, transferees, mortgagees, and successors of whatsoever kind or nature. If the **CITY** records this *Agreement*, then the **CITY** also agrees to execute and record a release at such time as **DEVELOPER** fulfill each of their obligations, promises, and payments under this *Agreement*.

This offer and *Agreement* are hereby accepted. The warranties and representations made herein survive the closing of this transaction. The undersigned hereby agrees to purchase, rehabilitate, renovate, repair, maintain, and operate the above-described **PROPERTY, FACILITIES, and improvements** according to the terms, contingencies, conditions, and obligations set forth, and acknowledges receipt of a copy of this *Agreement*.

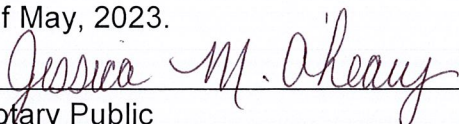
Offered, agreed to, and entered into this 15 day of May, 2023

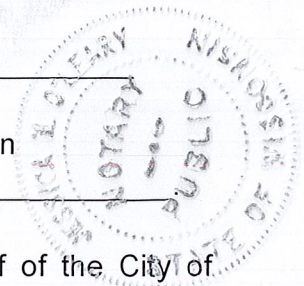
BECKER & BOLTON, LLC

By:  5-15-23
Ben Bolton
Managing Member, Becker & Bolton LLC

State of Wisconsin)
) ss
County of Walworth)

Subscribed to before me Becker & Bolton LLC, to me known to be the person who signed above this 15 day of May, 2023.

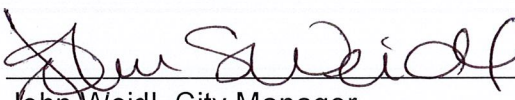
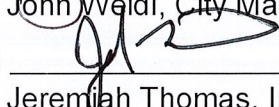

Notary Public
Walworth County, State of Wisconsin
My commission expires 4/12/2025



This *Agreement* is hereby accepted and entered into. On behalf of the City of Whitewater, the undersigned hereby agree to the terms, contingencies, conditions, and obligations set forth, and acknowledge receipt of a copy of this Agreement.

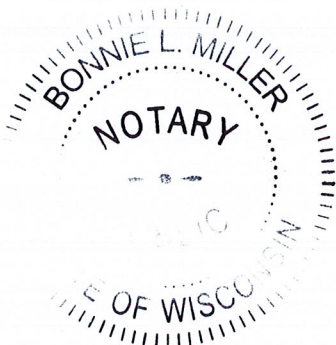
This 22nd day of May, 2023.

CITY OF WHITEWATER

BY: 
John Weidl, City Manager
Attest: 
Jeremiah Thomas, Interim City Clerk

State of Wisconsin)
) ss
County of Walworth)

Subscribed to before me personally by John Weidl, City Manager, and Jeremiah Thomas, Interim City Clerk, to me known to be the same persons who signed above this 22nd day of May, 2023.



Bonnie L. Miller
Notary Public
Walworth County, Wisconsin
My commission Expires 08/26/2024

Exhibit 'A'

LEGAL DESCRIPTION

Lot 1 of Certified Survey Map No. 3845 recorded in Volume 18 of Certified Surveys on Page 151 as Document No. 1022740, being a part of CSM 3497, and a part of the Southwest $\frac{1}{4}$ of Section 34, Township 5 North, Range 15 East, City of Whitewater, Jefferson County, Wisconsin.

(Tax Parcel No. 292-0515-3434-001)