

**DEVELOPMENT AGREEMENT**  
**BETWEEN**  
**CITY OF WHITEWATER, WISCONSIN**  
**AND**  
**STONEHAVEN DEVELOPMENT, LLC**  
**1222, 1242, 1252, 1262, AND 1272 E BLUFF RD**  
**WHITEWATER, WALWORTH COUNTY, WISCONSIN**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the [REDACTED] day of [REDACTED], 20[REDACTED], by and among the City of Whitewater, a Wisconsin municipal corporation, (the “City”) and STONEHAVEN DEVELOPMENT, LLC, a Wisconsin limited liability company (the “Developer”).

**WITNESSETH:**

**WHEREAS**, Developer currently has under contract parcels addressed at 1222, 1242, 1252, 1262, and 1272 E Bluff Road, Whitewater, Walworth County Wisconsin, located as described under Exhibit A attached hereto (the “Property”) (PIN: /A503200001, /A503200002, /A410100001, /A410100002, and /A410100003); and

**WHEREAS**, subject to obtaining the financial assistance set forth herein, Developer wishes to undertake development Stonehaven Project to include the division of the Property into 14 parcels (each, a “Lot”) and the construction of a single-family owner-occupied house on each Lot (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. #11 (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 Whitewater, 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, 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 as follows:

## **ARTICLE I 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" means the full equalized base value of the Property as of January 1, 2025, and is agreed by the parties to be One Hundred Forty-Three Thousand Eight Hundred dollars (\$143,800.00).

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

**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. below.

- 1.2.5.** “Developer” means Stonehaven Development, LLC and its successors and assigns.
- 1.2.6.** “Development Project” or “Project” means the division of the Property into 14 Lots and construction of a single-family house on each Lot, as generally shown on Exhibit B and as further described in Sections 2.1 and 2.2, below.
- 1.2.7.** “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.
- 1.2.8.** “Incremental Value” means the full equalized base value of the Property as of January 1 of the current year minus the Base Value.
- 1.2.9.** “Plans and Specifications” means the plans and specifications for the Project to be prepared by Developer and approved by the City Plan Commission, City Architectural Review Commission and City Council, which shall generally be consistent with Exhibit B.
- 1.2.10.** “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.
- 1.2.11.** “Projected Value Increment” means Four Million Nine Hundred and no/100 dollars (\$4,900,000.00), which is expected tax value of the Property following completion of the Project.
- 1.2.12.** “Property” means the property identified as Parcel Identification Number /A503200001, /A503200002, /A410100001, /A410100002, and /A410100003 in the City of Whitewater, Walworth County, Wisconsin as described on Exhibit A.
- 1.2.13.** “Schedule” means the schedule prepared by the City pursuant to Section 3.9., below.
- 1.2.14.** “Site Plan” means the specific physical layout of the Property as shown on Exhibit B.
- 1.2.15.** “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 Whitewater Assessor exceeds the Base Value established for the Property. The equalized value is calculated by taking the assessed value reported by the City of Whitewater Assessor that is certified by the State Department of Revenue times the aggregate ratio.
- 1.2.16.** “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.

- 1.2.17. “Term” means from **DATE** until the later of: (a) the date all Lots have been sold by Developer and (b) the date Developer has paid City all funds borrowed by Developer from the RLF Fund.
- 1.2.18. “TID # 11” means the Tax Incremental District No. 11 established by the City of Whitewater pursuant to Resolution No \_\_\_\_\_ on August 3, 2021 and recorded on \_\_\_\_\_.
- 1.2.19. “TID District” means Tax Incremental District No. 11 created by City Resolution on August 3, 2021, as a mixed-use district, as may be amended from time to time.
- 1.2.20. “Value” means full equalized fair market value of the real property.
- 1.2.21. “Zoning Code” or “Code” means Chapter 550 of the Code of Ordinances of the City of Whitewater.

## ARTICLE II DESCRIPTION OF DEVELOPMENT

**Section 2.1. Project Description.** Upon the receipt of all necessary governmental approvals, Developer subdivide the parcels into a total of 14 lots and shall build a single-family, owner-occupied single story house on each Lot with each house having approximately 1,456 sq ft. of area, no later than 5 years from the date of this Agreement, as shown conceptually in Exhibit B. Each house will be a single-story unit, and include three bedrooms, two bathrooms, poured concrete basement, an attached two-car garage, poured concrete driveway, poured concrete patio, final grading with dirt and seed, and be furnished with standard appliances. The Project will be developed under more detailed Plans and Specifications approved by the City Plan Commission, City Architectural Review Commission and City Council.

**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)) projected upon Developer’s representations is to be **TWO HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED DOLLARS (\$293,500.00)** per single-family house constructed and Four Million One Hundred Nine Thousand and no/100 Dollars (\$4,109,000.00) in aggregate, which shall be generally consistent with Exhibit B. In order to induce Developer to undertake the Development Project, the City agrees to reimburse Developer for eligible site and predevelopment costs, as defined under Wis. Stat. § 66.1105(2)(f) such as capital expenditures and project costs that it makes on the Property for construction of improvements and certain other expenditures, ~~and including, without limitation,~~ those costs listed in Exhibit C attached hereto (the “Development Eligible Costs”), in an amount not to exceed Two Hundred Eighty-Seven Thousand Eight Hundred Dollars (\$287,800). Reimbursement shall occur

upon submission of paid invoices and verification by the City of the work being completed. Repayment shall be made utilizing existing fund balance from TID #11, or other sources of funding at the City's discretion.

**Section 2.3. Sale Price Limitation.** Developer covenants that no Lot shall be sold for a price exceeding Three Hundred Fifty Thousand Dollars (\$350,000), subject to Developer's right to increase the sale price of a Lot upon the discovery of Unexpected Lot Conditions (as defined below) in an amount to pay reasonable costs to remediate such Unexpected Lot Conditions. Developer further covenants that the sale price for each Lot shall be limited to: (a) the costs reported to the City and covered from the RLF Fund (as defined below) to construct the house, (b) a fee charged by Developer not to exceed \$20,000, and (c) a commission fee that shall not exceed 5% of the sale price of a Lot.

An "Unexpected Lot Conditions" shall mean unforeseen subsurface, concealed, or latent conditions on a Lot, including hazardous materials, underground storage tanks that significantly differ from what was known, reflected in existing data, expected from site investigation, or discoverable with reasonable due diligence. If Developer encounters any Unexpected Lot Conditions, Developer shall promptly notify City.

City acknowledges and agrees that Developer may engage an entity affiliated with Developer, Legacy Realty Group, LLC to market and sell the Lots and pay commissions to Legacy Realty Group, LLC in an amount not to exceed 5% of the sale price of a Lot.

**Section 2.4. Project Value Increment.** 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, 2030, of at least **FOUR MILLION NINE HUNDRED THOUSAND DOLLARS** (\$4,900,000.00). Developer shall use all reasonable and good faith efforts to substantially complete the Project's construction on or before December 31, 2028.

**Section 2.5. Soil Condition Remediation.** While Developer warrants and attests to having had test holes dug on the Property in Fall 2025, and finding nothing concerning such as bedrock, limestone, or similar conditions, City will pay additional incentives to Developer for any Lots where soil conditions cause additional expense for blasting, excavating or utility work to remediate such conditions, resulting in an additional amount to be reimbursed to the Developer, not to exceed the lesser of additional expense for blasting, excavating or utility work to remediate such conditions, \$10,000 per Lot, or a total for the Property not to exceed \$140,000.00. Reimbursement shall occur upon submission of paid invoices and verification by the City of the work being completed.

**Section 2.6. Non-PAYGO Structure.** The parties acknowledge and agree that this Agreement does not utilize a pay-as-you-go structure and does not involve a Municipal Revenue Obligation.

**Section 2.7. Taxes.** Developer covenants and agrees that, until time of sale of the Lot, it shall

pay in full all taxes levied on such Lot 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 6, 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 City Manager and countersignature of the City Clerk.

**Section 2.8. Use of the TIF Grant Proceeds.** The proceeds of the City Contribution may be utilized for reimbursement of Development Eligible Costs, 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 seven (7) 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).

### **ARTICLE III UNDERTAKINGS OF THE DEVELOPER**

**Section 3.1. Development** Developer shall build the Project as described in Sections 2.1 and 2.2, above.

**Section 3.2. Intentionally Omitted.**

**Section 3.3. Plan Submission.** Developer shall submit all plans and specifications and necessary 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 July 1, 2026.

**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 August 1, 2026. Construction Commencement shall mean having obtained all necessary construction permits and having made substantial excavation for the foundations, footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. This date shall be extended for any noticed Force Majeure consistent with Section 8.6.

**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 December 31, 2029. This date shall be extended for any noticed Force Majeure consistent with Section 8.6.

**Section 3.7. Intentionally Omitted.**

**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. The City agrees to consider and approve or reject any non-material proposed change within thirty (30) 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 E are projected to be generated from the Project, pursuant to the current TID District Plan and this Development Agreement. These projections are included for illustrative purposes only.

**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. Intentionally Omitted.**

**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, but not less than the Term of this Agreement.

**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 provide final grading with dirt and seed in the terraces upon apron removal. City, at City's sole expense, will plant trees in the terraces.

**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, or the Term of this Agreement the structure of the storm sewer is damaged by an improvement on the Property, Developer will restore the storm sewer so as to provide an adequate structure to allow anticipated use of the improvements 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 the latter of during Developer's ownership of the Property, or the termination of this Agreement.

**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 8.3., 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 8.2., 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 District and the City's obligations as described in Article 4 hereof.

**Section 3.22. Deed Restrictions.**

**3.22.1** For purposes of this Section, Lot Owner shall mean a third party who has purchased a Lot developed under this agreement.

**3.22.2** For purposes of this Section the Capped Sale Price shall be equal to (a) the original sale price the Lot Owner paid for the Lot (b) the cost of any capital improvements Lot Owner has made to the property since purchasing the property and (c) inflation of the house based upon the FHFA House Price index for Wisconsin since the original purchase and any capital improvements to the house.

**3.22.3** Developer shall place a deed restriction upon the Property that requires each completed house on a Lot is owner occupied through December 31, 2041, and during the first five

years following the initial sale of a Lot, that if Lot Owner sells the Lot to a third party purchaser (the “Subsequent Sale”) and the sale price of the Subsequent Sale exceeds the Capped Sale Price, then at the closing of the Subsequent Sale, the Lot Owner shall pay City the difference between the actual sale price of the Subsequent Sale and the Capped Sale Price. For clarification purposes, the obligations of Developer under this paragraph are limited to recording the deed restriction described in this paragraph against the Property and Developer shall have no further obligations for monitoring or enforcing the deed restriction, and the City shall have the right to monitor and enforce the deed restriction.

**Section 3.23. Personal Guarantee of Performance and Repayment.** As a material inducement for the City to enter into this Agreement and to provide the City Financial Assistance described herein, Tim Vandeville Jr. and Amanda Vandeville (the “Guarantors”), being the principal owner(s), managing member(s), and/or controlling party(ies) of the Developer, shall jointly and severally execute a separate Personal Guarantee Agreement in favor of the City, in a form attached hereto as Exhibit G, contemporaneously with the execution of this Agreement.

The Personal Guarantee shall irrevocably and unconditionally guarantee:

1. **Performance Guarantee.** The full, timely, and faithful performance by the Developer of all material obligations under this Agreement, including, without limitation, completion of the Development Project in accordance with this Agreement and compliance with all sale price limitations, covenants, and restrictions set forth herein; and
2. **Financial Guarantee.** Repayment to the City of any amounts advanced through the Revolving Loan Fund, together with reimbursement of any City Financial Assistance that is subject to repayment under this Agreement, to the extent such amounts are not repaid from Lot sale proceeds or other project revenues.

The obligations of the Guarantor(s) under the Personal Guarantee shall be **absolute, continuing, and unconditional**, and shall not be released, reduced, or otherwise affected by:

- the insolvency, bankruptcy, dissolution, or reorganization of the Developer;
- any amendment to this Agreement approved by the City;
- the City’s exercise or failure to exercise any rights or remedies under this Agreement; or
- any sale, assignment, or transfer of the Property or the Development Project, unless expressly approved in writing by the City.

The Personal Guarantee shall remain in full force and effect until the earlier of: (a) full repayment of all Revolving Loan Fund advances and satisfaction of all financial obligations of the Developer to the City under this Agreement; or (b) such other written release approved by the Common Council, upon recommendation of the City Attorney and the City’s financial advisor.

## **ARTICLE IV UNDERTAKINGS OF THE CITY**

**Section 4.1. Appropriation.** The City shall pay all funds appropriated for the performance of its obligations under this Agreement as described in this Article.

**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 #11 and adopted Res. No. ##### on DATE, authorizing the funds from TID #11 to support the Development Project at the Property.

**Section 4.4. Payments from the City.** The City Contribution under this Agreement is conditioned upon Developer's compliance with all its obligations under this Agreement.

4.4.1. Subject to all of the terms covenants and conditions of this Agreement, applicable provisions of Wisconsin Law, and as inducement by the City to Developer to encourage Developer to undertake the commitments as outlined in Article 2 above; the City shall provide financial support for the Project to Developer to reimburse the Development Eligible Costs (the "City Payment") in the total amount of TWO HUNDRED EIGHTY SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$287,800.00) City Contributions shall be made in compliance with Section 2.2 above.

4.4.2. The Common Council of the City has determined in its discretion that payment of said contribution to the Project costs is necessary to implement the goals of the TID Development Project Plan and is allowed under and pursuant to Section 66.1105 of the Wisconsin Statutes.

4.4.3. The City shall in any event not be required to fund this obligation for the City Payment from the general obligations of the City. The City's obligation under this Subparagraph (2) are a special and limited obligation subject to the City's borrowing or bonding authority. While the City declares that it does have a present intention of providing such funds for the City Payment, the City is not obligated to use any other source other than RFL Funds.

4.4.4. If the Developer does not meet the performance criteria as stated in Article 3 of this Agreement, the City is not obligated to make the City Payment to Developer until all such performance criteria in this Agreement are met. In the event that there is a deferral in the payment of the City Payment, any deferred portion of the City payment shall not accrue interest.

**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 Development Eligible Costs.

**Section 4.6. Revolving Loan Fund.** The City shall establish a short-term Revolving Loan Fund

(the “RLF Fund”) with terms substantially in compliance with Exhibit D in an amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00) at zero percent (0%) interest to finance the reimbursement of the Development Eligible Costs and the vertical construction of houses on the Lots. Funds may be drawn from the RLF Fund by Developer in accordance with reasonable procedures approved by the City. Net proceeds from the sale of each Lot shall be returned to the City and deposited back into the RLF Fund until all draws are fully repaid. The City is authorized to borrow funds necessary to provide the upfront reimbursement and capitalize the RLF Fund. Interim debt service may be supported by revenues of TID District No. 11, consistent with the Ehlers Analysis. The City reserves the right to pay off the loan in full at any time at its sole discretion.

**Section 4.7. Fire Hydrant Relocation.** The City, at the City’s sole cost, shall relocate the fire hydrant on Parcel No. /A503200001 to a location it determines appropriate and that will not interfere with the project development.

**Section 4.8. Limited Obligation.** Developer hereby acknowledges that any 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 4.9. 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 4.10. Lookback.** The Parties understand that if the Development is successful then the RLF 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 mutually agreed upon fee earned by the Developer as compensation for its work on the Development Project. Accordingly, upon the earlier of: (i) 5 years after the date that the last house constructed in the Development Project receives an occupancy permit; or (ii) the date that the last Lot is sold to a third party, the Developer shall provide the City with reasonable evidence in the form of financial records of the Developer’s net profit from any individual Lot have not exceeded \$20,000 plus 5% of the sale price in realtor fees for each Lot sold, subject to any reasonable confidentiality restrictions permitted under Wisconsin law. The lookback provision is limited to a single review

of each lot 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 V COVENANTS RUNNING WITH THE LAND**

**Section 5.1. 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 VI REMEDIES**

**Section 6.1. Time of the Essence.** Time is of the essence as to all dates under this Agreement.

**Section 6.2. 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:

- 6.2.1.** Injunctive relief;
- 6.2.2.** Action for specific performance; and
- 6.2.3.** Action for money damages.
- 6.2.4.** Recovery of the Property as detailed in Section 6.3, below.

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 6.3. Recovery of the Property.**

- 6.3.1.** If construction of a house does not commence on a Lot as provided in Section 3.5, the City shall have the right to acquire such Lot from the Developer for the purchase price Developer paid for such Lot, less any reimbursement provided by the City for the original purchase by Developer of such Lot. The

City shall exercise this right by providing notice to Developer within 90 days of the date provided in Section 3.5.

**6.3.2.** If construction of a house is not completed on a Lot as provided in Section 3.6, the City reserves the right to acquire such Lot from the Developer for the purchase price Developer paid for such Lot less any reimbursement provided by the City for the original purchase by Developer of such Lot plus the unreimbursed construction costs of Developer on such Lot on the date provided in Section 3.6. The City shall exercise this right by providing notice to Developer within 90 days of the date provided in Section 3.6.

**Section 6.4. 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 6.5. 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 6.6. 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 VII INSURANCE**

**Section 7.1.** 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 7.2.** 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 VIII**

## WRITTEN NOTICES AND MISCELLANEOUS

**Section 8.1. 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 in writing and 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 Whitewater  
Office of the Finance & Administrative Services Director  
312 W Whitewater St  
P.O. Box 178  
Whitewater, WI 53190  
Attention: Rachelle Blich  
[RBlich@Whitewater-wi.gov](mailto:RBlich@Whitewater-wi.gov)

**With a copy to:**

City of Whitewater  
City Attorney's Office  
312 W Whitewater St.  
P.O. Box 178  
Whitewater, WI 53190  
Attention: Attorney Steven T. Chesebro  
[schesebro@whitewater-wi.gov](mailto:schesebro@whitewater-wi.gov)

**TO THE DEVELOPER:**

Stonehaven Development, LLC  
797 Meadowgate Dr.  
Waterford, WI 53185  
Attention: Tim Vandeville Jr.  
[tim@stonehavendev.com](mailto:tim@stonehavendev.com)

**With a copy to:**

Turke & Steil s.c.  
613 Williamson St., Suite 201  
Madison, WI 53703  
Attention: Attorney Peter Turke  
[peter@turkelaw.com](mailto:peter@turkelaw.com)

**Section 8.2. 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 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 8.3. Warranty of Developer; Non-Transferability.** The City has entered into this Agreement with Developer, on the basis of the identity of the Members and Managers, and on the strength of their experience. Therefore, Developer hereby warrants and represents to the City that the Members and Managers of Developer are as shown on Exhibit F, attached hereto. During the Term, Developer may not change Members and Managers 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 Members and Managers 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 8.4. 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 8.5. 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 8.6. 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. Any party alleging Force Majeure has delayed its performance of obligations shall provide notice to the other party within

30 days of the events begging to cause delay and shall include in that notice an estimate on the anticipated amount of delay. The party shall then provide a second notice confirming the actual length of delay, the second notice shall be provided no later than 15 days after the anticipated end of the delay detailing the actual amount of the delay caused by the Force Majeure.

**Section 8.7. 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 Walworth County, Wisconsin, Circuit Court.

**Section 8.8. 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 8.9. 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 8.10. 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 8.11. Recording and Survival.** The City shall record this Agreement against the Property with the Register of Deeds for Walworth 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 expiration of the Term, as defined above.

**Section 8.12. 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 8.13. 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 8.14. 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 8.15. 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 8.16. 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 8.17. 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 8.18. 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.

**Section 8.19. Term.** This Agreement shall continue in full force and effect until such time as Developer's obligations under this Agreement have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]



**CITY OF WHITEWATER:**

BY: \_\_\_\_\_  
John Weidl, City Manager

ATTEST:

BY: \_\_\_\_\_  
Heather Boehm, City Clerk

**AUTHENTICATION**

Signature(s) John Weidl, City Manager and Heather Boehm, City Clerk, authenticated this \_\_\_ day of Month, Year.

\_\_\_\_\_  
Attorney Steven T. Chesebro  
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 Whitewater on the within Agreement.

\_\_\_\_\_  
Rachelle Blich  
Finance & Administrative Services Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T.  
Chesebro  
City  
Attorney

EXHIBIT A  
LEGAL DESCRIPTION

EXHIBIT B  
CONCEPT PLAN

EXHIBIT C  
ELIGIBLE SITE DEVELOPMENT COSTS

Land Acquisition  
Surveys  
Certified Survey Maps  
Subdivision Plat  
Due Diligence, Design  
Attorneys' Fees  
Delivery Services  
Construction Phase  
Permits/City Fees  
Water Cuts Across Street  
Impact Fees/Park Fees

EXHIBIT D  
REVOLVING LINE OF CREDIT AGREEMENT

# REVOLVING LINE OF CREDIT AGREEMENT

## ARTICLE I. DEFINITIONS

### Section 1.1. Defined Terms

As used in this Agreement, the following terms shall have the meanings set forth below:

**"Advance"** means any loan or advance made by City to Developer under this Agreement.

**"Agreement"** means this Revolving Line of Credit Agreement, as it may be amended, supplemented, or otherwise modified from time to time.

**"Applicable Law"** means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

**"Approved Construction Invoice"** means an invoice for construction costs that (i) is consistent with the Construction Budget set forth in Exhibit A and (ii) complies with the requirements set forth in Section 2.3 of this Agreement.

**"Business Day"** means any day other than a Saturday, Sunday or Holiday recognized by the City and on which the City is closed.

**"City"** means City of Whitewater, a Wisconsin Municipal Corporation.

**"Closing Date"** means the date of this Agreement.

**"Collateral"** means all property and interests in property now owned or hereafter acquired by Developer that is subject to the Liens granted to City pursuant to any Loan Document.

**"Construction Budget"** means the detailed budget for the construction of houses on the Property, as set forth in Exhibit A attached hereto, which shall include line items for all costs associated with the acquisition, development, and construction of the Property.

**"Default"** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

**"Developer"** means Stonehaven Development, LLC a Wisconsin limited liability company and its successors and assigns.

**"Event of Default"** has the meaning specified in Section 7.1.

**"Governmental Authority"** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

**"Lien"** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever.

**"Loan Documents"** means, collectively, this Agreement, the Note, the Mortgage, and all other agreements, instruments, and documents executed in connection with this Agreement.

**"Lot"** means the 14 parcels of the Property following the division of the Property by Developer.

**"Maximum Credit Amount"** means One Million Two Hundred Thousand Dollars (\$1,200,000).

**"Mortgage"** means any mortgage, deed of trust, or similar instrument executed by Developer in favor of City, encumbering the Property to secure the Obligations.

**"Note"** means the promissory note executed by Developer in favor of City evidencing the Advances made by City, substantially in the form of Exhibit B attached hereto.

**"Obligations"** means all advances to, and debts, liabilities, obligations, covenants and duties of, Developer arising under any Loan Document, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

**"Payment Date"** means the day on which any Lot is sold by Developer.

**"Person"** means any individual, corporation, partnership, limited liability company, cooperative, association, joint stock company, trust, joint venture, unincorporated organization or other entity.

**"Property"** means the property identified as Parcel Identification Number /A503200001, /A503200002, /A410100001, /A410100002, and /A410100003 in the City of Whitewater,

Walworth County, Wisconsin as described on Exhibit C attached hereto as well as any lots the parcels are subdivided into.

**"Sale Proceeds"** means the gross proceeds received by Developer from the sale of a Lot, less reasonable and customary closing costs and expenses.

**"Standard Rate"** means the rate of interest per annum which shall be 6.75%.

## **Section 1.2. Other Interpretive Provisions**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- a. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise,
  - i. any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified,
  - ii. any reference herein to any Person shall be construed to include such Person's successors and assigns,
  - iii. the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof,
  - iv. all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear,
  - v. any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and
  - vi. the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.
- b. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

- c. Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

## **ARTICLE II. THE REVOLVING LINE OF CREDIT**

### **Section 2.1. Revolving Line of Credit**

- a. Subject to the terms and conditions set forth herein, City agrees to make Advances to Developer from time to time during the period from the Closing Date to July 1, 2030 (the “Maturity Date”), in an aggregate principal amount at any time outstanding not to exceed the Maximum Credit Amount; provided, however, that at no time shall there be more than four (4) Lots that are subject to active construction financing under this Agreement. Within the foregoing limits and subject to the terms and conditions set forth herein, Developer may borrow, prepay and reborrow under this revolving line of credit.
- b. To request an Advance, Developer shall notify City of such request in writing not later than 11:00 a.m., CST, two (2) weeks before the date of the proposed Advance. Each such written request shall specify
  - i. the amount of the Advance,
  - ii. the requested date of the Advance (which shall be a Business Day),
  - iii. the Lot for which the Advance is requested,
  - iv. a description of the construction costs to be paid with the proceeds of the Advance which shall be within the Construction Budget for the single family home on the Lot,
  - v. Copies of all invoices associated with the construction costs to be covered by the Advance,
  - vi. Receipts or waivers of construction lien for the work completed, and
  - vii. If no waivers are provided, payments must be made directly to invoicing company.
- c. Promptly following receipt of a request for an Advance in accordance with this Section, if all conditions precedent set forth in Section 2.3 have been satisfied, City shall make such Advance to Developer by check made payable to Developer and/or the invoicing company or companies.

### **Section 2.2. Note; Interest; Payments**

- a. The Advances made by City shall be evidenced by the Note. The Note shall be dated as of the Closing Date and shall be payable to the order of City in the principal amount of the Maximum Credit Amount.
- b. Each Advance shall bear no interest on the outstanding principal amount thereof from the date such Advance is made until the earlier of July 1, 2030 or the date on which ownership of the Lot identified in the request for Advance is transferred from Developer to a third party. Should the City not receive payment of the Advance within seven (7) days of transfer of ownership to a third party, interest on the Advance shall begin to accrue at the rate of 12% per annum. Interest shall be calculated on the basis of a year of 365 days and the actual number of days elapsed. Interest shall be payable monthly in arrears on each Payment Date, commencing with the first Payment Date following the date of the initial Advance.
- c. The entire outstanding principal balance of all Advances, together with all accrued and unpaid interest thereon, shall be due and payable in full on the Maturity Date.
- d. Developer may prepay any Advance in whole or in part at any time without premium or penalty. Any prepayment shall be applied first to accrued interest and then to principal.
- e. Upon the sale of a Lot, Developer shall apply the Sale Proceeds to repay all Advances made for the acquisition, development, and construction of such Lot, together with all accrued interest thereon. If the Sale Proceeds are insufficient to repay all such Advances in connection with a Lot and accrued interest, Developer shall pay the deficiency to City within five (5) Business Days after the closing of the sale of such Lot. Provided an Event of Default has not occurred and is continuing, to facilitate a sale of a Lot and allow Developer to provide title insurance for a third party buyer of a Lot, City agrees to execute and deliver a partial release of the Mortgage to release the lien of the Mortgage against the Lot being sold.

### **Section 2.3. Conditions to Advances**

- a. The obligation of City to make the initial Advance is subject to the satisfaction of the following conditions:
  - i. City shall have received each of the following, each in form and substance reasonably satisfactory to City:
    - 1. executed counterparts of this Agreement and each other Loan Document;
    - 2. the Note, duly executed by Developer;
    - 3. a Mortgage for the Property for which financing is initially requested, duly executed by Developer and properly recorded in the appropriate real property records;
    - 4. evidence of insurance as required by Section 5.5;
    - 5. a title insurance policy (or a marked, signed and redated commitment to issue such policy) insuring City's interest under the Mortgage as a valid first priority lien on the applicable Lot, subject only to such exceptions as City may approve, and containing such endorsements as City may require;

6. a survey of each Property for which financing is initially requested, prepared by a licensed surveyor acceptable to City;
  7. evidence that all taxes, assessments, and other charges relating to each Property for which financing is initially requested have been paid in full;
  8. the Construction Budget for the Property, in the form attached hereto as Exhibit A;
  9. copies of all building permits and other governmental approvals required for the construction of improvements on each Property for which financing is initially requested;
  10. copies of all construction contracts relating to each Property for which financing is initially requested; and
  11. such other documents, instruments, and agreements as City may reasonably request.
- ii. No Default or Event of Default shall exist or would result from the making of the Advance.
  - iii. The representations and warranties of Developer contained in Article IV shall be true and correct on and as of the date of the Advance.
- b. The Obligation of City to make each subsequent Advance is subject to the satisfaction of the following conditions:
- i. City shall have received each of the following, each in form and substance satisfactory to City:
    1. a written request for the Advance as required by Section 2.1(b);
    2. Approved Construction Invoices for all costs to be paid with the proceeds of the Advance;
    3. a title date-down endorsement to the title insurance policy for the applicable Lot, showing no liens or encumbrances other than those approved by the City;
    4. lien waivers from all contractors, subcontractors, and material suppliers who have performed work or supplied materials for the applicable Lot since the last Advance;
    5. a report from City's construction consultant confirming that the work for which payment is requested has been completed in accordance with the approved plans and specifications; and
    6. such other documents, instruments, and agreements as City may reasonably request.
  - ii. No Default or Event of Default shall exist or would result from the making of the Advance.
  - iii. The representations and warranties of Developer contained in Article IV shall be true and correct on and as of the date of the Advance.
  - iv. The number of Lots subject to active construction financing under this Agreement shall not exceed four (4) at any given time, with the exception that should bedrock, limestone, or similar conditions need to be remediated from the Property, an Advance shall be provided for the total cost of remediation of such bedrock, limestone, or similar

- conditions from the Property not to exceed the amount of \$10,000 per Lot which has bedrock, limestone, or similar conditions remediated.
- v. The total amount of all Advances for each Lot, including the requested Advance, shall not exceed the total amount budgeted for such lot in the attached Development Agreement between the City and Developer or Construction Budget.
  - c. Each request for an Advance shall constitute a representation and warranty by Developer that the conditions specified in Sections 2.3(a) and (b), as applicable, have been satisfied on and as of the date of the applicable Advance.

#### **Section 2.4. Use of Proceeds**

Developer shall use the proceeds of the Advances solely to pay for costs and expenses incurred in connection with the acquisition, development, and construction of the Property, as set forth in the Construction Budget for the Property. Developer shall not use the proceeds of any Advance for any purpose other than payment of Approved Construction Invoices.

### **ARTICLE III. SECURITY**

#### **Section 3.1. Grant of Security Interest**

As security for the payment and performance of the Obligations, Developer hereby grants to City a continuing security interest in, and a right to set off against, any and all right, title and interest of Developer in and to all of the following, whether now owned or hereafter acquired by Developer: (a) the Property; (b) all building materials and other personal property located on or intended to be incorporated into the Property; (c) all plans, specifications, permits, licenses, contracts, and other documents relating to the construction of improvements on the Property; (d) all proceeds of the sale of any Lot; and (e) all proceeds of the foregoing.

#### **Section 3.2. Further Assurances**

At any time and from time to time, upon the request of City, and at the sole expense of Developer, Developer shall promptly execute and deliver all such further instruments and documents and take such further action as City may reasonably deem necessary or desirable to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Agreement.

### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES**

Developer represents and warrants to City that:

#### **Section 4.1. Existence, Qualification and Power**

Developer (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a material adverse effect.

#### **Section 4.2. Authorization; No Contravention**

The execution, delivery and performance by Developer of each Loan Document to which it is a party have been duly authorized by all necessary action, and do not and will not (a) violate any provision of any law or any governmental rule or regulation applicable to Developer, any of the organizational documents of Developer, or any order, judgment or decree of any court or other agency of government binding on Developer; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any contractual obligation of Developer; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Developer (other than Liens created under any of the Loan Documents in favor of City); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any contractual obligation of Developer, except for such approvals or consents which have been obtained on or before the Closing Date.

#### **Section 4.3. Governmental Authorization; Other Consents**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Developer of any Loan Document to which it is a party.

#### **Section 4.4. Binding Effect**

Each Loan Document to which Developer is a party has been duly executed and delivered by Developer and constitutes a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

#### **Section 4.5. Financial Statements; No Material Adverse Effect**

- a. The financial statements of Developer most recently delivered to City fairly present the financial condition of Developer as of the date thereof and the results of operations of Developer for the period covered thereby in accordance with consistently applied accounting principles.
- b. Since the date of the most recent financial statements of Developer delivered to City, to the knowledge of Developer, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a material adverse effect on the business, assets, operations, or condition (financial or otherwise) of Developer.

#### **Section 4.6. Litigation**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Developer, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against Developer or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a material adverse effect.

#### **Section 4.7. No Default**

No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **Section 4.8. Ownership of Property; Liens**

Developer has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, including the Property, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a material adverse effect. The property of Developer is subject to no Liens, other than Liens permitted by Section 6.1.

#### **Section 4.9. Environmental Compliance**

To the knowledge of Developer, Developer and the Property are in compliance with all applicable federal, state and municipal laws and regulations of an environmental nature, except to the extent that the failure to comply therewith could not reasonably be expected to have a material adverse effect.

#### **Section 4.10. Insurance**

The properties of Developer are insured with financially sound and reputable insurance companies not affiliates of Developer, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in

localities where Developer operates.

#### **Section 4.11. Taxes**

Developer has filed all federal, state and other material tax returns and reports required to be filed, and has paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with generally accepted accounting principles.

#### **Section 4.12. Construction Budget**

The Construction Budget for each Lot is complete and accurate and includes all costs and expenses necessary to complete the construction of the improvements on the Property in accordance with the plans and specifications previously approved by City.

### **ARTICLE V. AFFIRMATIVE COVENANTS**

#### **Section 5.1. Financial Statements**

Subject to any reasonable confidentiality restrictions that Developer may desire, and which are permitted under Wisconsin law, so long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall deliver to City, in form and detail reasonably satisfactory to City:

- a. as soon as available, but in any event within 90 days after the end of each fiscal year of Developer, a balance sheet of Developer as at the end of such fiscal year, and the related statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, all in reasonable detail by an independent certified public accountant reasonably acceptable to City;
- b. as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Developer, a balance sheet of Developer as at the end of such fiscal quarter, and the related statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of Developer's fiscal year then ended, all in reasonable detail, certified by a responsible member or manager of Developer as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of Developer, subject only to normal year-end audit adjustments and the absence of footnotes;

- c. as soon as available, but in any event within 30 days after the end of each month, a report on the status of construction of each Lot, including a comparison of actual costs incurred to the Construction Budget and a projection of costs to complete; and
- d. promptly, such additional information regarding the business, financial or corporate affairs of Developer, or compliance with the terms of the Loan Documents, as City may from time to time reasonably request.

### **Section 5.2. Notices**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall promptly notify City:

- a. of the occurrence of any Default or Event of Default;
- b. of any matter that has resulted or could reasonably be expected to result in a material adverse effect, including (i) breach or non-performance of, or any default under, a contractual obligation of Developer; (ii) any dispute, litigation, investigation, proceeding or suspension between Developer and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Developer;
- c. of the occurrence of any ERISA Event;
- d. of any material change in accounting policies or financial reporting practices by Developer; and
- e. of any material change in the status of construction of any Lot, including any delay in construction, any change in the plans or specifications, or any change in the Construction Budget.

Each notice pursuant to this Section shall be accompanied by a statement of a responsible member or manager of Developer setting forth details of the occurrence referred to therein and stating what action Developer has taken and proposes to take with respect thereto.

### **Section 5.3. Payment of Obligations**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall pay and discharge as they become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with generally accepted accounting principles are being maintained by Developer; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all indebtedness under the Obligation (“Indebtedness”), as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

#### **Section 5.4. Preservation of Existence, Etc.**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall:

- a. Preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization;
- b. Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a material adverse effect; and
- c. Preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a material adverse effect.

#### **Section 5.5. Maintenance of Properties; Insurance**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall:

- a. Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted;
- b. Make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a material adverse effect; and
- c. Maintain with financially sound and reputable insurance companies not affiliates of Developer, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including, without limitation, (i) builder's risk insurance on each Property in an amount not less than the total cost of construction as set forth in the Construction Budget, (ii) liability insurance, and (iii) flood insurance, if any Property is located in a flood hazard area. Each such policy of insurance shall name City as an additional insured and loss payee.

#### **Section 5.6. Compliance with Laws**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall comply in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a material adverse effect.

### **Section 5.7. Books and Records**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall:

- a. Maintain proper books of record and account, in which full, true and correct entries shall be made of all financial transactions and matters involving the assets and business of Developer; and
- b. Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Developer.

### **Section 5.8. Inspection Rights**

Subject to any reasonable confidentiality restrictions that Developer may desire, and which are permitted under Wisconsin law, so long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall:

Permit representatives and independent contractors of City to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Developer; provided, however, that when an Event of Default exists City (or any of its representatives or independent contractors) may do any of the foregoing at the expense of Developer at any time during normal business hours and without advance notice.

### **Section 5.9. Construction of Improvements**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall:

- a. Commence construction of the improvements on each Property within 30 days after the initial Advance for such Property and diligently pursue such construction to completion in accordance with the plans and specifications approved by City;
- b. Cause all work to be performed in a good and workmanlike manner, in accordance with all applicable laws, ordinances, rules, regulations, and requirements of all Governmental Authorities having jurisdiction over the Property; and
- c. Subject to any reasonable confidentiality restrictions that Developer may desire, and which are permitted under Wisconsin law, permit City and its representatives to enter upon each Property at all reasonable times to inspect the work and materials and to examine all detailed plans and shop drawings which are or may be kept at the construction site.

## **ARTICLE VI. NEGATIVE COVENANTS**

### **Section 6.1. Liens**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- a. Liens pursuant to any Loan Document;
- b. Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with generally accepted accounting principles;
- c. carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person; and
- d. easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person.

### **Section 6.2. Indebtedness**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly create, incur, assume or suffer to exist any Indebtedness, except Indebtedness under the Loan Documents and the promissory note between Developer, as borrower, and Legacy Realty Group, LLC, as lender, dated \_\_\_\_\_ in the principal amount of One Hundred Seventy-Five Thousand and 00/100 Dollars (\$175,000.00) (the "Legacy Realty Promissory Note"). City acknowledges receipt of a copy of the Legacy Realty Promissory Note.

### **Section 6.3. Fundamental Changes**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly merge, dissolve, liquidate, consolidate with or into another Person, or any Disposition of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person. As used in this Agreement, "Disposition" shall mean the sale, disposal, assignment, or

transfer of an asset, including without limitation, real or personal property.

#### **Section 6.4. Dispositions**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly make any Disposition or enter into any agreement to make any Disposition, except:

- a. Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- b. Dispositions of inventory in the ordinary course of business; and
- c. Dispositions of Lots in the ordinary course of Developer's business, provided that (i) the Sale Proceeds are applied as required by Section 2.2(e), and (ii) no Default or Event of Default exists or would result from such Disposition.

#### **Section 6.5. Change in Nature of Business**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly engage in any material line of business substantially different from those lines of business conducted by Developer on the date hereof or any business substantially related or incidental thereto.

#### **Section 6.6. Transactions with Affiliates**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly enter into any transaction of any kind with any affiliate of Developer, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to Developer as would be obtainable by Developer at the time in a comparable arm's length transaction with a Person other than an affiliate. Notwithstanding anything to the contrary in this paragraph, City acknowledges and agrees that Developer may enter into agreements with an affiliated realtor that requires payment to such affiliated realtor of a commission fee that shall not exceed 5% of the sale price of a Lot.

#### **Section 6.7. Use of Proceeds**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly use the proceeds of any Advance, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

### **Section 6.8. Intentionally Omitted**

### **Section 6.9. Changes to Construction Budget**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly make or permit to be made any changes to the Construction Budget for any Property without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

### **Section 6.10. Changes to Plans and Specifications**

So long as any Advance or other Obligation hereunder shall remain unpaid or unsatisfied, Developer shall not, directly or indirectly make or permit to be made any changes to the plans and specifications for the improvements on any Property without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE VII. EVENTS OF DEFAULT AND REMEDIES**

### **Section 7.1. Events of Default**

Any of the following shall constitute an “Event of Default”:

- a. **Non-Payment.** Developer fails to pay, within ten (10) days after receipt of written notice from City, of any amount of principal of any Advance, any interest on any Advance, or any fee due hereunder; or
- b. **Other Defaults.** Developer fails to perform or observe any other covenant or agreement (not specified in subsection (a) above) contained in any Loan Document on its part to be performed or observed within thirty (30) days after written notice thereof to Developer or within such extended period required to cure the default, provided cure efforts are undertaken in good faith within the thirty (30) period and Developer is diligently pursuing such cure; or
- c. **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Developer herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or materially misleading when made or deemed made; or
- d. **Insolvency Proceedings, Etc.** Developer institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is

appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

- e. Inability to Pay Debts; Attachment. (i) Developer becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of Developer and is not released, vacated or fully bonded within 30 days after its issue or levy; or
- f. Judgments. There is entered against Developer (i) one or more final judgments or orders for the payment of money, or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or
- g. Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or Developer or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or Developer denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document.

## **Section 7.2. Remedies Upon Event of Default**

If any Event of Default occurs and is continuing, City may take any or all of the following actions:

- a. Declare the commitment of City to make Advances to be terminated, whereupon such commitment shall be terminated;
- b. Declare the unpaid principal amount of all outstanding Advances, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Developer;
- c. Exercise all rights and remedies available to it under the Loan Documents or applicable law; and

- d. Take possession of each Lot (not previously sold to a third party and released by the City) and complete the construction of the improvements thereon, in which event City may expend such sums as it deems proper to complete such construction, and all amounts so expended by City shall be deemed to be Advances made to Developer under this Agreement and shall be secured by the Loan Documents.

### **Section 7.3. Application of Funds**

After the exercise of remedies provided for in Section 7.2 (or after the Advances have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by City in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts payable to City;

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Advances;

Third, to payment of that portion of the Obligations constituting unpaid principal of the Advances; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Developer or as otherwise required by law.

## **ARTICLE VIII. MISCELLANEOUS**

### **Section 8.1. Amendments, Etc.**

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Developer therefrom, shall be effective unless in writing signed by City and Developer, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

### **Section 8.2. Notices; Effectiveness; Electronic Communication**

- a. Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

- i. If to Developer**

Stonehaven Development, LLC  
797 Meadowgate Dr.  
Waterford, WI 53185  
Attention: Tim Vandeville Jr.  
[tim@stonehavendev.com](mailto:tim@stonehavendev.com)

**With a copy to:**

Turke & Steil s.c.  
613 Williamson St., Suite 201  
Madison, WI 53703  
Attention: Attorney Peter Turke  
[peter@turkelaw.com](mailto:peter@turkelaw.com)

**ii. If to City,**

City of Whitewater  
Office of the Finance & Administrative Services Director  
312 W Whitewater St  
P.O. Box 178  
Whitewater, WI 53190  
Attention: Rachelle Blich  
[RBlich@Whitewater-wi.gov](mailto:RBlich@Whitewater-wi.gov)

**With a copy to:**

City of Whitewater  
City Attorney's Office  
312 W Whitewater St.  
P.O. Box 178  
Whitewater, WI 53190  
Attention: Attorney Steven T. Chesebro  
[schesebro@whitewater-wi.gov](mailto:schesebro@whitewater-wi.gov)

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by electronic mail shall be deemed to have been given when sent.

- b. Change of Address, Etc. Each of Developer and City may change its address, electronic mail or telephone number for notices and other communications hereunder by notice to the other party hereto.

**Section 8.3. No Waiver; Cumulative Remedies; Enforcement**

No failure by City to exercise, and no delay by City in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

#### **Section 8.4. Expenses; Indemnity; Damage Waiver**

- a. **Costs and Expenses.** Developer shall pay all out-of-pocket expenses incurred by City (including the fees, charges and disbursements of any counsel for City), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Advances made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Advances.
- b. **Indemnification by Developer<sup>1</sup>.** 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 Event of 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.
- c. **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable law, Developer shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof.
- d. **Payments.** All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

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<sup>1</sup> Note to draft: this indemnification provision matches the indemnification provision in Section 8.18 of the Development Agreement.

- e. Survival. The agreements in this Section shall survive the termination of the commitment of City to make Advances and the repayment, satisfaction or discharge of all the other Obligations.

### **Section 8.5. Payments Set Aside**

To the extent that any payment by or on behalf of Developer is made to City, or City exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by City in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

### **Section 8.6. Successors and Assigns**

- a. Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Developer may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of City. City may assign or otherwise transfer all or any portion of its rights or obligations hereunder to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) without the consent of Developer. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and, to the extent expressly contemplated hereby, the Related Parties of City) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- b. Participations. City may at any time, without the consent of, or notice to, Developer, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) (each, a "Participant") in all or a portion of City's rights and/or obligations under this Agreement (including all or a portion of its commitment to make Advances and/or the Advances owing to it); provided that
  - i. City's obligations under this Agreement shall remain unchanged,
  - ii. City shall remain solely responsible to the other parties hereto for the performance of such obligations, and
  - iii. Developer shall continue to deal solely and directly with City in connection with City's rights and obligations under this Agreement.

### **Section 8.7. Treatment of Certain Information.**

The Parties acknowledge that the City is subject to Public Records laws under Wis. Stat. §§ 19.31 – 19.39 and that some information provided to the City may become a public record and be subject to inspection. Developer understands that the City, as a governmental entity, has legal obligations to disclose public records upon request, unless a specific exemption applies. Notwithstanding any other provision in this Agreement regarding confidentiality, proprietary information, or non-disclosure, Developer acknowledges that the City cannot guarantee the confidentiality of any information provided to the City if such information constitutes a public record subject to disclosure under Open Records Laws. To the extent permitted by law and practicable under the circumstances, the City shall make reasonable efforts to notify Developer of any request made pursuant to Open Records Laws that seeks disclosure of information provided by Developer that Developer has specifically identified in writing as confidential or proprietary at the time of disclosure to the City. Developer shall have the opportunity, at its own expense, to submit written arguments to the City regarding whether the requested information is exempt from disclosure, and may obtain an injunction against disclosure at Developer's own expense if the City intends to release any information Developer believes to be confidential. Developer agrees to cooperate with the City in responding to any Open Records Laws requests, including providing any information necessary for the City to respond to such requests in a timely manner as required by law.

The City's disclosure of information pursuant to Open Records Laws shall not be deemed a breach of any confidentiality provisions contained in this Agreement.

#### **Section 8.8. Right of Setoff**

If an Event of Default shall have occurred and be continuing, City and each of its affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by City or any such affiliate to or for the credit or the account of Developer against any and all of the obligations of Developer now or hereafter existing under this Agreement or any other Loan Document to City or its affiliates, irrespective of whether or not City or affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of Developer may be contingent or unmatured or are owed to a branch, office or affiliate of City different from the branch, office or affiliate holding such deposit or obligated on such indebtedness. The rights of City and its affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that City or its affiliates may have.

#### **Section 8.9. Interest Rate Limitation**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If City shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the

Advances or, if it exceeds such unpaid principal, refunded to Developer. In determining whether the interest contracted for, charged, or received by City exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **Section 8.10. Counterparts; Integration; Effectiveness**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 2.3, this Agreement shall become effective when it shall have been executed by City and when City shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **Section 8.11. Survival of Representations and Warranties**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by City, regardless of any investigation made by City or on its behalf and notwithstanding that City may have had notice or knowledge of any Default at the time of any Advance, and shall continue in full force and effect as long as any Advance or any other Obligation hereunder shall remain unpaid or unsatisfied.

#### **Section 8.12. Severability**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### **Section 8.13. Governing Law; Jurisdiction; Etc.**

- a. GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF WISCONSIN.
- b. SUBMISSION TO JURISDICTION. DEVELOPER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST CITY OR ANY RELATED PARTY OF CITY IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF WISCONSIN SITTING IN WALWORTH COUNTY, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH WISCONSIN STATE COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.
- c. WAIVER OF VENUE. DEVELOPER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

- d. SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.2. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

#### **Section 8.14. Waiver of Jury Trial**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO

- a. CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND
- b. ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **Section 8.15. Time of the Essence**

Time is of the essence of the Loan Documents.

#### **Section 8.16. Electronic Execution of Assignments and Certain Other Documents**

The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, amendments or other modifications, notices,

waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by City, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

#### **Section 8.17. No Advisory or Fiduciary Responsibility**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Developer acknowledges and agrees, and acknowledges its affiliates' understanding, that: (i) (A) the services regarding this Agreement provided by City are arm's-length commercial transactions between Developer and its affiliates, on the one hand, and City, on the other hand, (B) Developer has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Developer is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) City is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Developer or any of its affiliates, or any other Person and (B) City has no obligation to Developer or any of its affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) City and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Developer and its affiliates, and City has no obligation to disclose any of such interests to Developer or its affiliates. To the fullest extent permitted by law, Developer hereby waives and releases any claims that it may have against City with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

#### **Section 8.18. Developer's Knowledge**

References to the "knowledge" of Developer shall mean the actual knowledge of any member or manager of Developer together with the actual knowledge that any such Person obtained in the performance of such Person's duties as a member or manager of Developer.

#### **Section 8.19. 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 Person 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 Person or its agents or contractors, as applicable. No Person to this Agreement shall be in default hereunder for so long as such Person or its agents and contractors, if applicable, are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence. Any party alleging Force Majeure has delayed its performance of obligations shall provide notice to the other party within 30 days of the events beginning to cause delay and shall include in that notice an estimate on the anticipated amount of delay. The party shall then provide a second notice confirming the actual length of delay, the second notice shall be provided no later than 15 days after the anticipated end of the delay detailing the actual amount of the delay caused by the Force Majeure.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]



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Attorney Steven T. Chesebro  
Title: Member State Bar of Wisconsin

# **EXHIBIT A**

## **CONSTRUCTION BUDGET**

[DETAILED CONSTRUCTION BUDGET FOR EACH PROPERTY]

## **EXHIBIT B**

### **FORM OF REVOLVING PROMISSORY NOTE**

REVOLVING PROMISSORY NOTE

\$1,200,000.00

[DATE]

FOR VALUE RECEIVED, the undersigned, Stonehaven Development, LLC, a Wisconsin limited liability company ("Developer"), hereby promises to pay to the order of City of Whitewater, a Wisconsin Municipal Corporation ("City"), the principal sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), or so much thereof as may be advanced and outstanding hereunder, together with interest on the outstanding principal balance from the date hereof at the rate provided for in the Revolving Line of Credit Agreement referred to below.

The Developer further agrees to pay the principal and interest with respect to the revolving line of credit in accordance with the terms of the Revolving Line of Credit Agreement dated as of the date hereof between the Developer and the City (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

This revolving promissory note (this "Note") is the Note referred to in the Credit Agreement and is entitled to the benefits thereof. This Note is secured as provided in the Loan Documents. Reference is hereby made to the Loan Documents for a description of the properties and assets in which a security interest has been granted, the nature and extent of the security, and the terms and conditions upon which the security interests were granted and the rights of the holder of this Note in respect thereof.

The holder of this Note may endorse and attach a schedule to reflect the date, Type and amount of each Advance under the Credit Agreement, the date and amount of each payment or prepayment of principal hereof, and the date of each interest rate conversion or continuation pursuant to the Credit Agreement and the principal amount subject thereto; provided that the failure of the City to make any such recordation (or any error in such recordation) shall not affect the obligations of the Developer hereunder or under the Credit Agreement.

This Note is subject to prepayment as provided in the Credit Agreement.

Upon the occurrence of an Event of Default, the unpaid balance of the principal amount of this Note, together with all accrued and unpaid interest thereon, may become, or may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Credit Agreement.

The terms of this Note are subject to amendment only in the manner provided in the Credit Agreement.

No reference herein to the Credit Agreement and no provision of this Note or the Credit Agreement shall alter or impair the obligations of the Developer, which are absolute and unconditional, to pay the principal of and interest on this Note at the place, at the respective times, and in the currency prescribed in the Credit Agreement.

The Developer, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF WISCONSIN.

IN WITNESS WHEREOF, the Developer has caused this Note to be duly executed by its authorized officer as of the day and year first above written.

Stonehaven Development, LLC a Wisconsin limited liability company

BY: \_\_\_\_\_  
Amanda Vandeville, Member

# **EXHIBIT C**

## **LEGAL DESCRIPTION OF THE PROPERTY**

EXHIBIT E  
SCHEDULE OF CITY PAYMENTS

EXHIBIT F  
DEVELOPER'S MEMBERS AND MANAGERS

Tim Vandeville Jr.  
Amanda Vandeville

**EXHIBIT G**  
**PERSONAL GUARANTY**  
**PERSONAL GUARANTY**  
**(STONEHAVEN DEVELOPMENT, LLC)**

The undersigned, Tim Vandeville, Jr. and Amanda Vandeville (“Guarantor”), for value received, and to induce the City of Whitewater, Wisconsin (“Lender”) to extend a Development Agreement and Loan to Stonehaven Development, LLC. (“Obligor”) dated as of even date with this guaranty, hereby jointly and severally guarantee full and timely:

- (1) payment of all sums (including, without limitation, principal, interest, fees, penalties, costs, and expenses for the preservation of any collateral and for enforcement and collection) due or to be come due under the Obligation described below; and
- (2) performance of all acts to be accomplished by Obligor under the Obligation described below.

Guarantor agrees that Guarantor may be joined in any action or proceeding commenced by Lender against Obligor in connection with or based upon the Obligation and that recovery may be had against Guarantor in any such action or proceeding, or in any independent action or proceeding against Guarantor, without any requirement that Lender and its successors or assigned first assert, prosecute, or exhaust any remedy or claim against Obligor and its successors and/or assigns, or against any collateral securing the Obligation. Guarantor agrees that Lender and Obligor may amend, renew, modify, or extend the Obligation without Guarantor’s consent or notice to Guarantor, and that this Guaranty shall remain in full force and effect as to any renewal, extension, modification, or amendment of the Obligation and may be enforced by any assignee of or successor to Lender. Guarantor agrees that the validity of this Guaranty and the obligations of Guarantor shall not in any way be terminated, affected, or impaired by reason of any action which Lender may take or be forced to take against Obligor, any collateral securing the Obligation or any other guarantor of the Obligation, or by reason of any waiver of, or failure to enforce, any of the rights or remedies of Lender, or by reason of any extension of time or other forbearance granted to Obligor by Lender. Guarantor agrees that this Guaranty is a continuing guaranty and shall not be revoked by the death of the undersigned. Guarantor hereby waives the right to notice of any and all notices or demands which may be given by Lender to Obligor, whether or not required to be given under the Obligation and hereby waives any notice of acceptance of this Guaranty by Lender.

Guarantor further waives all diligence of collection, presentment, protest, and all rights of contribution or subrogation against Guarantor until Lender is made whole. Guarantor further hereby waives all suretyship defenses generally, and the right to petition for the marshaling of assets.

The Obligation subject to this Guaranty includes, but is not limited to, any and all present and future indebtedness, obligations, and liabilities of any kind whatsoever of Obligor to Lender, whether direct or indirect, joint or several, absolute or contingent, liquidated or unliquidated, and whether or not evidenced by any note, draft, acceptance, guarantee, letter of credit, loan, advance, purchase, lease of goods or services, or other instrument or agreement, including without limitation: (a) the indebtedness evidenced by a Promissory Note payable to Lender dated as of even date executed by Obligor in the principal amount of One Million Two Hundred Thousand Dollars and no/100 (\$1,200,000.00); (b) the obligations of Obligor under the revolving loan fund agreement dated as of even date executed by Obligor in the principal amount of One Million Two Hundred Thousand Dollars and no/100 (\$1,200,000.00); (c) the obligations of Obligor under and/or provided for in the Development Agreement dated as of even date between Obligor and

Lender; (d) any and all other agreements, documents, or instruments between Obligor and Lender, whether now existing or hereafter arising; (e) any and all extensions, renewals, deferrals, modifications, refinancings, consolidations, or substitutions of any of the foregoing; and (f) all interest, charges, fees, expenses, and costs of any kind provided for in any of the foregoing.

Guarantor agrees that: (a) the validity, construction, and enforcement of this Guaranty are governed by the internal laws of the State of Wisconsin, except to the extent such laws are pre-empted by Federal Law; (b) invalidity of any provision of the Guaranty shall not affect the validity of any other provisions of this Guaranty; (c) this Guaranty benefits Lender, its successors and assigns, and binds Guarantor; and (d) this Guaranty shall continue in full force and effect, notwithstanding any change in structure or status of Obligor whether by merger, consolidation, reorganization, dissolution, or otherwise.

Guarantor acknowledges and agrees that Lender (a) has not made any representations or warranties with respect to, (b) does not assume any responsibility to Guarantor for, and (c) has no duty to provide information to Guarantor regarding, the enforceability of any of the Obligations or the financial condition of Obligor or any guarantor, Guarantor has independently determined the creditworthiness of Obligor and the enforceability of the Obligation and until the Obligation is paid in full and fully performed independently and without reliance on Lender continue to make such determinations.

This Guaranty will terminate upon the full performance, payment and satisfaction of all of the financial obligations of Obligor under the Development Agreement.

The undersigned, Tim Vandeville, Jr. and Amanda Vandeville, hereby represents and warrants to the City of Whitewater, Wisconsin that they reside at \_\_\_\_\_ and will provide notice of change of address within 60 days of moving.

Guarantor represents and warrants that this Guaranty is an obligation incurred in the interest of the marriage and/or the family.

[Signature page follows.]

Dated \_\_\_\_\_, 2026

GUARANTOR:

\_\_\_\_\_  
Tim Vandeville, Jr.

ACKNOWLEDGEMENT

STATE OF WISCONSIN        )  
  )SS  
COUNTY OF WALWORTH    )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2026, the above named Tim Vandeville, Jr. to me known or satisfactorily proven to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, State of Wisconsin  
My commission expires: \_\_\_\_\_

Dated \_\_\_\_\_, 2026

GUARANTOR:

\_\_\_\_\_  
Amanda Vandeville

ACKNOWLEDGEMENT

STATE OF WISCONSIN        )  
  )SS  
COUNTY OF WALWORTH    )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2026, the above named Amanda Vandeville, to me known or satisfactorily proven to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, State of Wisconsin  
My commission expires: \_\_\_\_\_