DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement"), entered into effective as of _____ ("Effective Date"), by and between the City of Whitewater, Wisconsin ("City") and _____ ("Developer/Guarantor"). Each of the forgoing may also be referred to in this Agreement as a "Party" and collectively as the "Parties".

RECITALS

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

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

WHEREAS, the City desires to encourage development and promote mixed-use development within the City;

WHEREAS, for these purposes, the City has created Tax Incremental District No.____("TID") pursuant to Wisconsin Statutes;

WHEREAS, the Developer, pursuant to that certain offer to purchase with a private entity for the property at _____, is to acquire the Property and develop it;

WHEREAS, the Developer has filed, or will file, with the City plans, specifications, documents and exhibits as required by the City for the development of the Property and for making other improvements.

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

1.   Developer Improvements. Developer shall complete improvements on the property in accordance with the terms, conditions and requirements of EXHIBIT B ("Developer's Improvements"). The plans, specifications and site plans for Developer's Improvements are subject to City approval, and Developer shall not commence construction of Developer's Improvements until such time as the City has approved such plans, specifications and site plans in writing. After the City's approval of Developer's Improvements, such documents shall not be modified without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. City's

approval of Developer's Improvements shall not excuse Developer from complying with any other governmental approvals, permits, ordinances or laws that are applicable to the Property or Developer's Improvements. All work to be performed by the Developer related to Developer's Improvements shall be performed in a good and workmanlike manner and consistent with the prevailing industry standards for such work in the area of the City. Developer shall perform all work in compliance with all applicable laws, regulations, ordinances and buildings codes and shall obtain and maintain all necessary permits and licenses for such work.

2.   City Grant.

(a)   Grant Amount. Subject to Section 2(b), the City agrees to provide a grant in an amount equal to _____ ($_____) ("City Grant").

(b)   Conditions Precedent. Prior to the City's payment of the City Grant, Developer shall satisfy the following conditions:

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

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

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

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

3.   Minimum Assessed Value.

(a)   Shortfall Payment. The minimum incremental value (equalized) for the tax year ____, based on an assessment date of January 1, ____, shall be $_____; for each year thereafter, the minimum incremental value (equalized) for each subsequent year, based on an assessment date of January 1 of such year, shall be $_____. If the development does not achieve a minimum incremental value of $_____, the City will charge a Shortfall Payment. For each year that the City determines that a Shortfall Payment is due and owing, the City shall notify Developer of the amount of the Shortfall Payment due and owing for that tax year, and such payment shall be due and payable to the City by not later than January 31 of the next ensuing year *(i.e.* if a Shortfall Payment is due and owing for tax year 2026 based on the actual assessed

value of the Property as of the January 1, 2025 assessment date, such payment shall be due and owing and shall be payable by not later than January 31, 2026 for the 2025 tax year).

(b)   Special Charge. Developer agrees that the amount of any Shortfall Payment due and owing to the City for any given year, pursuant to the agreement, may be treated as a "Special Charge" (as defined in Wisconsin Statutes§ 74.01(4) levied against the Property, without notice or hearing, such notice and hearing being expressly waived by Developer). The Special Charge shall be a lien on the Property and shall be extended upon the tax roll for the year in which it is due and owing against the Property in the event the Developer does not pay the City its Shortfall Payment by such Shortfall Payment due date. All proceedings in relation to collection, return and sale of the Property for delinquent real estate taxes shall apply to such Special Charge. The City shall also have the right to collect the Shortfall Payment in any other manner as permitted by law.

(c)   Agreement Runs with the Land. The Agreement shall inure to the benefit of the City and shall be binding on the from time-to-time owners of the Property and shall constitute covenants running with the land.

4.   Default.

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

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

5.   Guarantor Obligations. In the event of default of Developer of any payment obligation in this Agreement, Guarantor will discharge such obligation.

6.   Miscellaneous.

(a)   Changes. Parties to this Agreement may, from time to time, require changes in the scope of this Agreement. Such changes, which are mutually agreed upon by and

between the Developer and the City, shall be incorporated in written amendments to this Agreement.

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

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

In the case of the Developer:

[Developer Name]
[Mailing Address]
[Email]
[Phone]

In the case of the City:

City of Whitewater
Attn: John S. Weidl, City Manager
312 W. Whitewater Street
P.O. Box 178
Whitewater, WI 53190
Email: jweidl@whitewater-wi.gov
Phone: 262-473-0104

With a Copy to:

Jonathan K. McDonell, City Attorney
Harrison, Williams & McDonell, LLP
452 West Main Street
Whitewater, WI 53190
Email: jm@hmattys.com
Phone: 262-473-7900

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

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

(f)	Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

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

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

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

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

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

CITY OF WHITEWATER

By: _____
       John S. Weidl, City Manager

Attest:

_____
Heather Boehm, City Clerk

DEVELOPER:

[Name of Developer]

By: _____
Name: _____
Title: _____

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[Insert Notary Page for Applicable Parties]

EXHIBIT A

Property

[Property Description]

EXHIBIT B

Developer's Improvements

Table of Variable Terms in Form Development Agreement

Variable Term	Purpose
[Effective Date]	Insert the effective date of the Agreement which should be the same date as any applicable purchase agreement.
[Developer]	Insert the legal name of the party acquiring and improving the property.
[Developer Entity Jurisdiction and type]	Insert the jurisdiction of the Developer and its form (*e.g.,* Wisconsin Limited Liability Company).
[Guarantor]	If applicable, insert the individual or owner of Developer who will also be ultimately responsible for the performance of Developer for Developer's obligations under the Agreement. If Guarantor is an entity, its jurisdiction and type should also be listed.
[Property Size}	Insert size of the Property.
[Purchase Contract Title]	Insert title of the purchase contract related to the Property.
[Grant Amount]	Insert amount of grant.
[First Tax Year]	Insert year following current year.
[Jefferson][Walworth]	Select applicable county for filing based on location of the Property.
[Current Tax Year]	Insert current year.
[Initial Assessed Value]	Insert initial assessed value for the Property.
[Minimum Assessed Value]	Insert minimum assessed value for the Property.
[Second Tax Year]	Insert the year after the First Tax Year.
[Developer Address]	Insert mailing address for Developer.
[Property Description]	Insert description of the Property on Exhibit A.
[Developer's Improvements Description].	Insert description of the Developer's planned improvements.