

**Development Agreement
Cobblestone Hotel Development, LLC**

Parcel ID Nos.: WAKC 1308 263
WAKC 1308 262

After recording return to:
City Attorney
201 Delafield St Ste 330
Waukesha WI 53188-3646

This Development Agreement, referred to herein as the Agreement, is made by and between the **City of Waukesha, a Wisconsin municipal corporation**, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; **Cobblestone Hotel Development, LLC**, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

Legal Description:

[include parking lot 7]

This real estate, together with the parcel acquired by Developer pursuant to section 2, is referred to herein as the Property.

Recitals

Developer has proposed a project to build a new 60-room hotel with restaurant on to the Property. This project will entail the following:

Developer will raze the existing structure on the site.

Approximately 36,944 square feet of new hotel and restaurant space will be constructed on the Property along with onsite parking, patio/outdoor amenity space and landscaping improvements.

Site and infrastructure improvements.

The Developer has represented to the City that this overall redevelopment is expected to increase the assessed value of the Property by no less than \$4,775,000 and will be assessable for real property taxes at no less than \$5,500,000 by January 1, 2026.

The City has determined that it is in the best interests of the City and its taxpayers that the proposed redevelopment occur.

The City has been presented with satisfactory proof by Developer and the City's third-party consultant that, but for the extension of tax incremental financing, the proposed redevelopment will not occur. The project is proposed to be built within the City's Tax Incremental District 17, referred to herein as TID 17.

City has determined that making certain Development Incentive Grants to the Developer under Part Two of this Agreement constitutes an eligible project cost under Wis. Stat. §66.1105 and the Project Plan for TID 17 and further that such Development Incentive Grants are intended to be used to reimburse eligible project costs of the Developer.

The Common Council authorized the execution of a development agreement with the Developer on [redacted] to provide tax-increment financing to the Developer for the proposed development.

Now, therefore, in consideration of the mutual promises of the Parties contained in this Agreement, the Parties agree and contract as follows:

Part One – Construction of the Development

1. The Development. The term Development refers to the Property and the improvements thereon as generally shown on Exhibit 1, and specifically as described in the final development plans approved by the City's Plan Commission incorporating all City department requirements approved by the Common Council. In general, the Development shall include, at a minimum, the following improvements:

- a. Demolition of approximately 14,300 square feet of existing antiquated building space.
- b. Construction of approximately 36,944 square feet of new hotel and restaurant space.
- c. The Development shall also include site and infrastructure improvements as required in the final plan approval including the improvement of private drives and parking lots, removal of unneeded impervious surface, additional landscaping and outdoor amenity space, and stormwater quality facilities.

2. Real Estate Acquisition. The City and Developer shall enter into a separate contract for the purchase by Developer of the City-owned Parking Lot 7, tax key number WAKC 1308 262, at a sale price of \$200,000 and on such other terms and conditions as are agreed upon by the Parties. This parcel shall be deemed to be part of the Property, regardless of when it is acquired by Developer. The Parties acknowledge that this acquisition is not part of the financing being provided by TID 17.

3. Deviations from Approved Plans. Material deviations from the approved plans and specifications shall not be made unless approved by the City planning staff in advance and agreed to in writing appended to this Agreement. The City planning staff reserves the right to refer any changes it deems so material as to be in conflict with the original plan to the Plan Commission for its approval.

4. Construction Deadlines. Developer shall complete construction per the following schedule:

- a. Raze approximately 14,300 square feet of existing building space commencing before December 31, 2023, pending approval by the City of Waukesha.
- b. Construct approximately 36,944 square feet of new hotel and restaurant and gain occupancy of the new space by January 1, 2025, pending approval by the City of Waukesha.

Part Two – Financing Assistance

5. Incentive Grant. The City will pay an Incentive Grant of \$1,000,000 to Developer upon issuance of an occupancy permit for the new hotel and restaurant space described in section 1.b, subject to adjustment pursuant to Construction Cost Verification in section 6.

6. Reduction of Incentive Grant. The dollar limit of the Development Incentive Grant in section 5 may be reduced, as follows: Upon completion of the construction of the Development, the Developer shall deliver to the City documentation of the total final costs of construction of the Development, sufficient for the City and City's financial consultant to determine the actual total cost of construction, including all draws made against Developer's construction loan and all backup information provided to such lender. Developer shall provide to City all additional documentation reasonably requested by the City or City's financial consultant necessary to compute the final total cost of construction of the Development, in the City's reasonable discretion. City or City's financial consultant shall then compute the final total cost of construction of the Development, and if that cost is less than the total cost shown in Developer's final pro-forma budget submitted to the City's consultant, then the dollar limit of the Incentive Grant in Section 5 shall be reduced by an amount equal to one-half of the difference between the pro-forma budget and the final cost determined by the City and City's financial consultant. If that reduction amount exceeds the amount of the Incentive Grant, the Developer shall not owe a refund to the City. The cost verification and dollar-limit adjustment shall take place within 6 months of the issuance of the final certificate of occupancy. The City's calculation of actual final costs shall be based on reasonable market standards and include all typical costs associated with development but shall not include new furnishings. Costs of constructing the Development shall include all actual costs associated with the Development, including but not limited to disbursements made by or on behalf of the Developer, their affiliates or their assignees in connection with the construction of the Development, design, consulting and engineering fees, legal fees, all other categories of soft costs, and the cost of acquiring Parking Lot 7 as provided in section 2.

7. Grant Not for Payment of Taxes. Developer shall not use the Incentive Grant for the reimbursement or payment of any real, personal, or other property taxes.

8. Grant Not a Debt Obligation. This Agreement is the only documentation of the City's obligation to pay the Incentive Grant, and no other instrument will be executed

to evidence the obligation to make the Incentive Grant. The Incentive Grant shall not be included in the computation of the City's constitutional debt limitation, because the Grant is limited and conditional, and no taxes have been or will be levied for its payment or pledged to its payment. Nothing in this Agreement shall be deemed to change the nature of City's obligation from a limited and conditional obligation to a general obligation.

Part Three – Warranty of Taxable Value and Payments in Lieu of Taxes

9. Warranty of Assessed Value. Developer warrants to the City that the assessed value of the Development shall be no less than \$5,500,000 as of January 1, 2026 and as of each successive January 1 until January 1 of the tenth tax year after the closure of TID 17. This value is referred to herein as the Warranted Value.

10. Payments in Lieu of Taxes. If on January 1, 2026, and each and every January 1 thereafter until TID 17 closes, the assessed value of the Development is less than the Warranted Value, then the Developer shall make payments in lieu of taxes to the City, in addition to the real property taxes payable that year, equal to the property taxes that would have been paid on the difference between the actual assessed value of the Development and the Warranted Value. It shall not be a breach of this section 10 if the failure to meet the Warranted Value is due to taking by eminent domain.

a. Due Date of Payments. Payments in lieu of taxes shall be due on March 15 of the year in which regular property tax payments are due. For example, if on January 1, 2025, the assessed value of the Property is \$4,500,000 (\$1,000,000 less than Warranted Value) a payment in lieu of taxes equal to \$1,000,000 times the tax rate for 2025 would be due on March 15, 2025.

b. Term of Payments. The obligation to make payments in lieu of taxes shall continue until the tenth tax year after the closure of TID 17.

11. Payments in Lieu of Taxes Due without Regard to Tax-Exempt Status. The obligation to make payments in lieu of taxes continues even if the Development becomes exempt from the payment of property taxes, or if the Developer successfully challenge the assessment of the Development in court and has the assessment reduced below the Warranted Value.

12. Unpaid Amounts to Be Special Charge. If the Developer fails to make any payment in lieu of taxes when due, the Developer consents that any unpaid amount shall

be a special charge imposed upon the Development pursuant to Wis. Stat. §66.0627 and §74.01(4).

13. Preservation of Value of Development. The following covenants shall survive and continue in binding effect upon all of Developer's successors in interest.

a. Prohibition of Conveyance to Tax-Exempt Entity. Developer and Developer's successors in interest shall not convey the Development or any portion of the Development to any entity which is exempt from payment of property taxes unless such entity and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the property taxes that would otherwise be owed, for each year that such entity owns the Development. City is not obligated to execute such an agreement if it deems the third-party entity to be an unacceptable credit risk. Any conveyance attempting to do otherwise shall be void and of no effect.

b. Prohibition of Obtaining Tax-Exempt Status. Developer and Developer's successors in interest shall not make application for, obtain, or accept recognition of tax-exempt status which would result in the Development being exempt from real-property taxation unless the Development's then-current owner and the City execute an agreement for the entity to make payments in lieu of taxes, in the full amount of the property taxes that would otherwise be owed.

c. Prohibition of Contesting Real Property Taxes. Developer waives its rights to, and shall not, contest in any manner or in any forum the City's assessed value of the Development, to the extent that the requested re-assessment would result in an assessed value less than the Warranted Value.

d. Requirement to Maintain the Development. Developer shall maintain the Development, and all additions, improvements, and fixtures to the Development, in good condition, in compliance with all applicable statutes, building codes, and the Waukesha Municipal Code, such that the fair market value of the Development does not decrease as a result of the condition of the Development or a failure to maintain the Development.

e. Requirement to Maintain Casualty Insurance. Developer shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction

and loss of income coverage, for not less than the actual replacement value of all improvements and lost income. Developer shall provide the City with proof of such coverage upon request.

f. Requirement to Reconstruct after Casualty Loss. Developer shall promptly repair, rebuild and reconstruct the Development after any casualty loss, to restore the Development to the condition it was in prior to the loss. If the loss is of a type covered by the insurance required in section 13.e, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty and income losses, promptly after loss, and shall apply all proceeds of the insurance to the repair and reconstruction of the Development. Notwithstanding anything to the contrary in this Agreement, Developer shall not be required to make payments in lieu of taxes following a casualty loss until the loss is fully restored and the Development resumes normal operations, not to exceed 30 months.

Part Four – General Provisions

14. Agreement Runs with the Land and Binds Successors. The City shall record this Agreement against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. This Agreement shall run with the land. This entire Agreement is binding on and inures to the benefit of the Developer and all of Developer's successors in interest, except that if the City certifies in writing that Developer has fully performed all of its obligations under this Agreement, only the following sections of this Agreement are binding upon Developer's successors in interest: 9, 10, 11, 12, and 13. The City shall provide such written certification upon request, and shall not unreasonably withhold it.

15. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions. The City shall not participate in, or have any responsibilities connected with, the Development in any way other than the City's specific obligations in this Agreement.

16. Governmental Immunities and Notice Requirement Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities

or notice requirements imposed by Wis. Stats. §893.80 or any other law.

17. Assignment Prohibited. Prior to completion of the Development, this Agreement, and the Developer's responsibilities under this Agreement, may be assigned to a special-purpose entity formed to own, develop and operate the Development or the purchaser of the Property, but shall not otherwise be assigned by the Developer without the City's written consent, which cannot be unreasonably withheld, provided, however that the City hereby agrees that the Developer may collaterally assign this Agreement to its lenders and the City shall acknowledge and consent to the same on terms and conditions reasonably acceptable to the City.

18. Notices. All notices required by this Agreement shall be in writing and delivered by first-class postage by the US Postal Service, addressed as follows:

To City:

Director of Community Development
City of Waukesha
201 Delafield St Ste 200
Waukesha WI 53188

To Developers:

Cobblestone Hotel Development, LLC
Attn: Jeremy Griesbach
980 American Drive
Neenah, WI 54956

19. City Access to Development. Developer shall give City representatives access to the Development during construction, upon reasonable notice, to inspect and verify compliance with this Agreement provided any such access shall be at the City's and its representatives' sole risk.

20. Proof of Good Standing and Authorization. Developer shall provide to City a certificate of good standing issued by the Wisconsin Department of Financial Institutions, and a resolution of all members of Developer authorizing the execution of this Agreement by the individuals signing, within 10 days of the execution of this Agreement.

21. Default. Neither Party shall be in default of this Agreement unless written notice of the default has been delivered and 30 days have passed without the default being cured by the Developer; provided, if such default cannot be reasonably cured within such 30-day period,

then such longer period as may be reasonable to effectuate such cure, as long as such party is diligently pursuing such cure. An election by any Party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults.

22. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual and reasonable attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

23. No Discrimination. Developer shall not discriminate against any employee or contractor, or potential employee or contractor, in the construction of the Development on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry.

24. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer warrant and represent that they are duly authorized to bind the such party to this Agreement. Developer warrants and represents that the execution of this Agreement is not prohibited by its 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.

25. Assistance of Counsel, Voluntary Agreement. 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 such party has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that this Agreement is executed freely and not under conditions of duress.

26. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed,

and the remainder of this Agreement will remain in effect and enforceable.

27. Governing Law and Jurisdiction. This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

28. Integration. This Agreement constitutes the entire agreement of the Parties. All other agreements and understandings of the parties with respect to the subject matter expressed in this Agreement are unenforceable. However, nothing in this Agreement shall be construed to limit the Common Council in the exercise of its legislative powers.

29. Incorporation of Exhibit. Exhibit 1 is incorporated into this Agreement by reference.

30. Estoppel Certificate. City will provide Developer with an estoppel certificate upon Developer's reasonable request.

31. Limitation on Liability. The Parties acknowledge and agree that in carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of either Parties' officers, managers, members, partners, agents, shareholders, employees, or representatives, it being understood and agreed that in such matters they act as agents and representatives of the applicable party.

32. Force Majeure. No Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, such as civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials and/or labor, acts of god, governmental restrictions, pandemics, or epidemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid such causes and resumes performance in good faith as soon as possible. Time for performance shall be extended by the period of delayed performance.

Executed this _____ day of _____, 2023.

City of Waukesha

Shawn N. Reilly, Mayor

Gina L. Kozlik, Clerk-Treasurer

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the persons who executed this Agreement on behalf of the City of Waukesha in the indicated capacities, personally came before me this _____ day of _____, 2023, signed their names in my presence, and acknowledged the same.

Notary Public, Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

Cobblestone Hotel Development, LLC

(sign above)
Print name: _____
Title: _____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____, known to me to be the persons who executed this Agreement on behalf of Cobblestone Hotel Development, LLC, in the indicated capacities, personally came before me this _____ day of _____, 2023, signed their names in my presence, and acknowledged the same.

Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires_____)

This document was drafted by City of Waukesha Department of Community Development.

Incorporated attachment(s): Exhibit 1 – Site Development Plan

Exhibit 1: Site Development Plan

