

**Development Agreement  
JPD GC Waukesha, LLC  
Riverfront Development**

Parcel ID Nos.: WAKC 1305 075, WAKC 1305 373, and part of WAKC 1305 370

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; and **JPD GC Waukesha, LLC, a Wisconsin limited-liability company**, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

**Legal Description**

COMMENCING at the Northwest corner of the Northeast 1/4 of Section 3; thence South 00°32'59" West along the West line of the Northeast 1/4 of said Section 3 for a distance of 1870.36 feet to a point; thence South 89°27'01" East 569.32 feet to a point of intersection of the South right of way line of East St. Paul Avenue and the North right of way line of Madison Street; thence North 49°02'58" East along said South line 434.58 feet to the point of beginning of lands to be described; thence North 49°02'58" East along said South line 287.91 feet to a point on the Westerly line of Brehm Street; thence South 51°28'30" East along aforesaid Westerly line 324.18 feet to a point on the South line of Bank Street; thence North 61°37'43" East along said South line 368.05 feet to a point on the Westerly line of Barstow Street, thence Southeasterly 137.70 feet along the Westerly line of Barstow Street and the arc of a curve whose center lies to the Southwest, whose radius is 365.00 feet, whose chord bears South 32°49'08" East 136.89 feet to a point, thence South 21°31'17" East along aforesaid Westerly line 20.70 feet to a point; thence South 60°30'20" West 209.82 feet to a point; thence North 66°24'14" West 71.67 feet to a point; thence South 68°05'56" West 105.80 feet to a point; thence South 21°53'43" East 18.74 feet to a point; thence South 80°15'23" West 79.50 feet to a point; thence South 84°44'50" West 171.79 feet to a point; thence North 11°46'17" West 18.20 feet to a point, thence South 59°03'47" West 105.90 feet to a point; thence South 32°50'05" East 17.99 feet to a point; thence South 57°09'54" West 68.71 feet to a point; thence North 34°23'16" West 30.35 feet to a point; thence North 52°54'44" East 32.56 feet to a point; thence North 40°56'58" West 235.12 feet to the point of beginning.

Said lands as described contains 155,788 square feet or 3.5764 Acres.

This land is referred to herein as the Real Property. The Real Property will be consolidated by a certified survey map, with three lots and one outlot, substantially as shown on Exhibit B.

**Note: This can be replaced with the new CSM information when recorded.**

**Recitals**

Developer has proposed a mixed-use development consisting of three buildings: (1) the River Building – A mixed-use (commercial and multi-family residential) building with 66 apartment units, tenant amenities, indoor parking, and approximately 2,000 square feet of commercial space along Barstow Street; (2) the East Building – A 74-unit apartment building with indoor parking; and (3) the West Building – A 52-unit apartment building with indoor parking; all on the above-described real estate, including all required site and infrastructure improvements. The Developer has represented to the City

that this overall development is expected to cost no less than \$31,000,000 to build and the land and improvements will be assessable for real property taxes at no less than \$31,000,000.

The City has determined that it is in the best interests of the City and its taxpayers that the proposed development be built.

The City has been presented with satisfactory proof by both the Developer and a third-party consultant that, but for the extension of tax incremental financing, the proposed development will not be built. The development is proposed to be built within the City's Tax Incremental District 26, referred to herein as TID 26.

City has determined that making certain incentive payments to Developer under Part Two of this Agreement constitutes an eligible project cost under Wis. Stat. §66.1105 and the Project Plan for TID 26 and further that such incentive payments 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 \_\_\_\_\_ 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:

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### Part One – Construction of the Development

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

- a. River Building.** A mixed-use (commercial and multi-family residential) building with 66 apartment units, tenant amenities, indoor parking, and approximately 2,000 square feet of commercial space along Barstow Street, on Lot 3 shown on Exhibit B.
- b. East Building.** A 74-unit apartment building with indoor parking on Lot 2 shown on Exhibit B.
- c. West Building.** A 52-unit apartment building with indoor parking on Lot 1 shown on Exhibit B.
- d. Public Street Improvements.** The Developer shall submit plans and install public street and sidewalk for Bank Street and Brehm Street as shown in Exhibit A, and any other related improvements required by the City of Waukesha Department of Public Works.
- e. Public Infrastructure.** The Development shall also include the improvement of private drives, stormwater management facilities, and public infrastructure as required in the final plan approval.

**f. Easements.** The Developer will provide the City with a cross-access easement and parking easement that covers the private extension of Bank Street.

**2. Deviations from Approved Plans.** Material deviations from the approved plans and specifications for the Development, which in the ordinary course of the construction of a mixed-use project in the City would require the approval of the City planning staff, 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.

**3. Construction Deadlines.** Subject to Force Majeure delays (as defined below) Developer shall complete construction per the following schedule:

- a. Phase 1.** Phase 1 shall include the River Building and shall commence construction on or before March 31, 2022, and be completed no later than December 31, 2023.
- b. Phase 2.** Phase 2 shall include the East Building and West Building and shall commence construction on or before March 31, 2023 and be completed no later than December 31, 2024.
- c. Street Improvements and Other Infrastructure.** Developer shall commence reconstruction of Bank Street and Brehm Street no later than March 31, 2023, with completion of both streets no later than December 31, 2024 or

occupancy of the final building, whichever happens first. The final roadway plans for Bank Street and Brehm Street must be approved by the City Board of Public Works and Common Council prior to the issuance of building permits for Phase 1 of the Development. The locations of any infrastructure and utilities to serve the future City park must be approved in advance by the Waukesha Department of Parks, Recreation and Forestry. The City has final approval over the acceptance of bids, and the terms of contracts and any amendments to contracts, for the portions of roadway work and work related to infrastructure and utilities to serve the future City park work that are being paid for by the City pursuant to this section, and the Developer must coordinate with the City to complete the bid process.

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## Part Two – Financing

**4. Definitions.** For purposes of this Part Two, the following definitions apply.

**a. Increment.** The positive difference between the assessed value of the Development and the assessed value of the Real Property for 2019. Increment is calculated using the assessed value of the Development only, and not any other properties within TID 26.

**b. Increment Revenue.** Property tax revenue attributable to the Increment, including any payments in lieu of taxes made by Developer pursuant to section 7.

**c. Administrative Expense.** Seven percent (7%) of the annual Increment Revenue, before deduction of the Debt Service.

**d. Debt Service.** The principal and interest paid annually on all debt instruments issued by the City to fund the City payment obligations described in section 5. The City shall attempt to secure terms of payment as close as reasonably possible to those shown on the attached Exhibit C, however, financial and market circumstances in existence at the time of issuance of the debt instruments may require different terms, in the City's reasonable discretion.

**5. City Participation.** Payments will be made by City to Developer in the form of a land acquisition, loan, Municipal Revenue Obligation, and reimbursement of certain street reconstruction and infrastructure expenses, as follows:

**a. Land Acquisition.** At the closing of the purchase of the Real Property by Developer, the City shall purchase from Developer, for a purchase price of \$1,000,000, the portion of the Real Property identified as Outlot 1 on Exhibit B, which subsequent to such conveyance, shall be improved by Developer (installation of utilities, grading and soil capping) and shall be conveyed from the Developer to the City by warranty deed at closing, free and clear of all liens and encumbrances except municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of the conveyance, and subject to such other terms as required by the City Attorney.

**b. Forgivable Loan.** At the closing of the purchase of the Real Property by Developer, the City shall loan to Developer an amount equal to \$1,650,000 for the purchase of the remaining Real Property, which loan shall have interest-only payments at 1% annually, and the principal of which shall be forgiven upon the issuance of final certificates of occupancy for Phase 2 of the Development. The loan shall be documented by a demand note in the form of the attached Exhibit @@.

**c. Municipal Revenue Obligation.** A Municipal Revenue Obligation, referred to herein as MRO, payable in annual installments in a total amount not to exceed \$4,750,000, and further subject to qualified TIF cost limitations imposed by state statutes and regulations. Commencing the first year in which Increment Revenue is available, annual MRO payments will be made by the City to Developer. MRO payments shall be made no later than July 1 of each year and shall be made by check drawn on the City's treasury.

**d. Amount of MRO Payments.** The annual MRO Payment shall be equal to the Increment Revenue for that year, reduced by the amount of the City's Debt Service for that year and further reduced by the City's Administrative Expense for that year.

**e. Limit of MRO Payments.** The total amount of all MRO Payments paid to the Developer shall not exceed \$4,750,000, and MRO Payments shall cease after the payment due for 2039 (which may be payable in 2040). If the aggregate MRO

Payment limit of \$4,750,000 has not been reached by the date of the payment due for 2039 (which may be payable in 2040), payments will cease. The MRO shall terminate when either the payment limit or the time limit has been reached, and the City may elect to close TID 26 at that time.

**f. Adjustment of MRO.** The dollar limit of the MRO in section 5.e may be reduced, as follows:

**i. Construction Cost Verification.**

Upon the first anniversary of the issuance of the final certificate of occupancy for Phase 2 (both East and West Buildings) of the Development, the Developer shall deliver to the City documentation of the total costs of construction of the Development, sufficient for the City and City's financial consultant to determine the actual total Construction Cost (defined below) of the Development, including documentation of all draws made against Developer's construction loan and all backup information provided to Developer's lender. Developer shall provide to City all additional documentation requested by the City or City's financial consultant reasonably necessary to compute the actual total cost of construction, in the City's reasonable discretion, subject to review and approval of Developer (not to be withheld absent manifest error). City or City's financial consultant shall then compute the actual total Construction Cost of the Development, and if that cost is less than the total Construction Cost shown in Developer's final pre-construction budget submitted to the City on which the City's financial consultant performed its analysis of the Development for TIF eligibility (the Pre-Construction Budget), then the dollar limit of the MRO in section 5.e shall be reduced by an amount equal to one-half of the difference between the Pre-Construction Budget and the final Construction Cost determined by the City and City's financial consultant, subject to review and approval of Developer (not to be withheld absent manifest error). If that reduction amount exceeds the total remaining balance of the MRO, the Developer shall not owe a refund to the City. The Construction Cost verification and dollar-limit adjustment shall take place as soon as reasonably possible after the first

anniversary of the issuance of the final certificate of occupancy for Phase 2 of the Development (both East and West Buildings). "Construction Costs" shall include all actual costs associated with the Development, including but not limited to disbursements made by or on behalf of the Developer, its affiliates or their assignees in connection with the construction of the Development, design and engineering fees, legal fees, all other categories of soft costs included in the Pre Construction Budget and including contributions to any Capital Reserve Account, and any amounts required to be deposited into a reserve account by Developer's lenders at stabilization or at the time of construction cost verification, as applicable.

Capital Reserve Account shall mean an account created by Developer and may be drawn upon by Developer from time to time for costs that if known at the time of calculating the savings would have or should have been included as part of the actual construction costs, such as costs of maintenance, repair and replacement, including without limitation, insurance deductibles, incurred in connection with matters related to construction defects and final satisfactory construction completion. The Capital Reserve Account shall not exceed \$250,000, unless approved in writing by the City, which approval shall not be unreasonably withheld. If any amounts remain in the Capital Reserve Account 30 months after the account is established, or such earlier date as may be determined by Developer, then any remaining amounts shall be distributed half to the City and half to the Developer.

Reserve accounts required by Developer's mortgage lenders at the time of stabilization or at the time of construction cost verification, as applicable, may only be drawn upon as permitted in the Developer's loan documents and only for expenses of the Development, and may not be paid to Developer as fees, savings, or other similar purpose. No more than \$50,000 of such lender reserve accounts may be counted

towards Developer's actual construction costs.

**ii. Internal Rate of Return Review. A)**

Upon any sale or fee conveyance of the Development to a third party (excluding any sale or fee conveyance to an entity controlled by or under common control with Developer or the principals of Developer), or B) as of the December 31<sup>st</sup> which is 8 full calendar years after the issuance of the final certificate of occupancy for Phase 2 in the Development, whichever of A) and B) occurs first, the Developer shall within 30 days deliver to the City financial records relating to the Development sufficient for the City or City's financial consultant to determine the internal rate of return for the Development, using the same methodologies as used to calculate the pre-construction projected internal rate of return. The City's determination shall be subject to review and approval by Developer (not to be withheld absent manifest error). If that internal rate of return exceeds 15.5% then the amount of revenues generated by the Development that causes the internal rate of return to exceed 15.5% shall be divided by two, and the dollar limit of the MRO in section 5.e shall then be reduced by the resulting amount. If that reduction amount exceeds the total remaining balance of the MRO, the Developer shall not owe a refund to the City. The calculation of internal rate of return shall take into account all relevant factors, as determined by the City's financial consultant using generally-accepted accounting principles and reasonable market standards, including the final Construction Costs (as defined above), and all subsequently incurred expenses, including but not limited to, brokerage fees, leasing fees, disposition costs, equity contributions and loans made to the Developer by its members or others, and financing related costs.

**g. MRO Not for Payment of Property Taxes.**

MRO payments shall only be made after Developer has paid all outstanding property taxes on the Development in full. MRO payments shall not offset any property tax payment obligation.

**h. MRO Is Limited and Conditional.** This Agreement is the only documentation of the City's

obligation to pay the MRO Payments, and no other instrument will be executed to evidence the obligation to make the MRO Payments. The MRO Payments shall not be included in the computation of the City's constitutional debt limitation, because the MRO Payments are 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.

**i. Reimbursement of Infrastructure**

**Expenses.** The City will reimburse Developer for the expenses of the reconstruction of Bank and Brehm Streets required in section 3.c, in progress payments, upon the completion of the following milestones, and for the infrastructure and utilities to serve the future City park. Payments will be made after inspection and acceptance of the work in each milestone by the City, and upon presentation of sufficient proof of the expenses incurred.

- Removal of existing street, including asphalt pavement, curb, gutter and sidewalk, installation of storm sewer, grading and filling to subgrade elevation, subgrade proof roll approval, stoning street area.
- Installation of concrete curb and gutter, sanitary manhole adjustments, concrete street paving.
- Sidewalk, brick pavers, tree grates, televising storm and sanitary sewers, sod restoration, pavement markings, signing, lighting, and all punch list items.
- All traffic lanes and parking lanes open for vehicular traffic and all sidewalks open for pedestrian use.
- Upon completion of the infrastructure and utilities to serve the future City Park.

These items are the only infrastructure items that will be reimbursed by the City, all other required infrastructure shall be at the Developer's sole expense.

**6. Parcel Exchange.** Promptly after the closing of the purchase of the Real Property, the City and Developer shall exchange the parcels indicated on the "Land Swap Exhibit," Exhibit @@ attached hereto. There shall be no additional consideration given for the exchange. Title shall be conveyed by warranty deed, free and clear of all

liens and encumbrances except municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of the conveyance.

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### Part Three – Warranty of Taxable Value

**7. Warranty of Assessed Value.** Each Lot in the Development as shown in Exhibit B shall be assessed separately by the City for property-tax purposes. Developer warrants to the City that the total assessed value of the Development shall be not less than \$31,000,000 as of January 1, 2025, and as of each successive January 1 until the earlier of (i) January 1 of the year after TID 26 closes and (ii) January 1 of the year that is seven years after the date the MRO terminates pursuant to Section 5.d. (the “Assessed Value Warranty Period”). It shall not be a breach of this section 7 if the failure to meet the warranted value is due to taking by eminent domain.

**8. Payments in Lieu of Taxes.** During each year of the Assessed Value Warranty Period, Developer shall make payments in lieu of taxes to City, in addition to the real property taxes due that year, as follows:

**a. During MRO Payment Period.** In each year that MRO payments are due hereunder, Developer shall make a payment in lieu of taxes, in addition to the real property taxes payable that year, equal to the amount that the combined amount of Debt Service and Administrative Expense exceeds Increment Revenue for that year.

**b. After MRO Period.** After the City’s obligation to make MRO payments has expired, and continuing through the Assessed Value Warranty Period, in each year in which the assessed value of the Development is not at least the value warranted in section 7, the Developer shall make a payment in lieu of taxes, in addition to the real property taxes payable that year, equal to the property taxes that would have been paid on the difference in value between the actual assessed value of the Development and the warranted value shown in section 7; provided, such payment in lieu of taxes shall not be required to the extent the failure to meet the warranted value is due to taking by eminent domain.

**c. Due Date of Payments.** Payments in lieu of taxes shall be due on May 31 of the year in which

regular property tax payments are due. For example, if on January 1, 2036, the assessed value of the Development is \$30,000,000, a payment in lieu of taxes equal to \$1,000,000 times the tax rate for 2036 would be due on May 31, 2037.

**d. Term of Payments.** The obligation to make payments in lieu of taxes shall continue until the expiration of the Assessed Value Warranty Period.

**9. Effect of Conveyance to Successors.** The warranty of assessed value and the obligation to make payments in lieu of taxes described herein shall apply to all successors and assigns, and binds only the then-current title holder of the Development.

**10. 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 or the Developer becomes exempt from the payment of property taxes, or if the Developer successfully challenges the assessment of the Development in court and has the assessment reduced.

**11. Unpaid Amounts to Be Special Charge.** If 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), and may reduce future MRO payments to the Developer, in the City’s discretion.

**12. Preservation of Value of Development.** The following covenants shall survive and continue in effect until the expiration of the Assessed Value Warranty Period.

**a. Prohibition of Conveyance to Tax-Exempt Entity.** Until the date that is twenty years following the expiration of the Assessed Value Warranty Period (the “Prohibited Tax-Exempt Period”), Developer shall not convey the Development or any portion of the Development to any entity that is exempt from payment of property taxes unless the City has given its prior, written approval of the conveyance.

**b. Prohibition of Obtaining Tax-Exempt Status.** During the Prohibited Tax-Exempt Period, Developer 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 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, for each year that such entity owns the Development.

**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 amount warranted in section 7.

**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 a period of at least 12 months), 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.** Subject to the rights of Developer's first-mortgage lenders, Developer shall promptly repair, rebuild and reconstruct the Development after any casualty loss, to restore the Development to substantially the same condition it was in prior to the loss, or substantially to its pre-loss value or higher. If the loss is of a type covered by the insurance required in section 12.e, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty and income losses, promptly after loss, and, subject to the rights of Developer's mortgage lenders to proceeds of casualty insurance policies, shall apply all proceeds of the insurance to the repair and reconstruction of the Development. Casualty loss shall not be an excuse for not making payments in lieu of taxes.

**13. 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, and the Developer shall reimburse the expense to the City. 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: 7, 8, 9, 10, 11, and 12. The City shall provide such written certification upon request, and shall not unreasonably withhold it. References to Developer shall be deemed to refer to Developer and all of Developer's successors in interest.

**14. 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.

**15. 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.

**16. Assignment Prohibited.** Prior to completion of the Development, this Agreement may not be assigned by the Developer, except to an entity controlled by or under common control with the Developer, General Capital Group, or its principals, without the City's written consent. 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, provided further such lenders may require that the City provide notice and an opportunity to cure any Developer defaults hereunder.

**17. 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

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## Part Four – General Provisions

201 Delafield St Ste 200  
Waukesha WI 53188

To Developer:

JPD GC Waukesha, LLC  
Attn. Michael Weiss  
6938 N. Santa Monica Blvd.  
Fox Point, WI 53217

With a copy to:

Joseph Property Development  
117 N Jefferson Street, Suite 200  
Milwaukee, WI 53202

**18. 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.

**19. 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.

**20. 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, and if 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 either Party not to enforce any default of this Agreement shall not be deemed to be a waiver of the right to enforce subsequent defaults.

**21. 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.

**22. 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.

**23. Corporate Authorization.** 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.

**24. Assistance of Counsel, Voluntary Agreement.** 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.

**25. 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.

**26. 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.

**27. 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.

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

**29. Confidentiality of Financial Information.** The Parties acknowledge that no financial information would be provided by the Developer to the City or the City's financial consultants without a pledge of confidentiality of that information. All financial reports and information required to be provided by Developer to the City under



this Agreement shall be provided to the City's outside financial consultant for review on behalf of the City. At the request of the Developer, all financial reports and information provided to the City or its financial consultant in connection with this Agreement shall be held and treated as confidential to the extent permitted under the Wisconsin Open Records Law.

**30. Change in Property Tax.** If the laws of the State of Wisconsin regarding ad valorem taxation are amended or modified during the term of this Agreement such that the projected Increment revenue from the Development are materially reduced, i.e., by five percent (5%) or more, and there are no corresponding amendments or modifications to the Tax Increment laws of State of Wisconsin to compensate for such reduction, the parties agree to work in good faith to consider amendments to this Agreement toward the end of rendering the respective positions of the parties generally equivalent to the positions set forth herein.

**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. Prevailing Wage.** The City does not impose any prevailing wage requirements applicable to the Developer or the Development.

**33. Force Majeure.** Neither 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, and/or pandemics, 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 as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**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 \_\_\_\_\_, 2021, signed their names in my presence, and acknowledged the same.

\_\_\_\_\_  
Notary Public, Waukesha County, Wisconsin  
My commission (is permanent)(expires\_\_\_\_\_)

**JPD GC Waukesha, LLC**

\_\_\_\_\_  
(sign above)  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Wisconsin }  
                                  } ss.  
\_\_\_\_\_ County }

\_\_\_\_\_, known to me to be the person who executed this Agreement on behalf of JPD GC Waukesha, LLC in the indicated capacity, personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, signed his or her name 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 attachments:**
- Exhibit A – Site Development Plan**
  - Exhibit B – Development Lots**
  - Exhibit C –**
  - Exhibit D –**
  - Exhibit E –**
  - Exhibit F –**
  - Exhibit G –**

# Exhibit A: Site Development Plan

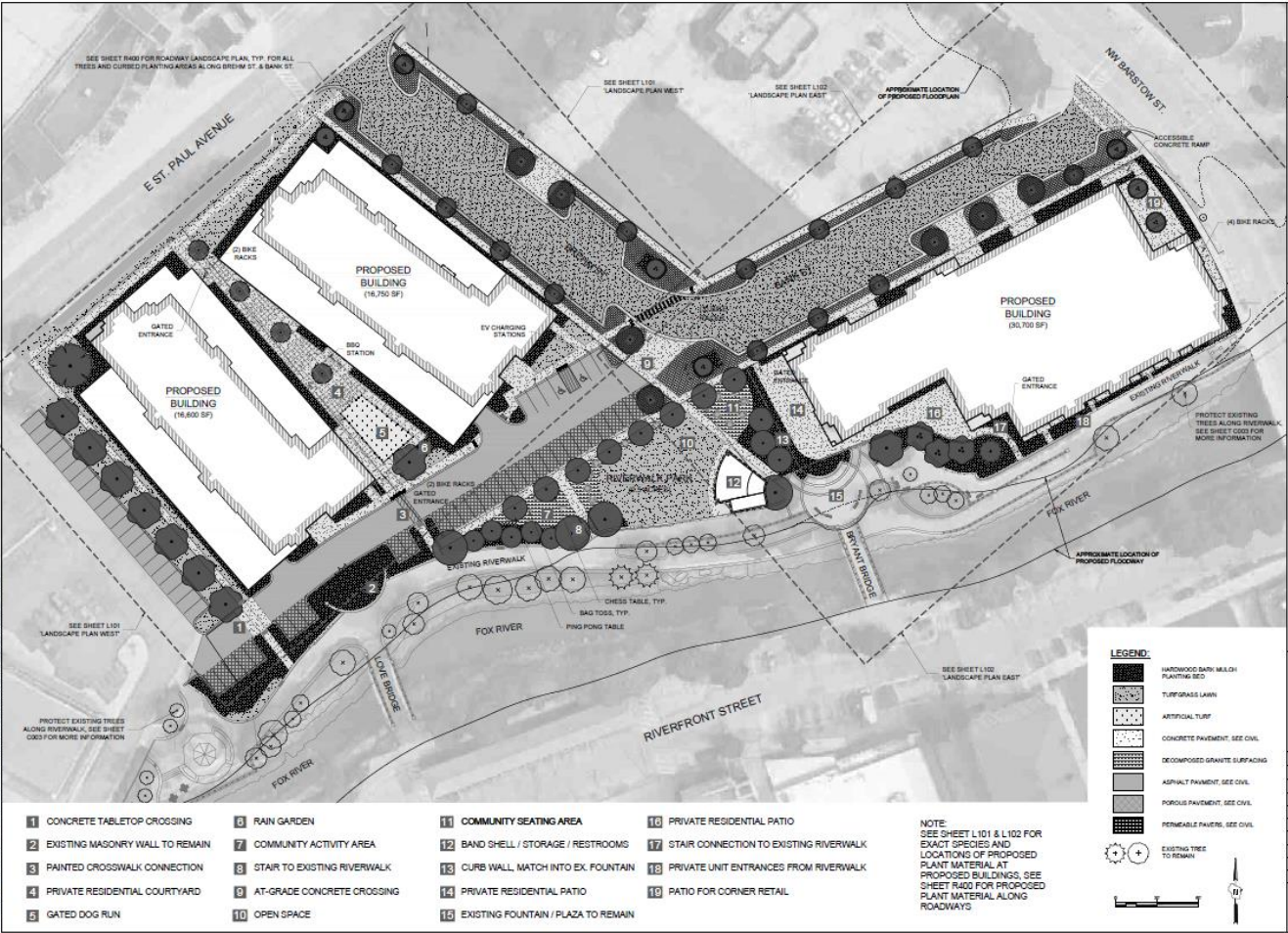
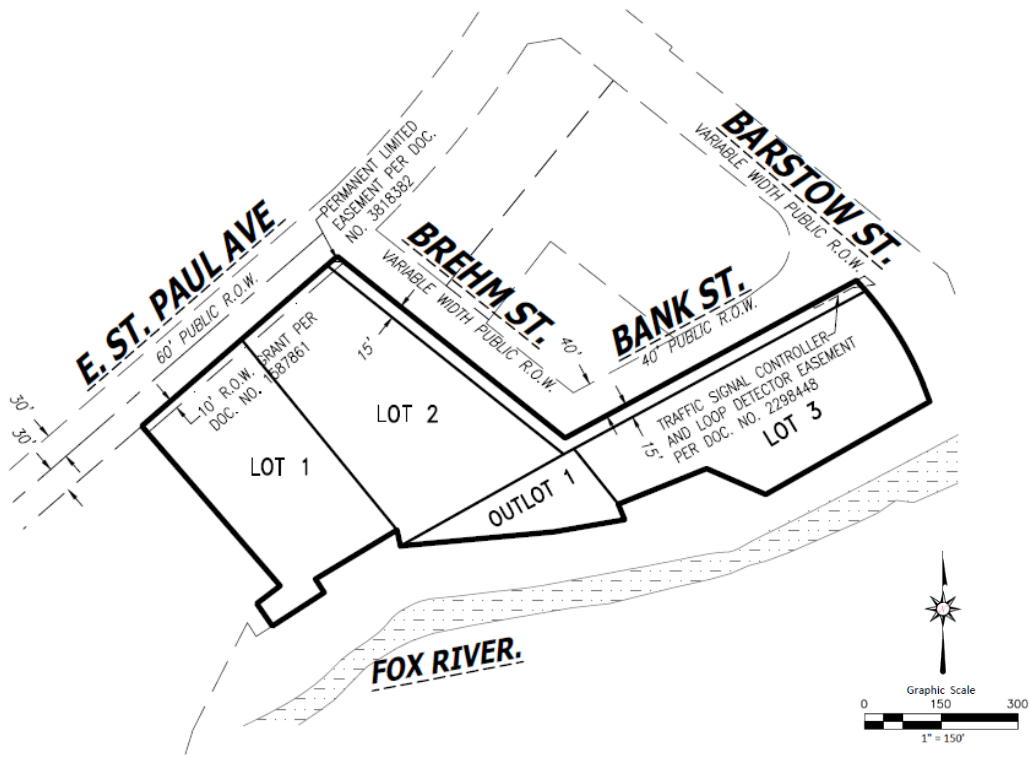


Exhibit B: Development Lots



### Exhibit C

| City of Waukesha                          |                           |                           |                         |                   |                          |                                |                      |                                   |                      |                 |                  |          |                       |                   |            |                          |      |
|---|---------------------------|---------------------------|-------------------------|-------------------|--------------------------|--------------------------------|----------------------|-----------------------------------|----------------------|-----------------|------------------|----------|-----------------------|-------------------|------------|--------------------------|------|
| Tax Increment District #26 (Project Only) |                           |                           |                         |                   |                          |                                |                      |                                   |                      |                 |                  |          |                       |                   |            |                          |      |
| Cash Flow Projection - Scenario D         |                           |                           |                         |                   |                          |                                |                      |                                   |                      |                 |                  |          |                       |                   |            |                          |      |
| Year                                      | Projected Revenues        |                           |                         |                   |                          | Expenditures                   |                      |                                   |                      |                 | Balances         |          |                       |                   |            |                          |      |
|   | Phase 1 Tax<br>Increments | Phase 2 Tax<br>Increments | Capitalized<br>Interest | Total<br>Revenues | Dated Date:<br>Principal | Taxable G.O. Bond<br>Est. Rate | 03/01/22<br>Interest | Tax Exempt G.O. Bond<br>Est. Rate | 03/01/23<br>Interest | MISO<br>Payment | Other            | Admin.   | Total<br>Expenditures | Annual            | Cumulative | Principal<br>Outstanding | Year |
| 2019                                      | 0                         | 0                         | 0                       | 0                 | 0                        | 1.40%                          | 67,605               | 1.90%                             | 35,651               | 89,976          | 0                | 6,400    | 109,656               | 0                 | 0          | 0                        | 2019 |
| 2020                                      | 0                         | 0                         | 0                       | 0                 | 0                        | 1.40%                          | 66,485               | 1.90%                             | 23,768               | 89,976          | (1)              | 35,650   | 365,837               | 0                 | 0          | 0                        | 2020 |
| 2021                                      | 0                         | 0                         | 101,408                 | 101,408           | 0                        | 1.40%                          | 64,285               | 1.90%                             | 23,528               | 251,911         | 0                | 34,466   | 361,202               | 0                 | 0          | 0                        | 2021 |
| 2022                                      | 0                         | 0                         | 101,408                 | 101,408           | 0                        | 1.40%                          | 62,035               | 1.90%                             | 22,988               | 332,679         | 0                | 44,989   | 352,572               | 101,408           | 101,408    | 0                        | 2022 |
| 2023                                      | 0                         | 0                         | 101,408                 | 109,656           | 0                        | 1.40%                          | 59,302               | 1.90%                             | 21,118               | 327,368         | 0                | 47,027   | 357,813               | 0                 | 0          | 0                        | 2023 |
| 2024                                      | 109,656                   | 0                         | 0                       | 109,656           | 0                        | 1.40%                          | 56,302               | 1.90%                             | 20,000               | 327,368         | 0                | 44,989   | 357,813               | 0                 | 0          | 0                        | 2024 |
| 2025                                      | 191,509                   | 174,328                   | 0                       | 365,837           | 0                        | 1.40%                          | 53,744               | 1.90%                             | 19,883               | 327,368         | 0                | 43,085   | 357,813               | 0                 | 0          | 0                        | 2025 |
| 2026                                      | 217,646                   | 303,545                   | 0                       | 521,191           | 30,000                   | 1.40%                          | 51,913               | 1.90%                             | 18,398               | 327,368         | 0                | 41,167   | 357,813               | 0                 | 0          | 0                        | 2026 |
| 2027                                      | 222,561                   | 420,011                   | 0                       | 642,572           | 30,000                   | 1.40%                          | 50,273               | 1.90%                             | 17,458               | 327,368         | 0                | 40,029   | 357,813               | 0                 | 0          | 0                        | 2027 |
| 2028                                      | 227,568                   | 439,154                   | 0                       | 666,722           | 30,000                   | 1.40%                          | 48,980               | 1.90%                             | 16,655               | 327,368         | 0                | 38,538   | 357,813               | 0                 | 0          | 0                        | 2028 |
| 2029                                      | 232,568                   | 459,107                   | 0                       | 691,675           | 30,000                   | 1.40%                          | 47,765               | 1.90%                             | 15,883               | 327,368         | 0                | 37,129   | 357,813               | 0                 | 0          | 0                        | 2029 |
| 2030                                      | 237,505                   | 449,004                   | 0                       | 686,509           | 30,000                   | 1.40%                          | 46,589               | 1.90%                             | 15,000               | 327,368         | 0                | 35,840   | 357,813               | 0                 | 0          | 0                        | 2030 |
| 2031                                      | 243,278                   | 459,107                   | 0                       | 702,385           | 30,000                   | 1.40%                          | 45,423               | 1.90%                             | 14,165               | 327,368         | 0                | 34,546   | 357,813               | 0                 | 0          | 0                        | 2031 |
| 2032                                      | 248,752                   | 469,437                   | 0                       | 718,188           | 30,000                   | 1.40%                          | 44,273               | 1.90%                             | 13,288               | 327,368         | 0                | 33,246   | 357,813               | 0                 | 0          | 0                        | 2032 |
| 2033                                      | 254,348                   | 479,999                   | 0                       | 734,348           | 30,000                   | 1.40%                          | 43,140               | 1.90%                             | 12,458               | 327,368         | 0                | 32,000   | 357,813               | 0                 | 0          | 0                        | 2033 |
| 2034                                      | 260,072                   | 490,769                   | 0                       | 750,841           | 30,000                   | 1.40%                          | 42,020               | 1.90%                             | 11,658               | 327,368         | 0                | 30,800   | 357,813               | 0                 | 0          | 0                        | 2034 |
| 2035                                      | 265,923                   | 501,842                   | 0                       | 767,765           | 30,000                   | 1.40%                          | 40,913               | 1.90%                             | 10,840               | 327,368         | 0                | 29,640   | 357,813               | 0                 | 0          | 0                        | 2035 |
| 2036                                      | 271,906                   | 513,133                   | 0                       | 785,040           | 30,000                   | 1.40%                          | 39,819               | 1.90%                             | 10,040               | 327,368         | 0                | 28,520   | 357,813               | 0                 | 0          | 0                        | 2036 |
| 2037                                      | 278,024                   | 524,679                   | 0                       | 802,703           | 30,000                   | 1.40%                          | 38,739               | 1.90%                             | 9,260                | 327,368         | 0                | 27,440   | 357,813               | 0                 | 0          | 0                        | 2037 |
| 2038                                      | 284,280                   | 536,484                   | 0                       | 820,764           | 30,000                   | 1.40%                          | 37,670               | 1.90%                             | 8,500                | 327,368         | 0                | 26,380   | 357,813               | 0                 | 0          | 0                        | 2038 |
| 2039                                      | 290,676                   | 548,555                   | 0                       | 839,231           | 215,000                  | 2.50%                          | 3,118                | 2.60%                             | 1,960                | 381,953         | 0                | 499,820  | 1,560                 | 0                 | 0          | 0                        | 2039 |
| 2040                                      | 297,216                   | 560,898                   | 0                       | 858,114           | 0                        | 2.50%                          | 58,746               | 2.60%                             | 60,088               | 0               | 60,088           | 696,884  | 152,547               | 227,801           | 0          | 2040                     |      |
| 2041                                      | 303,904                   | 573,518                   | 0                       | 877,422           | 0                        | 2.50%                          | 61,420               | 2.60%                             | 61,420               | 0               | 61,420           | 60,088   | 798,046               | 1,025,847         | 0          | 2041                     |      |
| 2042                                      | 310,742                   | 586,422                   | 0                       | 897,164           | 0                        | 2.50%                          | 62,801               | 2.60%                             | 62,801               | 0               | 62,801           | 61,420   | 816,002               | 1,841,849         | 0          | 2042                     |      |
| 2043                                      | 317,733                   | 599,616                   | 0                       | 917,350           | 0                        | 2.50%                          | 64,214               | 2.60%                             | 64,214               | 0               | 64,214           | 62,801   | 834,362               | 2,676,211         | 0          | 2043                     |      |
| 2044                                      | 324,882                   | 613,108                   | 0                       | 937,990           | 0                        | 2.50%                          | 65,659               | 2.60%                             | 65,659               | 0               | 65,659           | 64,214   | 853,135               | 3,529,346         | 0          | 2044                     |      |
| 2045                                      | 332,192                   | 626,903                   | 0                       | 959,095           | 0                        | 2.50%                          | 67,137               | 2.60%                             | 67,137               | 0               | 67,137           | 65,659   | 872,331               | 4,401,677         | 0          | 2045                     |      |
| 2046                                      | 339,667                   | 641,008                   | 0                       | 980,674           | 0                        | 2.50%                          | 68,647               | 2.60%                             | 68,647               | 0               | 68,647           | 67,137   | 891,958               | 5,293,635         | 0          | 2046                     |      |
| 2047                                      | 347,309                   | 655,431                   | 0                       | 1,002,740         | 0                        | 2.50%                          | 70,192               | 2.60%                             | 70,192               | 0               | 70,192           | 68,647   | 912,027               | 6,205,652         | 0          | 2047                     |      |
| <b>Total</b>                              | <b>6,410,479</b>          | <b>11,539,410</b>         | <b>107,408</b>          | <b>18,108,296</b> | <b>2,840,000</b>         |                                | <b>781,205</b>       |                                   | <b>1,058,000</b>     | <b>254,675</b>  | <b>4,750,000</b> | <b>0</b> | <b>1,259,206</b>      | <b>10,970,962</b> |            | <b>Total</b>             |      |

Notes:  
 Phase 1 construction starts Mar 2023, opens Jul 2024, stabilized 2024  
 Phase 2 construction starts Mar 2023, opens Jul 2024, stabilized 2025  
 City to retain 7.0% of increment for administrative costs  
 First 2 years bond payments are interest only  
 Reduced annual increases to 2.50% from developer projections  
 (pricing based on two sales on 8 November + 25cpd)

Revised: 2/23/2024

**Exhibit D**