

**TIF Development Agreement
The Glen at Standing Stone, LLC**

Parcel ID Nos.: WAKC 1350 264
WAKC 1350 999 009
WAKC 1350 265

After recording return to:
City Attorney
201 Delafield St Ste 206
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 **The Glen at Standing Stone, 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:

Outlots 1 and 2 of Certified Survey Map Number 11932 in the City of Waukesha, Waukesha County Wisconsin, recorded on November 6, 2019 as Instrument # 4434043 and Lot 1 of Certified Survey Map Number _____ in the City of Waukesha, recorded on _____, as Instrument # _____

This land is referred to herein as the Real Property.

NEEDS UPDATING TO INCLUDE NEW CSM INFO ONCE RECORDED

Recitals

Developer has proposed a residential development on the Real Property consisting of 108 detached and attached condominium homes. This residential development also includes site and infrastructure improvements. The Developer has represented to the City that after full buildout of the Development the land and improvements will ultimately be assessable for real property taxes at no less than \$46,076,000.

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 to assist with certain public infrastructure expenses, the proposed development will not be built. The development is proposed to be built outside of, but within one-half mile of, the City's Tax Incremental District 22, referred to herein as TID 22.

City has determined that making an Incentive Payment to Developer, as defined in Part Two of this Agreement, constitutes an eligible project cost under Wis. Stat. §66.1105 and the Amended Project Plan for TID 22; and further that such Incentive Payments are intended to be used for partial reimbursement of infrastructure expenses incurred by the Developer in the extension of Tenny Avenue, a public street.

The proposed development received general site layout and infrastructure plan approval by the Plan Commission on December 9, 2020, and by the Common Council on March 16, 2021.

The Common Council authorized the execution of a development agreement with the Developer on _____ 2021 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 improvements described below are referred to collectively herein as the Development. The general layout of the Development is shown on Exhibit A. The Development shall include the following improvements:

- a. Single Family Development.** A 28-lot single-family residential development on the east side of Tenny Avenue.
- b. Multi-Family Condominium Units.** A mix of 9 four-unit condominium buildings and 10 two-unit condominium buildings on the west side of Tenny Avenue.
- c. Single Family Units.** Sixteen single family condominium units on the west side of Tenny Avenue.
- d. Development Amenities.** Development amenities shall include a clubhouse, swimming pool, bocce court, and pickleball court.
- e. Private Infrastructure.** The Developer shall install all required private infrastructure in accordance with the approved final site plans.
- f. Public Infrastructure.** The Development shall also include the improvement of private drives, sidewalks, extension of Tenny Avenue to Les Paul Parkway, Tenny Avenue bridge, stormwater management facilities, and public infrastructure as required in the final plan approval and the DPW Development Agreement also executed by the Developer and the City.
- g. City-Approved Plans.** All improvements contained in the Site, Architectural, Infrastructure, and Landscaping Plans, as amended, were approved by the Plan Commission on December 9, 2020 and the Common Council on January 5, 2020 with all incorporated staff comments; and are adopted in the DPW Development Agreement also executed by the Developer and the City.

2. Obligation to Build. The Developer shall build the Development and diligently pursue the following target dates for increment value of the Development constructed:

January 1, 2023: \$12,798,889

January 1, 2024: \$28,157,556

January 1, 2025: \$43,089,593

January 1, 2026: \$46,076,000

There shall be no penalty to Developer if these target values are not achieved due to reasons beyond Developer's control.

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.

Part Two – Financing Assistance

4. Incentive Payment. The City shall pay to the Developer, an Incentive Payment of One Million Six Hundred Thousand Dollars (\$1,600,000), subject to adjustment pursuant to section 5. The Incentive Payment is a grant in aid of the infrastructure cost, and Developer shall not be required to repay the City. The incentive shall be payable to the Developer in two installments as follows

- a.** Fifty (50%) percent of the incentive payment shall be made to the Developer upon completion of public infrastructure work totaling no less than \$800,000. The developer shall submit invoices for verification prior to the distribution of the incentive payment.
- b.** The remaining incentive payment shall be made to the developer after the following have been completed:
 - i.** Completion of all the public infrastructure, and dedication accepted by the City, as shown on the Development plans approved by the City in compliance with the terms of this Agreement and the Department of Public Works Development Agreement also executed by Developer and City.

- ii. The construction cost verification outlined in Section 5 has been completed and incentive payment adjustments, if applicable, are made in accordance with Section 5.

5. Adjustment of Incentive Payment. Upon completion of construction of the extension of Tenny Avenue to the Les Paul Parkway and after acceptance by the City of its dedication to the public, which will not be unreasonably delayed or conditioned, the Developer shall deliver to the City documentation of the total costs of construction of the extension of Tenny Avenue to Les Paul Parkway, sufficient for the City and City's financial consultant to determine the final, actual cost of construction, 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. City or City's financial consultant shall then compute the actual total cost of construction of the extension of Tenny Avenue to the Les Paul Parkway, and if that cost is less than the total cost of construction shown in Developer's final pre-construction budget submitted to the City, then the Incentive Payment shall be reduced by an amount equal to one-half of the difference between the pre-construction budget and the final, actual cost of construction determined by the City and City's financial consultant. The construction cost verification and Incentive Payment adjustment shall be done within 10 business days of Developer's delivery to City of all required documentation. The City's calculation of construction costs shall be based on reasonable market standards and include all typical costs associated with such construction including both hard and soft costs, consisting of engineering, inspection, project management and oversight.

6. Documentation of Incentive Payment Obligation. This Agreement is the only documentation of the City's obligation for the Incentive Payment and no other instrument will be executed to evidence the obligation. Nothing in this Agreement shall be deemed to change the nature of City's obligation from a limited and conditional contractual obligation to a general obligation.

Part Three – Restrictive Covenants

7. Preservation of Value of Development. The following covenants shall survive and continue in effect both during the life of TID 22 and after TID 22 closes.

a. Prohibition of Conveyance to Tax-Exempt Entity. Developer shall not convey the Development or any portion of the Real Property 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 City property taxes that would otherwise be owed, for each year that such entity owns the Development or any portion of the Development. Any conveyance attempting to do otherwise shall be void and of no effect.

b. Prohibition of Obtaining Tax-Exempt Status. Developer shall not make application for, obtain, or accept recognition of tax-exempt status which would result in the Development or any portion of the Development being exempt from real-property taxation, and if Developer does so, then Developer shall make payments in lieu of taxes, in the full amount of the City property taxes that would otherwise be owed with respect to the Development or portion of the Development, in each year in which the Development or portion of the Development is exempt from property taxation.

c. Requirement to Maintain the Development. Developer during its period of ownership 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, for the purpose of maintaining the fair market value of the Development.

d. Requirement to Maintain Casualty Insurance. During its period of ownership, Developer shall maintain comprehensive property casualty insurance on the Development, including builder's risk insurance during construction, for not less than the actual replacement value of all improvements. Developer shall provide the City with proof of such coverage upon request.

e. Requirement to Reconstruct after Casualty Loss. Subject to the rights of Developer's secured mortgage lenders, and any regulatory restriction or limitation, Developer shall promptly repair, rebuild

and reconstruct the Development or any portion of the Development that is still owned by the Developer after any casualty loss, to restore it to substantially the condition it was in prior to the loss. If the loss is of a type covered by the insurance required in section 7.d, then Developer or Developer's successors shall make claim to casualty-insurance carriers for all casualty 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.

8. Agreement Runs with the Land. The City may record this Agreement against the Development with the Register of Deeds for Waukesha County, at the Developer's expense. The Restrictive Covenants of Part Three shall run with the land. The Parties acknowledge that the Development will include individual lots and condominium units, and that these will be sold to successor owners. The restrictive covenants in section 7 shall be binding on all such successors in interest to the Developer, and all references in section 7 to Developer shall be deemed to include such successor owners, including any condominium or homeowners associations, and all references to the Development shall be deemed to refer to the lots, common elements, or condominium units owned by such successors. No monetary lien or assessment right is granted by this Agreement against the Development or Real Property.

Part Four – General Provisions

9. 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.

10. 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.

11. Assignment Prohibited. This Agreement, and the Developer's responsibilities under this Agreement, may

not 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.

12. 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 Developer: The Glen at Standing Stone, LLC
Cornerstone Development
Attn: John Wahlen
N63 W23849 Main Street
Sussex, WI 53089

With a copy to: True Vine Development
Attn: Alan Peters
P.O. Box 1984
Brookfield, WI 53008

13. 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.

14. 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.

15. 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 or its investor member. 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.

16. 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 attorney fees. If a judgment

is taken, then costs of enforcement will be added to the judgment.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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, including but not limited to civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions, legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and 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 reasonably possible. Time for performance shall be extended by the period of delayed performance.

Executed 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_____)

The Glen at Standing Stone, LLC

(sign above)
Print name: _____
Title: _____

(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 _____, in the indicated capacities, personally came before me this _____ day of _____, 2021, 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 attachments: Exhibit A – General Development Plan

Exhibit A
General Development Plan

