

**Tax Incremental Financing Development Agreement**  
The Reserve at Waukesha Mixed-Use Development

Parcel ID Nos. **WAKC**  
**WAKC**

After recording return to:  
City Attorney  
201 Delafield St Ste 206  
Waukesha WI 53188-3646

This Tax Incremental Financing 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 **Campbell Capital Group, LLC, a Wisconsin limited-liability company**, Wisconsin 53, referred to herein as the Developer. The Developer and the City together are referred to herein as the Parties.

**Recitals**

Developer has proposed a development consisting of a building containing 186 apartment units and 2,000 square feet of commercial space and all required site and infrastructure improvements required. The Developer has represented to the City that this development is expected to cost no less than \$38,744,000 to build, including land purchase and all construction costs, and will be assessable for real property taxes at no less than \$30,500,000.

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 proposed development received final site plan and architectural review approval by the Plan Commission on August 28, 2019, and by the Common Council on September 3, 2019.

The Common Council authorized the execution of a development agreement with the Developer on @, 2019 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 Development is defined as the parcel of real estate identified as **Lot 1 on Exhibit B**, and all of the proposed improvements to that parcel as presented by Developer to the Plan Commission, and as amended and finally approved by the Plan Commission and Common Council. The plans, drawings, and specifications submitted to the Plan Commission by Developer, as amended, supplemented, and finally approved by the Plan Commission, are incorporated into this Agreement by reference. The improvements will

consist of a building having approximately 145 one-bedroom units and approximately 41 two-bedroom units, for a total of approximately 186 units. The building will have five levels of indoor parking. The Building will also have amenity spaces and commercial space on the first floor. Construction will be in a single phase. The total area of the building will be approximately 143,943 sq. ft. The Development will have approximately 240 covered parking spaces and 17 uncovered spaces. An outdoor amenity and pool space will be built within the Development. The Development will also include the

improvement of private drives and public infrastructure as required in the final plan approval.

**2. Donation of Lots to the City.** The Developer shall provide to the City all environmental investigation and testing reports in its possession for the parcels identified as Lots 2 and 4 on Exhibit B, no later than @@ days after the execution of this Agreement. If the City, in its sole discretion, determines that the environmental condition of the lots is acceptable, then the City shall notify Developer in writing of that determination, and Developer shall convey those lots to the City by warranty deed, for no additional consideration, no later than @@ days after delivery to the Developer of the City's notice of determination. The City shall be responsible, at its sole expense, for any title insurance or surveys. If the City determines in its sole discretion that the environmental condition of the lots is not acceptable, then Developer shall retain title to the lots.

**3. Improvements to Lot 3.** Developer will perform site grading and floodplain mitigation to the parcel identified as Lot 3 in Exhibit B, in accordance with the site grading plan and floodplain mitigation plan approved by the Wisconsin DNR, at Developer's sole expense.

**4. Deviations from Approved Plans.** Material deviations from the approved plans and specifications shall not be made unless approved by the City in advance and agreed to in writing appended to this Agreement.

**5. Construction Deadline.** Developer shall complete construction of the Development no later than December 31, 2021.

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## Part Two – Financing

**6. Incentive Payments to Developer.** The City, as a development incentive and to reimburse certain eligible project costs incurred by Developer in connection with the acquisition and development of that portion of the Development described as Lot 1 on Exhibit B, shall grant to Developer incentive payments in an aggregate amount not to exceed \$4,750,000, payable in installments, and subject to all terms and conditions in this Agreement. Incentive payments to Developer will be made by the City as follows.

**a. Initial Incentive Payment.** An initial incentive payment of \$1,500,000 will be made by the City to the Developer after commencement of construction of the Development. Commencement of construction is defined as the date on which actual

excavation for the building foundation begins and continues uninterrupted until completion of the Development. Developer shall give the City written notice of the commencement of construction, and the City shall promptly verify that construction has actually commenced. Upon verification, the City shall make the initial incentive payment within 60 days thereafter. Payment shall be made by check drawn on the City's treasury.

**b. Annual Incentive Payments.** In addition to the Initial Incentive Payment, Annual Incentive Payments will be made by the City to the Developer on the following terms.

**i. Definitions.** For purposes of this subsection 6.b, the following definitions apply.

**(1) Increment Revenue.** Tax revenue attributable to the increment generated by the Development only, and no other properties in TID 26, including any payments in lieu of taxes made by Developer pursuant to section 7.

**(2) Administrative Expenses.** The portion of the City's overall annual administration cost for its tax incremental districts allocated to TID 26 by the City's Finance Department. Administration cost is the amount of staff compensation allocated to work done in connection with administration of the City's tax incremental districts, along with any consultant costs and Department of Revenue fees.

**(3) Debt Service.** Payments made by the City of debt-issuance costs, principal and interest, including capitalized interest, arising from the debt issued by the City to fund the Initial Incentive Payment.

**ii. Annual Incentive Payments.** After completion of construction and upon issuance of the certificate of occupancy for the entire Development, additional annual incentive payments will be made by the City to Developer, calculated as follows: The Increment Revenue for a given tax year shall be reduced by (1) Administrative Expenses for that year, (2) Debt Service for that year, and (3) an amount equal to 10% of the Increment

Revenue for that year before deduction of Administrative Expenses and Debt Service. The remainder of the Increment Revenue shall be the Annual Incentive Payment for that year. The Annual Incentive Payment shall be made no later than June 1 of each year and only after all payable and outstanding real estate taxes have been paid. Payment shall be made by check drawn on the City's treasury. The first Annual Incentive Payment, anticipated to be paid in 2022, shall also be reduced by the amount of Debt Service and Administrative Expenses paid in 2019, 2020 and 2021 as well as 10% of the increment revenue recognized in 2019, 2020 and 2021.

**c. Limit of Incentive Payments.** The total amount of the Initial Incentive Payment and the Annual Incentive Payments shall not exceed \$4,750,000, and shall not extend beyond tax year 2033 (i.e., the Annual Incentive Payment due in 2034). Annual Incentive Payments shall cease when the aggregate limit of \$4,750,000 has been reached, or the Annual Incentive Payment for tax year 2033 (payable in 2034) has been made, whichever occurs first. Annual Incentive Payments shall also be subject to reduction following application of the look-back provision in section 6.d.

**d. Look-Back Provision.** The projected Internal Rate of Return (IRR) for the Development has been determined by the City's financial consultant, using data projections supplied by the Developer and the application of generally-accepted accounting principles, to be 10.28%. If, within three years of the issuance of the final certificate of occupancy for the Development, the Developer conveys all or any portion of its ownership interest in the Development to a third party in a bona-fide arm's length sale, then Developer shall, notify the City of such sale not later than 10 days after the closing of the sale and shall provide the City or City's financial consultant with all financial data relative to the Development and the sale requested by City or City's financial consultant. City's financial consultant shall then calculate the Development's IRR taking into account the proceeds of the sale and applying the same principles as used in the original calculation, and if the re-calculated IRR exceeds 14.78%; then the City's obligation to make Incentive Payments shall terminate. If Developer fails to notify City of any such sale, or fails to provide requested data, then City's obligation to make Incentive Payments shall terminate, and any Incentive Payment made after the date of the sale shall be refunded to the City. This provision shall not apply to a sale or conveyance taking place three years or more after issuance of the final certificate of occupancy for the Development. City shall

provide Developer with the financial consultant's IRR computations upon request.

**e. Construction Cost Verification.** After construction of the Development is complete, the City shall engage a construction expert to compare Developer's actual construction expenses to the projected expenses provided by Developer to the City's financial consultant at the time of this Agreement. The cost of the construction expert shall be an eligible TID administrative expense. If Developer's actual total expenses for the Development, as determined by the construction expert, are less than the Developer's expense projections, then remaining Incentive Payments will be reduced by 50% of the difference between actual and projected expenses. Developer shall provide all necessary documentation to complete construction cost verification within 9 months of the certificate of occupancy being issued for the entire Development. If Developer's expenses exceed the projections, then Developer shall be solely responsible for all such excess expenses.

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### Part Three – Guaranty of Taxable Value

**7. Guaranty of Assessed Value, Payments in Lieu of Taxes.** Developer guaranties to the City that the Development shall have a total real estate tax assessed value of no less than \$30,500,000 as of December 31, 2021, and as of each successive January 1 until the date 10 years after the date Tax Incremental District 26 closes. For each year in that time period in which the assessed value of the Development is not at least \$30,500,000, the Developer shall make a payment in lieu of taxes, in addition to payment of the property taxes actually billed by the City. The payment in lieu of taxes shall be equal to the difference between \$30,500,000 and the assessed value on which the property tax for that year was calculated, multiplied by the applicable tax rate for that year. Payments in lieu of taxes shall be due on March 15 of the year in which regular property tax payments are due. For clarification, if on December 31, 2021, the Development is assessed at \$29,500,000, a payment in lieu of taxes equal to \$1,000,000 times the tax rate for 2021 would be due on March 15, 2022.

**8. 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.

**9. 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 incentive payments to the Developer, in the City's discretion.

**10. Personal Guaranties.** All of the members of the Developer shall personally guaranty the payment of all Developer payment obligations required by this Agreement, and shall execute and deliver to the City fully-executed guaranties in the form of Exhibit A attached hereto. Any new members of Developer shall also execute guaranties upon assuming membership in Developer. If ownership of the Development is assumed by any party or parties other than the Developer before the obligation to make payments in lieu of taxes under section 7 has expired, then the members, shareholders, partners, and principals of such successor-owner parties shall execute similar guaranties and deliver them to the City, and Developer's members' guaranties shall remain in force until those successor guaranties are delivered to the City.

**11. Mortgage.** Developer shall grant the City a mortgage on the Development securing payment of all outstanding amounts due from the Developer under this Agreement, including amounts to become due in the future. The mortgage shall be subordinate only to mortgages securing the construction loan for the Development and mortgages securing any permanent loan that the construction loan is rolled into. The mortgage shall be in a form satisfactory to the City.

**12. Assignment of Income and Rents.** Developer shall execute and deliver to the City an assignment of income and rents, assigning income and rents from the Development to the City in the event that Developer defaults in any payment obligation to the City required by this Agreement.

**13. Preservation of Value of Development.** The following covenants shall be effective during the period starting on the execution of this Agreement and ending on the date 10 years after the date Tax Incremental District 26 closes.

**a. Prohibition of Conveyance to Tax-Exempt Entity.** Developer shall not convey the Development or any portion of the Development to

any entity which is exempt from payment of property taxes. Any conveyance attempting to do so 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 being exempt from real-property taxation.

**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 of less than \$30,500,000.00.

**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. Casualty loss shall not be an excuse for not making payments in lieu of taxes.

**g. Covenants Are Binding on Successors in Interest.** All of the covenants in this section 13 run with the land and are binding on all of Developer's

successors in interest, whether those successors are exempt from taxation or not.

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#### 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. All of the terms and conditions of this Agreement shall run with the land and be binding upon Developer and all of Developer's successors in interest, specifically including the obligation to make payments in lieu of taxes. Every reference to Developer herein shall be a reference to Developer and all of Developer's successors in interest, including tax-exempt entities.

**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.** Until a certificate of occupancy is issued for the entire Development, Developer shall not, without the City's prior written consent, which shall not be unreasonably withheld, sell, convey, or otherwise transfer the Property, except that Developer may at any time, with or without the City's consent: (i) enter into leases for all or portions of the Property; (ii) mortgage the property as security for the Development's financing; and (iii) convey the Property to a member of Developer or to an entity that Developer is affiliated with or is a partner or member in as long as such entity assumes all the Developer's obligations under this Agreement; provided, however, such conveyance will trigger the look-back provisions of section 6.d, if applicable. Except as otherwise expressly set forth in this Agreement, until a certificate of occupancy is issued for the entire Development, Developer shall not, without the City's prior written consent, which shall not be

unreasonably withheld, assign this Agreement. Upon the issuance of a certificate of occupancy for the entire Development, or at such earlier time as consented to in writing by the City, and notwithstanding anything to the contrary in this Agreement, Developer may freely (i) transfer, sell, exchange, mortgage, lease and convey the Property and (ii) assign this Agreement, provided, however, such conveyance will trigger the look-back provisions of section 6.d, if applicable, and, notwithstanding anything to the contrary in this Agreement, in either such event, Developer shall not have any further obligation or liability under the Agreement. Notwithstanding anything to the contrary herein, under no circumstances shall Developer's lenders be bound by the terms and conditions regarding transferability or assignment of this Agreement as described in this section.

**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 Developer:

**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.

**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. 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.

**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 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 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.

**25. 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.

**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. 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, 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 the @@ day of November, 2019.

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 @@, 2019, signed their names in my presence, and acknowledged the same.

**Exhibit A – Form of Guaranty**

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

**Campbell Capital Group, 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  
\_\_\_\_\_, 2019, signed their names in my presence, and acknowledged the same.

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

**Incorporated attachments: Exhibit A – Form of Personal Guaranty**

This document was drafted by Brian E. Running, City Attorney.

**Exhibit A – Form of Guaranty**

**Personal Guaranty**

**Guarantor:** (print name) \_\_\_\_\_  
Guarantor address: \_\_\_\_\_  
\_\_\_\_\_

**Developer:**

**Recitals**

Developer has proposed a real estate development in the City of Waukesha, and has requested tax-incremental financing (TIF) from the City for a portion of the cost of the development. The City has agreed to extend TIF financing to Developer, according to the terms and conditions of a “Tax Incremental Financing Development Agreement – Reserve at Waukesha – Mixed Use Development” executed by the Developer and City. One of the terms of the Tax Incremental Financing Development Agreement is the requirement that all of the members of the Developer guaranty the payment of the Developer’s monetary obligations to the City contained in the Tax Incremental Financing Development Agreement. This Guaranty is given by the Guarantor to satisfy that requirement, and to induce the City to extend TIF financing to the Developer, upon the following terms:

1. **Acknowledgement of Value Received.** Guarantor certifies and acknowledges that (a) he or she is a shareholder, member or partner in the Developer; (b) he or she will receive value from the extension by the City of TIF financing to the Developer; and (c) that the received value is adequate and sufficient consideration to support this Guaranty as a contractual obligation.
2. **Guaranty of Payment.** Guarantor personally, jointly and severally with the Developer and Developer’s other guarantors, guaranties payment all of the Developer’s payment obligations to the City contained in the Tax Incremental Financing Development Agreement, specifically including, but not limited to payments-in-lieu-of-taxes; including all future advances, extensions and renewals; and including the costs of collection, reasonable attorney fees and court costs.
3. **Limit of Guaranty Duration.** This guaranty shall remain in full force and effect until December 31, 2035, unless the City terminates this Guaranty earlier by a written notice delivered to Guarantor.
4. **Waiver of Notice, Presentment and Demand.** Guarantor waives (a) notice of acceptance of this guaranty and of extensions of credit by City to the Developer, (b) presentment and demand for payment, (c) protest and notice of dishonor or default, and (d) all other notices to which Guarantor might otherwise be entitled, and (e) any demand for payment under this Guaranty.
5. **Not a Guaranty of Collection.** This is a guaranty of payment and not of collection, the Guarantor’s obligation is primary. Guarantor waives any right to require that any action be brought against the Developer or any other guarantor, or to require that resort be had to any security or collateral.
6. **No Waiver of City’s Rights.** No forbearance or delay on the part of City in exercising any rights shall be deemed a waiver of rights, unless the City specifically waives any such rights in writing delivered to the Guarantor.
7. **Applicable Law and Venue.** This Guaranty shall be construed and enforced according to the laws of Wisconsin, and any action to enforce it shall be filed in the Wisconsin Circuit Court for Waukesha County. Guarantor waives all objections to venue or personal jurisdiction.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Guarantor signature



**Exhibit A – Form of Guaranty**

State of Wisconsin }  
                                  } ss.  
Waukesha County    }

\_\_\_\_\_ personally came before me the \_\_\_\_\_ day of \_\_\_\_\_, 2019, signed the foregoing Guaranty in my presence, and acknowledged the same.

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