



# **AGENDA OF THE COMMON COUNCIL**

**TUESDAY, MARCH 15, 2016, 7:00 P.M.**

**COUNCIL CHAMBERS  
ROOM 203, CITY HALL**

- Roll call.
- Pledge of Allegiance.
- Invocation.
- Approval of minutes of the February 23, 2016, and March 1, 2016, meetings.
- Approval of the Agenda.
- Report by the Mayor.
- Announcements.

## **PUBLIC HEARINGS**

Zoning Ordinance No. 3-16

An ordinance rezoning 1857 Shawano Avenue from General Commercial (C1) District to Highway Commercial (C2) District. (Item #21)

Zoning Ordinance No. 4-16

An ordinance rezoning 3597 Nicolet Drive from General Commercial (C1) District to Low Density Residential (R1). (Item #22)

**Zoning Ordinance 5-16**

An ordinance rezoning portions of 2400 block of University Avenue to Highway Commercial (C2) and Community Center Commercial (C3). (Item #23)

**Zoning Ordinance No. 6-16**

An ordinance amending Zoning Ordinance 17-07 to relocate previously approved two-family uses as part of the Preliminary Plat of Eaton Heights Second Addition located along the 1000 block of Spartan Road. (Item #24)

**Planning Ordinance No. 2-16**

An ordinance amending the Official Map of the City to revise the future road pattern for an Area Development Plan #112, generally located along Sitka Road. (Item #25)

**APPOINTMENT**

**City Attorney**

Vanessa Chavez

**RE-APPOINTMENTS**

**Redevelopment Authority**

Harry Maier

Melanie Parma

**On Broadway BID**

Rachel Sowinski

**REFERRAL OF PETITIONS & COMMUNICATIONS**

1. Referral of communications and petitions received by the City Clerk.  
Late communications.

**REPORTS FOR COUNCIL ACTION**

2. Report of the Park Committee.
3. Report of the Economic Development Authority.
4. Report of the Plan Commission.
5. Report of the Redevelopment Authority.

6. Report of the Finance Committee.

With respect to Item #3, the Council may convene in closed session pursuant to Sections 19.85(1)(g), Wis. Stats., for purposes of conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. The Council may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.

7. Report of the Improvement & Service Committee.

8. Report of the Protection & Welfare Committee.

9. Report of the Protection & Welfare Committee granting Operator Licenses.

**RECEIVE & PLACE ON FILE**

Building Permit Report for February, 2016.

Municipal Court Report for February, 2016.

**RESOLUTIONS**

10. Resolution authorizing cancellation of 2014/2015 personal property taxes.
11. Resolution approving the Development Agreement Between University Avenue Center, LLC, Redevelopment Authority of the City of Green Bay, and the City of Green Bay.
12. Resolution supporting and recommending the Wisconsin Assembly and Senate restore local rights for municipalities to govern cell tower placement within City limits.
13. Resolution supporting and recommending amendments to NEW Lutheran's proposed cell tower construction.
14. Resolution authorizing conditional-use approval at northwest corner of Sun Terrace and Phasianus Street.
15. Resolution authorizing conditional-use approval at 1744 S. Ashland Avenue.
16. Preliminary Resolution declaring intent to exercise special assessment powers under Section 66.0703, Wisconsin Statutes – Asphalt Resurfacing.

17. Preliminary Resolution declaring intent to exercise special assessment powers under Section 66.0703, Wisconsin Statutes – Concrete Pavement.
18. Preliminary Resolution declaring intent to exercise special assessment powers under Section 66.0703, Wisconsin Statutes – Asphalt Pavement.
19. Preliminary Resolution declaring intent to exercise special assessment powers under Section 66.0703, Wisconsin Statutes – Asphalt Resurfacing.

#### **ORDINANCE - FIRST READING**

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20. Zoning Ordinance No. 7-16  
An ordinance creating a Planned Unit Development (PUD) Overlay District for properties located in the 2400 block of Sturgeon Bay Road (2400 block University Avenue).

#### **ORDINANCES - THIRD READING**

21. Zoning Ordinance No. 3-16  
An ordinance rezoning 1857 Shawano Avenue from General Commercial (C1) District to Highway Commercial (C2) District.
22. Zoning Ordinance No. 4-16  
An ordinance rezoning 3597 Nicolet Drive from General Commercial (C1) District to Low Density Residential (R1).
23. Zoning Ordinance 5-16  
An ordinance rezoning portions of 2400 block of University Avenue to Highway Commercial (C2) and Community Center Commercial (C3).
24. Zoning Ordinance No. 6-16  
An ordinance amending Zoning Ordinance 17-07 to relocate previously approved two-family uses as part of the Preliminary Plat of Eaton Heights Second Addition located along the 1000 block of Spartan Road.
25. Planning Ordinance No. 2-16  
An ordinance amending the Official Map of the City to revise the future road pattern for an Area Development Plan #112, generally located along Sitka Road.



**APPENDIX OF SUPPLEMENTAL INFORMATION**

**FOR COUNCIL MEETING**

**OF TUESDAY, MARCH 15, 2016**

**7:00 P.M.**

PETITIONS & COMMUNICATIONS

IMPROVEMENT & SERVICE COMMITTEE

Applications for Concrete Sidewalk Builder's Licenses by the following:

- A. Fisher Concrete Sawing, Inc.
- B. JD Concrete Corporation
- C. T & L Construction
- D. Weise Construction

Application for a Tree & Brush Trimmer License by A to Z Tree Service LLC.

PROTECTION & WELFARE COMMITTEE

Request by the owners of Anduzzi's, 900 Kepler Drive, to hold an outdoor event on July 22-24 with music until 11:30 P.M. on July 23.

Application for a "Class B" Combination License by LVP SHS Green Bay Holding Corp, at 1011 Tony Canadeo Run. (Currently Green Bay CS Hotel Group, LLC)

## REPORT OF THE PARK COMMITTEE

March 15, 2016

The Park Committee, having met on Wednesday, March 9, 2016, considered all matters on its agenda and wishes to report and recommend the following:

1. To approve the request by No Child Wet Behind – Green Bay Doulas to host a 5K run and one-mile family run at Joannes Park on Saturday, May 21, 2016, contingent upon the following:
  - All costs of the event are the responsibility of No Child Wet Behind – Green Bay Doulas;
  - All proper permits and insurances being obtained;
  - No Child Wet Behind – Green Bay Doulas being responsible for all security and safety for the event;
  - Must adhere to all noise ordinances and regulations;
  - Final approval of the City's Special Events Committee.
2. To accept the donation of a fishing pier from the Leadership Green Bay group contingent upon the following:
  - All costs for the purchase of the dock are the responsibility of the Leadership Green Bay group;
  - The Wildlife Sanctuary is responsible for securing the volunteers and the supervision of the installation of the dock;
  - All materials and supplies meet City building codes;
  - All proper permits and insurances being obtained;
  - Once installed, it becomes City property.
3. To approve the request by Bellin Health to hold the Bellin Women's Half-Marathon at Bay Beach Amusement Park on October 8, 2016, contingent upon the following:
  - Final approval from the City's Special Event Committee;
  - Prepared food must be provided by a Bay Beach preferred caterer;
  - Alcoholic beverages may not be served, sold, or given away at the event;
  - Bay Beach will receive 15% of all sales of the event as outlined in the Bay Beach Off-Season Events Policy;
  - All proper permits and insurances being obtained;
  - All fees and charges, security, garbage disposal, clean-up, traffic control, and barricades are the responsibility of Bellin Health.
4. To refer to staff to compare the revised pool concept to the original pool concept including operating costs and to discuss cost-saving bidding options with the Department of Public Works, Law Department, and the consultant.

5. To approve using parkland development fees for the development of the Arnie Wolff Sports Complex.
6.
  - A. To award the purchase of a 60" zero turn riding mower with bagger to the lowest responsive responsible vendor to Service Motor Company for \$14,550.
  - B. To award the purchase of a 72" riding mower to the lowest responsive responsible vendor to Service Motor Company for \$16,300.
  - C. To award the purchase of a brush chipper to the lowest responsive responsible vendor to Vermeer Wisconsin for \$72,450.
  - D. To award the purchase of a skid steer loader with snowblower to the lowest responsive responsible vendor to Bobcat Plus for \$30,955.
  - E. To award the purchase of two side-by-side utility vehicles to the lowest responsive responsible vendor to Auto Parts Power Sports for \$17,290.
  - F. To approve the purchase of custom-fabricated trucks for the Bay Beach trains from American Custom Metal Fabricating for \$36,312.
  - G. To approve the purchase of parts for train car trucks from Diamondcar Works, LLC for \$15,466.
7. To receive and place on file the Director's Report.

# REPORT OF THE GREEN BAY ECONOMIC DEVELOPMENT AUTHORITY MEETING

March 15, 2016

The Economic Development Authority having met on Wednesday, March 9, 2016 considered all matters on its agenda and wishes to report the following:

1. To approve staff's recommendation to withhold the use of any grant funds on the Tillman site until redevelopment plans are proposed.
2. To approve staff's recommendation to move forward with Phase I of the Velp Avenue Study using the Brownfields Grant.
3. To refer to staff and report back in two (2) months request by Ald. Moore regarding the Hispanic Chamber of Commerce.
4. To keep land pricing in University Heights the same.
5. To sell 907 and 913 Main St. (parcels 9-47 and 9-46) as a package with adjacent RDA and City-owned parcels.

**REPORT OF THE GREEN BAY PLAN COMMISSION**  
**March 15, 2016**

The Green Bay Plan Commission, having met on Monday, March 7, 2016, considered all matters on its agenda and wishes to report and recommend the following:

1. To refer to Planning staff a request by Ald. Mark Steuer for the following:
  - A. A zoning map and short report showing the locations of R1, R2, R3, R4, and MF in the City and the percentage of each against the zoning district.
  - B. A land-use map and short report showing the locations of SF, 2F, and MF in the City and the percentage of each against the total land use.
2. To refer to Planning staff a request by Ald. Tim De Wane to reconsider the zoning code at the 1200 block of E. Mason Street.
3. To refer to Planning staff a request by Ald. Randy Scannell and Ald. Mark Steuer to set aside funding for the Velp Avenue Corridor/Brownfield Redevelopment Plan, also referred to the Economic Development Authority and Redevelopment Authority.
4. To create a Planned Unit Development (PUD) for several parcels on the 2400 Block of University Avenue, subject to the draft ordinance.
5. To approve a Conditional Use Permit (CUP) to authorize two, two-family dwellings in a Low Density Residential (R1) District located along the northwest corner of Sun Terrace and Phasianus, subject to the following conditions:
  - A. Staff and the applicant agree to landscape along the south end of the property adjacent to the pedestrian walk to reduce headlight glare and provide a transition between uses.
  - B. Compliance with all of the regulations of the Green Bay Municipal Code not covered under the Conditional Use Permit (CUP), including standard site plan review and approval.
  - C. Compliance with Chapter 13-1602(4), Green Bay Zoning.
6. To authorize a Conditional Use Permit (CUP) to operate a minor auto repair in a General Commercial (C1) District located at 1744 S. Ashland Avenue, subject to the following conditions:
  - A. Compliance with all of the regulations of the Green Bay Municipal Code not covered under the Conditional Use Permit (CUP), including standard site plan review and approval.
  - B. All vehicle parts shall be stored inside of an enclosed building.
  - C. Foundation landscaping along east façade.
  - D. There shall be no expansion of the conditional use without Plan Commission and City Council approval.

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**REPORT OF THE GREEN BAY REDEVELOPMENT AUTHORITY**  
**March 15, 2016**

The Green Bay Redevelopment Authority, having met on Tuesday, March 8, 2016, considered all matters on its agenda and wishes to report and recommend the following:

1. To refer to staff the request by Ald. Randy Scannell and Ald. Mark Steuer to set aside funding for the Velp Avenue Corridor/Brownfield Redevelopment Plan, also referred to the Green Bay Plan Commission and Economic Development Authority.
2. To approve the Resolution Authorizing the Sale and Issuance of \$10,210,000\* Taxable Lease Revenue Refunding Bonds, Series 2016 (KI Convention Center Project), the Approval and Execution of Related Documents, and Other Details.
3. To approve the request for Green Bay CS Hotel Group, LLC to sell property at 1011 Tony Canadeo Run (Parcel 1-1841-K) (a/k/a Springhill Suites).
4. To approve the Development Agreement with University Avenue Center, LLC (a/k/a Festival Foods and Kwik Trip), subject to minor legal and technical changes.
5. To approve the Letter of Intent from Broadway Events LLC for an outdoor events center at 100 W. Mason Street (Parcel 2-78).
6. The Redevelopment Authority recommends approval of the draft 2016 Annual Action Plan. The Annual Action Plan guides the use of the Community Development Block Grant (CDBG) Funds and HOME Funds for the City of Green Bay. CDBG and HOME program initiatives include providing quality, affordable housing for low-income persons, furthering fair housing, economic expansion, and public improvements to the City.

The Redevelopment Authority completed its review of allocations for use of the fiscal year 2016 CDBG and HOME funds as outlined in the draft 2016 Annual Action Plan. The Redevelopment Authority recommends the Council approve the draft 2016 CDBG and HOME budgets as attached.

After Council approval of the 2016 draft CDBG and HOME budgets, a draft Annual Action Plan for fiscal year 2016 will be released for a 30-day comment period. On April 19, 2016, the Plan will come back to the Council for consideration of any comments received and final adoption.

7. ~~INFORMATIONAL ONLY - To purchase 615 12<sup>th</sup> Avenue for \$49,900 and 2,272 SF of 610 11<sup>th</sup> Avenue for \$3,000 using Neighborhood Enhancement funds.~~
8. To direct staff to gather information and report back regarding 100 W. Walnut Street (Parcel 4-180).
9. To direct staff to proceed with discussions for development of 901, 907, 913, and 915 Main Street (Parcels 9-48, 9-47, 9-46, and 9-45).

**DEVELOPMENT AGREEMENT  
UNIVERSITY AVENUE FESTIVAL FOODS**

This Development Agreement is made this \_\_\_ day of March, 2016, by THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY (“RDA”), THE CITY OF GREEN BAY, a Wisconsin municipal corporation (“City”), and UNIVERSITY AVENUE CENTER, LLC, a Wisconsin limited liability company (“Developer”).

**RECITALS:**

A. Developer has proposed to acquire and develop certain real property, identified for real estate tax purposes and address as:

<u>Tax Parcel No.</u>	<u>Address</u>
21-1251-A	2439-2443 University Way
21-1251-B	2445 University Ave
21-1251	2437 University Ave
21-1252-1	2429 University Ave
21-1252-2	2419 University Ave
21-1254	2442 University Ave
21-1254-2-C	610 Clement Street
21-1254-3	2476 University Ave
21-1714-E-32	2340 University Ave
21-2475-F-1	2350 University Ave

The Property may also include the “Fred Street Properties:”

21-1714-E-31	607 Fred Street
21-1714-E-30	601 Fred Street

The parcels listed above, which shall include the Fred Street Properties and any additional contiguous properties acquired by Developer, if Developer purchases them, are hereafter together referred to as the “Property.”

B. Developer desires to make certain improvements to the Property in accordance with the Preliminary Concept Plan, a copy of which is attached hereto as Exhibit B, in multiple phases (the first two such phases hereinafter referred to as the “First Phase” and the “Second Phase”, respectively). In the First Phase, Developer shall complete certain infrastructure improvements to the Property and construction of an approximately 80,000 square foot, full service Festival Foods grocery store and accompanying parking areas on approximately seven acres of the Property, and the construction of an approximately 9,000 square foot strip shopping center on 1.5 acres of the north central part of the Property. In the Second Phase, the Developer will either build a convenience store, gas station and car wash (the “Kwik Trip Improvements”)

on the western 1.5 acres of the Project Site, to be occupied by Kwik Trip, Inc. (together with its affiliates, "Kwik Trip"), or will sell the 1.5 acre parcel to Kwik Trip where upon Kwik Trip will construct the Kwik Trip Improvements. All improvements in such phases shall be according to the Concept Plan, shall be referred to as the "Project", and upon completion Developer expects will have a final aggregate assessed value not less than fifteen million dollars (\$15,000,000.00). Approximately one acre in the eastern part of the Property will be reserved for future development.

C. The Property has a 2015 assessed value of \$ \_\_\_\_\_, which is based on the mill rate in effect as of January 1, 2015, less real estate taxes payable to the State of Wisconsin, yielded \$ \_\_\_\_\_ to the City.

D. The City and RDA desire to have Developer undertake the Project in order to generate economic activity and tax base for the community consistent with the City's Comprehensive Plan, the University Avenue Corridor Brownfields Redevelopment Plan and the Tax Incremental District No. 18 Plan, copies of which have previously been provided to Developer.

E. Pursuant to the provisions of Section 66.1105, Wisconsin Statutes (the "Tax Increment Law"), the City has included the Property within Tax Incremental District #18 (the "TID"), which will provide part of the financing for certain costs of the Project.

F. Developer has requested and will receive TIF assistance from the RDA and City with regard to the cost of acquisition, demolition, remediation, construction, infrastructure relocation and street improvements relating to the Project.

G. In order to induce Developer to undertake the Project, such that blight will be eliminated, approximately 200 permanent jobs will be created, and the public will generally benefit, the City has agreed to provide assistance to Developer as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

## SECTION I - GENERAL PROVISIONS: PURPOSE

1.1 **Incorporation of Proceedings, Exhibits, and Recitals.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City or RDA with respect to the Project, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement and upon attachment and consent by amendment if necessary or not attached at the time of execution of this Agreement.

1.2 **Implementation Schedule and Time of the Essence.** TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein and incorporated herein. Any material modification or deviation from an approved schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld, conditioned or delayed. The City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project. Notwithstanding the above: (a) this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property.

1.3 **Entire Agreement.** This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitutes the entire Agreement between the parties hereto in respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement shall be deemed to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City or RDA, granting approvals or conditions attendant with such approval, the terms of this Agreement shall be deemed controlling and the City and RDA will take the necessary action to amend any conflicting approvals or conditions.

1.4 **Purpose of the Agreement.** In order to cause the Project to occur and to induce Developer to undertake the Project, to promote community development, industry and job creation and to expand and enhance the tax base within the City, the City intends to provide the TIF Incentives as set forth in this Agreement. The City intends to recover its costs through the Available Tax Increment generated by the Property. The parties intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

## SECTION II - DEFINITIONS; EXHIBITS

**Certain Definitions.** As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

- a. "Agreement" means this Development Agreement among the City, RDA and Developer, as amended and supplemented from time to time.
- b. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- c. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the Tax Increment Base and attributable to development within the TID during the twelve (12) month period preceding a payment date, that has not been previously used to

make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.

- d. "City" means the City of Green Bay, Brown County, Wisconsin.
- e. "Concept Plan" means the plan for the Project, approved by the City, RDA and Developer.
- f. ~~"Plans and Specifications" means the plans and specifications developed for the Project.~~
- g. "Preliminary Concept Plan" means the initial Concept Plan, a copy of which is attached as Exhibit B and which is subject to such changes as Developer, the City or RDA may propose and the Developer, the City and/or RDA may accept in their respective sole discretion.
- h. "Private Improvements" means the improvements to be constructed on the Property that are not Public Improvements.
- i. "Project" means the Project as defined in the Recitals.
- j. "Public Improvements" means the public infrastructure improvements in connection with the Project including, without limitation, all road improvements, grading, engineering, landscaping, erosion control, sanitary sewer, storm sewer and potable water and wastewater mains and laterals, natural gas, high speed cable, telephone, electrical power and other public utilities.
- k. "Qualified Expenditures" means, with respect to the Project, any expenditures by Developer or its affiliates which are "Project Costs" as generally defined in the Tax Increment Law.
- l. "Special Assessment" means any special assessment levied against the Property by the City under §§66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.
- m. "Special Charge" means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.
- n. ~~"Tax Incremental Base" means the aggregate value, as equalized by the Wisconsin Department of Revenue, of all taxable property within the TID on the date as of which the TID was created, determined as provided in §66.1105(5)(b), Wis. Stats.~~

o. "Tax Increment" means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable real property within the TID in a year by a fraction having as a numerator the Value Increment for that year in the TID and as a denominator that year's equalized value of all taxable real property in the TID. Tax Increment shall not include any amounts levied that are intended to be paid to the State of Wisconsin.

p. "TID" means Tax Incremental District No.18 of the City of Green Bay, which has been established and is in good standing by the City of Green Bay, Wisconsin.

q. "TIF" means Tax Increment Financing, as described in Section IV below and in particular, Tax Increment Financing relating to the TID.

r. "TIF Incentives" means the payment of 75.0% of the Available Tax Increment toward Qualified Expenditures in an amount not to exceed \$3,400,000.00 on a pay-as-you-go basis and as set forth in Section IV of this Agreement including specifically the Tax Incentive Cap described in Section 4.3(b)(1).

s. "Value Increment" means the equalized value of all taxable real property in the TID in any year minus the Tax Incremental Base. In any year, the Value Increment is positive if the Tax Incremental Base is less than the aggregate value of taxable property as equalized by the Wisconsin Department of Revenue, and negative if the Tax Incremental Base exceeds that aggregate value.

### SECTION III - OBLIGATIONS OF DEVELOPER

3.1 **Development of Concept Plan.** The parties shall work cooperatively to develop and approve a Concept Plan, which shall be based on, but may differ in certain respects from the Preliminary Concept Plan. The RDA or Developer may at any time propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the RDA and the Developer. All site and building plans are subject to review and approval by the City for compliance with federal, state and municipal code requirements. At any time before the completion of the Project, Developer may submit to the RDA proposed revisions in the approved Concept Plan in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the proposed revisions in the Concept Plan; provided, however, that the RDA shall approve such revised Concept Plan unless it determines such revisions would impair the objectives of this Agreement, impose substantial financial burdens on the RDA or the City, or materially and adversely affect the Concept Plan. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans.

3.2 **Traffic Impact Analysis.** No later than April 1, 2016, Developer shall have obtained the

approval of the City, RDA, and State of Wisconsin Department of Transportation (the "WisDOT") to a traffic impact analysis regarding the Project.

3.3 **Development Budget.** Developer shall submit to the City and RDA a Development Budget no later May 1, 2016. The Development Budget shall include at least a 10% cost overrun/change order line item. The Development Budget shall include not less than \$ \_\_\_\_\_ in "hard" construction costs, i.e., costs of construction services, labor and materials, for the First Phase. Design Development Documents shall consist of site plans and building plans or other drawings and other documents that fix and describe the size and character of the entire development project as to structural, mechanical and electrical systems, materials and other such essentials as may be determined by the RDA to be appropriate. The RDA may approve, disapprove or impose further requirements with respect to the Development Budget and Design Development Documents, provided, however, that if the Development Budget and Design Development Documents conform with the Concept Plan, such approval may not unreasonably be withheld, conditioned or delayed. If the Development Budget and Design Development Documents are not acted upon by the RDA within thirty (30) days of the date of submission, they shall be deemed approved. The RDA will make all reasonable efforts to determine the acceptability of the Development Budget and Design Development Documents in less than thirty (30) days, including convening for special meetings to review and consider the same.

3.4 **Proof of Equity.** Developer shall have in place and shall provide the City and RDA no later than May 1, 2016, proof of equity in the form of the value of the Property, less any mortgages thereon, plus funds on hand and not less than ten percent cash equity available for injection into the Project in an amount sufficient to cover all Project Costs, which shall not be provided to any third party sources. Except for Fred Street Purchase Funds, as defined below, any available Developer funds obtained from sources other than lenders or the City shall be expended on the Project before any lender or City funds are expended or any third party financing is used to pay Project costs.

3.5 **Proof of Financing.** By no later than May 1, 2016, Developer shall have delivered proof reasonably satisfactory to the City and RDA of financing, which after injection of the Developer equity into the Project, will be sufficient in the reasonable determination of the City and RDA, to complete the Project according to the Plans and Specifications.

3.6 **Acquisition of Property.** By no later than May 31, 2016, Developer shall have closed on the purchase of all of the parcels comprising the Property and all of the necessary rights of way required for the Project. Developer shall provide copies of deeds and such other closing documents as requested by the City or RDA regarding the purchase of the Property and rights of way. The Property and rights of way shall be owned in the name of the Developer.

~~3.7 **Termination or Relocation of Easements.** Developer shall diligently and in good faith negotiate and execute agreements with all holders of easements that may be materially and adversely affected by the Project acknowledging the termination, modification or relocation of easements to accommodate the Concept Plan.~~

3.8 **Development of Fred Street Properties/Creation of "Round Corner."** Developer shall either (a) acquire the Fred Street Property(ies) or (b) come to agreement with the owners of the Fred Street Properties to lengthen their driveways so that either the acquisition(s) or agreements accommodate the creation of a "Round Corner" at the intersection of Fred Street and Van Deuren Street sufficient to allow maneuvering of municipal vehicles. Developer shall obtain approval of the creation of the Round Corner from the City's Department of Public Works, which approval shall not be unreasonably withheld, conditioned or delayed.

3.9 **Creation of New Street.** Developer shall have obtained approval from the WisDOT for the creation of a new public street to extend from the current intersection of Ruth Street and Van Deuren Street to State Highway 54/57 (Sturgeon Bay Road).

3.10 **Certified Survey Map.** Promptly after the Property has been acquired by Developer, Developer shall cause a certified survey map to be prepared, approved by the City, RDA and any other party whose consent is required. Approval by the City and RDA shall not be unreasonably withheld, conditioned or delayed. Developer shall cause the certified survey map to be recorded with the Brown County Register of Deeds.

3.11 **Lease.** By no later than May 1, 2016, Developer shall make available for review by Davis & Kuelthau, s.c., attorneys for the City and RDA, for review a draft copy of the lease for the Festival Foods grocery store as finally negotiated, but before the same is executed, to confirm it provides for a term of not fewer than seventeen (17) years and contains no unusual provisions allowing for early termination. No copies of that lease shall be made, but Davis & Kuelthau, s.c. may provide a verbal report to the City and RDA regarding its review of that lease.

3.12 **Use of Funds.** Developer may use TIF supported funds only to fund or reimburse Qualified Expenditures as set forth in the approved Development Budget.

3.13 **Improvement of Property.** Developer shall promptly design and complete the Project. The First Phase of the Project shall commence no later than ten (10) days after the last to occur of approval by RDA and the City of the Preliminary Concept Plan, approval by RDA of the Development Budget and Development Plans, and issuance of a building permit and all other permits or licenses required to commence construction on the First Phase, which shall be no later than May 1, 2016, and shall be completed no later than December 31, 2016. The Second Phase shall commence no later than ten (10) days after Developer or responsible party with respect to the Kwik Trip Improvements, has obtained a building permit and all other permits or licenses required to commence construction of the Second Phase, and shall be completed no later than December 31, 2018. Developer shall file with the RDA copies of the detailed construction plans promptly (within thirty (30) days) after completion of each of the First Phase and the Second Phase.

3.14 **Compliance with Planning; Zoning; Permits and Use.** Developer will obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties

having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

**3.15 Construction Design Criteria/Building Materials and Standards.** The buildings to be constructed for the Project shall be designed by a duly registered and licensed architect. The exterior architectural features of such buildings shall be of substantially the same style for both the First Phase and the Second Phase. All work to be performed by Developer on the Property shall be made with high quality materials and performed in a good and workmanlike manner and consistent with the prevailing industry standards for high quality construction in the City. Developer shall perform all work in compliance with all applicable laws, regulations, ordinances, and permits. The Concept Plan shall include details in regard to materials to be used. The City and RDA may set reasonable conditions on the private improvements to insure compliance with the high quality construction and esthetic appearance anticipated by the Concept Plan. Any conditions so imposed may not be revoked or amended without the prior written consent of the City and RDA, shall survive the expiration or termination of this Agreement and, shall be deemed to be a covenant running with the land.

**3.16 Identification of Architect and General Contractor.** Before the commencement of construction of the First Phase, Developer shall provide the City and RDA with the names of the architect and general contractor for the First Phase. If the architect or general contractor Developer employs for design or construction for the Second Phase is different than the architect or contractor for the First Phase, Developer shall with the names of the new architect and/or architect, as appropriate.

**3.17 Lamar Billboard.** At its expense, Developer shall cause the billboard owned by Lamar Advertising Company and currently on the Property to be removed from the Property, or relocated to another part of the Property as approved by the City and Developer, which approval shall not be unreasonably withheld, conditioned or delayed, and after Developer has obtained all permits regarding the relocation.

**3.18 Reports and Information.** During the period before the commencement of construction, Developer shall from time to time provide to the RDA information having a bearing upon the Property, the Project, material developments in marketing, sale and leasing relating to the Project, and any other material matters pertaining to the interests of the City and the RDA in the Property or under this Agreement. ~~Developer shall file with the RDA quarterly progress reports during the course of construction of each Phase. Developer shall provide the City and RDA with annual reviewed financial statements for Developer through termination of this Agreement.~~

3.19 **Copies of Documents.** All documents from Developer to the City or the RDA shall be submitted in triplicate.

3.20 **Maintenance and Repair.** Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject to demolition and construction activities contemplated by this Agreement.

3.21 **Transfer or Sale of Project Property.**

a. **Notice of Intent to Transfer.** If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City a written notice of transfer thirty (30) days prior to the anticipated transfer. Such a transfer by Developer may affect the TIF Incentive payments to Developer. In any case, this Agreement inures to the benefit and becomes the obligation of the heirs, successors and assigns of Developer. This Agreement shall run with the land and shall be binding upon all current and future owners of the Property. Developer shall not be required to provide City with written notice of its intent to transfer in connection with the granting of any mortgage or security agreement to finance or refinance loans for the purchase of the Property or payment of costs of the Project.

b. **No Transfer to Exempt Entities.** Prior to the closure of TID No. 18, the Property shall not be sold, transferred or conveyed to, leased or owned by any entity or used in any manner that would render any part of the Property exempt from taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement with the City in a form reasonably satisfactory to the City providing for acceptable payments to the City in lieu of taxes.

c. **Effect of Partial Sale of Property on TIF Incentive Payments.** The transferee of any transfer of a part, but not all, of the Property (the "Transferred Property") shall be entitled to TIF Incentives, the amount of which shall be determined by dividing the total Tax Increment of the Property by the total Tax Increment attributable to the Transferred Property and applying the resulting percentage to the Available Tax Increment payments due and payable after the transfer of the Transferred Property. Nothing herein shall prevent Developer or any successor of Developer from entering into private agreements with transferees of a Transferred Property for sharing of the TIF Incentive payments other than as set forth in this Agreement, but the City shall not be bound by any such private agreement.

3.22 **Easements.** Developer shall grant to City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.

3.23 **Environmental.**

a. **Presence of Hazardous Materials/Compliance with Environmental Laws.** Except for any remediation measures that will be taken in strict compliance with laws and directives of the Wisconsin Department of Natural Resources during construction on the Property in regard to a remediation on a parcel or parcels within the Property and owned by Mark and Michelle Conard and/or the Lyle N. and Janice M. Conard Revocable Trust of 2000, which remediation shall be commenced during construction of the First Phase and diligently pursued to completion with commercially reasonable efforts, Developer shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten days after receiving the same. Without limitation, Developer shall provide the City and RDA with a closure letter from the Wisconsin Department of Natural Resources regarding the remediation of the Conard parcel(s) referred to above promptly upon receipt of the same.

b. **Developer's Environmental Indemnification.** Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA and their respective agents, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity): (a) arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property; or (b) arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.

c. **Hazardous Materials Defined.** As used herein, the term "Hazardous Materials" means (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental

matters (collectively, "Environmental Laws"); and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D) waste aviation or motor vehicle fuel and (E) asbestos containing materials. The provisions of this Section 14 shall survive the conveyance to Developer of the RDA Property.

3.24 **Insurance.** Before commencement of construction activities on the Property, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance reasonably requested by the City or RDA, which Developer is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

a. **Workers Compensation and Related Coverage.** Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits: Bodily Injury by Accident - \$100,000 per accident; Bodily Injury by Disease - \$100,000 per employee; and \$500,000 policy limit.

b. **Comprehensive General Liability Insurance.** Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits: General Aggregate Limit - \$2,000,000; Personal and Advertising Injury Limit (per person/organization) - \$2,000,000; Bodily Injury and Property Damage - \$2,000,000 per occurrence; Fire Legal Liability Damage Limit - \$100,000 per occurrence; Medical Expense Limit - \$10,000 per person.

c. **Comprehensive Automobile Liability and Property Damage.** Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non-owned motor vehicles. The amounts of such insurance shall be not less than the following limits: Bodily Injury - \$250,000 per person; \$1,000,000 per occurrence; and Property Damage - \$250,000 per occurrence.

d. **Umbrella Coverage.** Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of \$1,000,000 for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs a to c above.

e. **Builder's Risk Insurance.** Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect an all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

f. **Fire and Casualty Insurance.** Developer shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount equal to the assessed value of such improvements. In the event of loss the Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

### 3.25 **General Indemnity.**

a. **Protection Against Losses.** Developer shall indemnify, defend and hold harmless the City, RDA and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with (i) any breach by Developer of the terms of this Agreement; (ii) any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or (iii) any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.

b. **Indemnification Procedures.** Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA.

Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld, conditioned or delayed. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. The City and RDA shall reasonably cooperate in the defense or prosecution of any claim hereunder, including the retention of and access to records and making employees and other personnel available on a mutually convenient basis to provide such information as the City and RDA may have regarding the matter in issue and an explanation of any material provided or made available. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

#### SECTION IV – TAX INCREMENT FINANCING

4.1 **Qualification for TIF.** Before commencement of the Project, Developer shall demonstrate to the reasonable satisfaction of RDA and City a need for TIF, with such determination to be made according to the “but for” test, that is, that but for the RDA and City providing TIF, the Project would not happen. Developer shall demonstrate to the reasonable satisfaction of the City and RDA the Developer's qualification and need for TIF, both in terms of Qualified Expenditures and the amount of money to be paid to Developer.

4.2 **Nature of TIF Incentive.** The TIF Incentive available to Developer under this Agreement is a pay-as-you-go (PAYGO) obligation of the City, that is, Developer shall be responsible to incur and pay all of the upfront costs of the Project and, to the extent TID revenues are sufficient to the limits of the TID and this Agreement, Qualified Expenditures shall be reimbursed to Developer as set forth in this Section IV.

4.3 **Limitations of Payment of TIF Incentive.** The TIF Incentive available to Developer for the Project is limited as follows:

a. **Temporal Limitation.** Provided Developer qualifies for TIF Incentive and provides adequate proof to the City and RDA that Developer has incurred and paid Qualified Expenditures, TIF Incentive payments shall be made within thirty (30) days after Developer has paid the real estate taxes and any Special Assessments and Special Charges in full for the previous tax year, provided, however, in no event shall TIF Incentive payments continue after the earlier of termination date of the TID and the termination of this Agreement before the termination of the TID, because of an Event of Default by Developer.

b. **Monetary Limitation.**

(1) **Tax Incentive Cap.** Irrespective of the total amount of Qualified Expenditures incurred and paid by Developer, the City shall not be obligated to pay TIF Incentive in excess of each of the following: Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) for the Project; Five Hundred Thousand Dollars (\$500,000.00) for public infrastructure required as a result of the Project that benefits the TID; Two Hundred Thousand Dollars (\$200,000.00) for Developer costs related to the Fred Street Properties.

(2) **Formula Limitation.** TIF Incentive payments will equal 75% of Available Tax Increment, commencing the first year after the first occupancy permit for the Project has been issued, and will be payable to Developer in the year following the year of the determination, after Developer has provided proof to the City of the full payment of the real estate taxes, special assessments and special charges against the Real Estate for the previous year. For example, if the first occupancy permit is issued on September 1, 2016, the TIF Increment would be determined as of January 1, 2017 and is first payable in 2018. Assessed value shall be determined each tax year and shall be compared to the assessed value of the Tax Incremental Base.

(3) **Tax Receipts Limitation.** Only the Available Tax Increment actually received by the City, and no other property, revenue, or asset of the City, shall be used to pay TIF Incentives.

4.4 **No General Obligation of City.** The City's obligation to make TIF Incentive payments shall be a special and limited obligation of the City and shall not be a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of such amounts. Funds in the special fund of the District attributable to the Available Tax Increments shall not be used to pay any other project costs of the TID until the City has applied to the payment due hereunder of the TIF Incentive payment. The City shall take no action to dissolve the TID before payment of all TIF Incentive payments due to the Developer, subject to the provisions of this Agreement. In no circumstances shall amounts to be paid Developer hereunder be considered an indebtedness of the City, and the obligation of the City hereunder is limited to the Available Tax Increment appropriated and received by the City. Amounts due hereunder shall not count against the City's constitutional debt limitation, and no taxes will be levied for its payment or pledged to its payment other than from the Available Tax Increment.

**SECTION V - CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY**

The City's obligations under this Agreement are conditioned upon the following:

5.1 **Existence.** Developer shall have provided a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.

5.2 **Incumbency; Due Authorization.** Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and RDA and to bind Developer to its terms.

5.3 **No Violation or Default.** Developer shall not be in violation of, subject to any applicable notice or cure period, any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.

5.4 **Insurance.** Developer shall have delivered to the City certificates of all insurance required under this Agreement.

5.5 **TID District.** The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

#### **SECTION VI - CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER**

The obligations of Developer under this Agreement are conditioned upon the following:

6.1 **TID.** The TID shall be in effect and in good standing certified by the Wisconsin Department of Revenue.

6.2 **Due Authorization.** The City Council of the City shall have passed a resolution on due notice, authorizing the City to enter into this Agreement and authorizing the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

#### **SECTION VII - REPRESENTATIONS, WARRANTIES AND COVENANTS**

Developer represents and warrants to the City and RDA as follows:

7.1 **No Material Change in Documents.** All contract documents and agreements have been furnished to City and RDA, as the case may be, and are true and correct in all material respects and there has been no material change in any of the same.

7.2 **No Material Change in Developer Operations.** There has been no material change in the business operations of Developer since the date the parties began negotiation to enter into this Agreement.

7.3 **Compliance with Zoning.** The Property now conforms and will conform in all respects with applicable zoning and land division laws, rules, regulations and ordinances.

7.4 **Payment.** Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, except for liens for claims to payment that are subject to a bona fide dispute, and, in that case, such liens shall be removed by Developer posting bond or other security, paying 125% of the lien claimed into court, escrowing funds or promptly taking other steps to remove the lien of record. Developer shall pay all other obligations relating to the Project, including all creditors holding liens or mortgages against the Property when and as the same become due. Developer will pay or cause to be paid all taxes and assessments levied against the Property when and as the same become due.

7.5 **Certification of Facts.** No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City or RDA pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.

7.6 **Good Standing.** Developer is a limited liability company organized and existing in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business.

7.7 **Due Authorization.** The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary company action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.

7.8 **No Conflict.** The execution, delivery, and performance of the obligations of Developer pursuant to this Agreement will not violate or conflict with the Articles of Organization or Operating Agreement of Developer or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of obligations of Developer pursuant to this Agreement violate or conflict with any law applicable to Developer.

7.9 **No Litigation.** There is no litigation or proceeding pending or threatened against or, to the knowledge of Developer, affecting Developer or the Property that would materially and adversely affect the Project, Developer or the priority or enforceability of this Agreement, the

ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

7.10 **No Default.** No default, or event that with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.

7.11 **Compliance with Laws and Codes.** The Project, when completed, will conform and comply in all respects with all applicable laws, rules, regulations and ordinances, including without limitation, all building codes and ordinances of the City. Developer will comply with, and will cause the Project to be in compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances.

7.12 **Fees or Commissions.** Neither the City nor RDA shall be liable for any broker fees or commissions incurred by Developer in connection with the Property or any transactions contemplated by this Agreement.

## SECTION VIII - DEFAULT

### 8.1 Developer Default.

**Events of Default.** Each of the following shall be an Event of Default by Developer:

a. **Failure to Make Payment.** Developer fails to make any payment required and such payment continues for a period of ten (10) days from and after the date of receipt of written notice of the same; provided, a good faith dispute or a challenge of real property taxes in accordance with the prescribed process shall not be a default under this Section 8.1.a;

b. **Failure to Abide by Other Terms.** Developer fails to perform any other of its obligations under this Agreement and such failure continues for a period of thirty (30) days from the date of written notice from the City or RDA; provided, however, if such cure cannot reasonably be accomplished within such thirty days and the delay in cure does not materially impair the financial interests of the City or RDA, and if Developer promptly commences cure within the initial thirty days and diligently pursues cure thereafter, Developer shall have a reasonable time, not to exceed sixty (60) days after the initial thirty (30) days (a total of 90 days) to cure;

c. **Misrepresentation.** Any representation or warranty of Developer in this Agreement or any agreement contemplated by this Agreement is untrue in any material respect;

d. **Fraud and Other Illicit Behavior.** Developer or any of its members is convicted of, pleads no contest to, or enters into any other agreement other than a dismissal with no conditions as to any allegation of: (1) fraud; or (2) indecent or illicit behavior that in the determination of the City or RDA would threaten the reputation of Developer or its ability to complete the Project according to the requirements of this Agreement;

e. **Insolvency.** Developer or any guarantor of the obligations of Developer hereunder is insolvent or becomes the subject of a petition in bankruptcy, a receivership, a composition or any other proceeding designed for the benefit of creditors generally that is not dismissed within sixty (60) days of the date of filing;

f. **Involuntary Liens.** Any lien is imposed upon the Property involuntarily due to the acts or omissions of Developer and such lien is not removed within sixty (60) days of it being imposed upon the Property.

8.2 **Remedies Upon Default.** In the event of the occurrence of an Event of Default by Developer, the City may in its discretion:

a. **Termination.** Terminate this Agreement by written notice to Developer;

b. **Offset and Recoupment.** Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach;

c. **Specific Performance.** Sue for specific performance;

d. **Sue for Damages.** Sue for all damages caused by the Event of Default;

e. **Other Remedies.** Pursue any other remedies available to the City or RDA at law or in equity;

f. **Interest.** Collect interest on all delinquent amounts at the rate of 12% percent per annum from the date such amount was due; and

g. **Costs and Attorney Fees.** Collect all costs and fees, including reasonable attorney fees incurred by the City and RDA, or either of them, by virtue of the Event of Default.

8.3 ~~**City or RDA Default.** Developer shall have all rights and remedies available under law or equity with respect to any failure of the City or RDA to perform their obligations under this Agreement, but only after providing the City and RDA notice of such default and a failure by the City or RDA to commence attempts to cure such default within the thirty (30) day notice period.~~

If the City or RDA, as appropriate, commences cure within the thirty day notice period and thereafter reasonably and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default.

8.4 **Limitation of Damages.** The foregoing notwithstanding, none of the parties shall be liable to any other party for any incidental, consequential, indirect, punitive or exemplary damages. All claims and damages asserted against the City or RDA shall be subject to statutory protections of municipalities and their officials and employees, including the immunity and limitations set forth in §893.80 of the Wisconsin Statutes.

8.5 **No Waiver.** Any delay in instituting or prosecuting any actions or proceedings or otherwise asserting the rights granted in this Agreement, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way, nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.

8.6 **Remedies Cumulative.** Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party.

## SECTION IX – TERMINATION

9.1 **Date of Termination.** This Agreement shall terminate upon the earliest of the date:

- a. All Qualified Expenditures have been repaid in full by Tax Increment;
- b. The City closes and terminates the TID;
- c. The Wisconsin Department of Revenue fails to certify or revokes certification of all or any portion of the TID or the Property;
- d. This Agreement is terminated because of an Event of Default;
- e. The parties agree in writing to terminate this Agreement.

9.2 **Termination of TIF Incentives Payments.** Payment of the TIF Incentives shall only continue for a period of no longer than fifteen (15) years, but in no event after 2032.

9.3 **Survival of Certain Provisions.** Sections III.5, III.7, III.8, III.11, III.12, III.13, III.14, III.15, III.16, VI.2, VII.2, VII.3, VII.6, VII.7, VIII.2, VIII.4, VIII.5, VIII.6, X.3, X.8, X.9, X.10, X.13, X.15, X.16, X.18 and X.19 shall survive the termination of this Agreement.

## SECTION X - MISCELLANEOUS PROVISIONS

10.1 **Assignment.** Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, until the obligations of the Developer under Section III hereof are fully performed and satisfied. Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld, conditioned or delayed. A collateral assignment for financing purposes shall not be considered an assignment under this Section 10.1.

10.2 **Nondiscrimination.** In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Project or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry. The construction and operation of the Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.

10.3 **No Personal Liability.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.

10.4 **No Personal Interest of Public Employee.** No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.

10.5 **Relationship of Parties.** The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.

10.6 **Force Majeure.** No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party

whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes herein above enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. The foregoing notwithstanding, a Force Majeure event may not be used to avoid an Event of Default if the delay caused by the Force Majeure event exceeds ninety (90) days from the date the event occurred.

**10.7 Parties and Survival of Agreement.** Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.

**10.8 Notices.** All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one business day after deposit with a nationally recognized over-night commercial courier service, air bill pre-paid, or forty-eight (48) hours after deposit in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To the City:	City of Green Bay Attn: City Clerk 100 North Jefferson Street Green Bay, WI 54301
To RDA:	Redevelopment Authority of the City of Green Bay Attention: Executive Director 100 North Jefferson Street, Room 608 Green Bay, WI 54301
To Developer:	University Avenue Center, LLC Attn: Laurence S. Langohr 118 W. Peckham Street Neenah, WI 54956

The foregoing addresses shall be presumed to be correct until notice of a different address is given according to this paragraph.

**10.9 Governing Law.** The laws of the State of Wisconsin shall govern this Agreement.

**10.10 Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.

10.11 **Execution in Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.

10.12 **Severability.** If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.

10.13 **Recording of Agreement.** The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.

10.14 **Priority Over Subsequent Liens.** This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. Developer warrants and represents that there will not be any mortgage or any other lien against the Property at the time this Development Agreement is recorded other than mortgages for the purchase of the Property and to finance costs of constructing the Project. This Development Agreement shall have precedence and shall take priority over any mortgage and refinancing of the same, lien or other encumbrance that may be recorded against the Property (or any portion thereof) after the recording of this Development Agreement (or Memorandum thereof).

10.15 **No Construction Against Drafter.** This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.

10.16 **Venue.** The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.

10.17 **Signatures and Counterparts.** Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

[Signature page follows.]



company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\*  
\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Wisconsin  
My Commission Expires \_\_\_\_\_

**Signature page**

Development Agreement – City of Green Bay, Redevelopment Authority of the City of Green Bay, University Avenue Center, LLC

**CITY OF GREEN BAY**

By: \_\_\_\_\_  
James Schmitt, Mayor

Attest: \_\_\_\_\_  
Kris Teske, Clerk

**Signature page**

Development Agreement – City of Green Bay, Redevelopment Authority of the City of Green Bay, University Avenue Center, LLC

**REDEVELOPMENT AUTHORITY OF  
THE CITY OF GREEN BAY**

By:

\_\_\_\_\_  
Harry Maier, Chairman

Attest:

\_\_\_\_\_  
Kevin J. Vonck, Executive Director

**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

Error! Unknown document property name.