Riverfront Redevelopment
Agreement to Undertake Development - Phase 1
Summary of Main Elements
April 9, 2021

1. *Parties*.

    a. Developer - Curt Vaughn Brink LLC
    b. Redevelopment Authority of City of Stoughton
    c. City of Stoughton

2. *Phase 1 land area*. See attached Exhibit A

3. *Riverfront Site*. See attached Exhibit B

4. *Developer Obligations*.

    a. Design and construct Public Improvements needed for Phase 1. Follow public bidding laws. [Need a final list of Phase 1 Public Improvements. Expected to include street, sanitary sewer, water, storm sewer, stormwater management]

    b. Remediate environmental contamination on Phase 1 land and land on which Phase 1 public improvements are located. Apply for WEDC Brownfields Grant, and cooperate to pursue other grant opportunities.

    c. Perform any pay the cost of any continuing obligations relating to the Phase 1 land that are imposed in a closure approval letter.

    d. Provide a letter of credit (or performance bond?) to secure the completion of the Public Improvements. [Note: surety would not include environmental work, because the City is responsible to pay for that work].

    e. Pay impact fees.

    f. Construct the Project (multi-family buildings approved in PDD zoning process).

5. *City Obligations*.

    a. Pay the cost of environmental remediation work that is not funded by grants. Perform and pay the cost of any continuing obligations relating to the Public Improvement lands.

b. Provide a Municipal Revenue Obligation to Developer ("pay-as-you-go TIF funding") in the amount of the cost of the Phase 1 Public Improvements.

6. *Contingencies that must be satisfied before Buyer or either Seller is required to perform agreement*.

   a. Both parties must approve and execute Development Agreement.
   b. Developer must acquire Phase 1 land pursuant to the Purchase Agreement.
   c. Developer to deliver the letter of credit (performance bond?).
   d. WEDC must award Brownfields grant in amount not less than $_____.
   e. WDNR must approve Materials Management Plan and Remedial Action Plans.

EXHIBIT A

Phase 1 Land Area

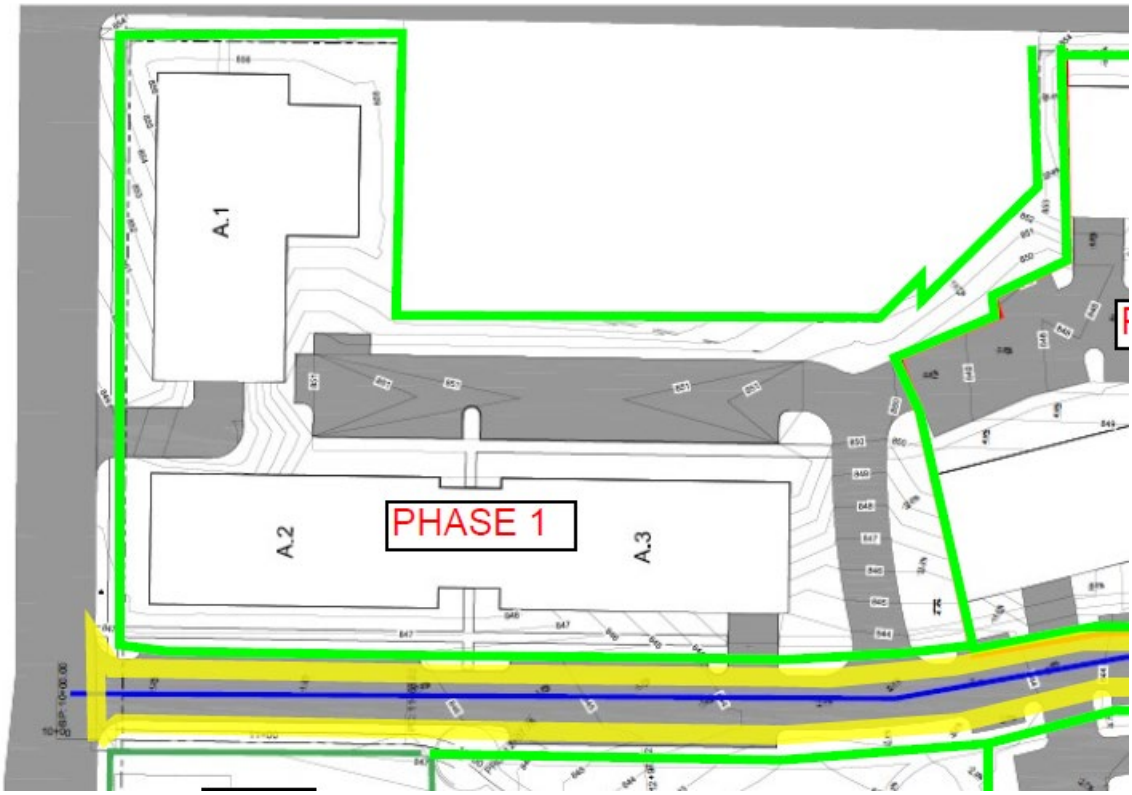

EXHIBIT B

REDEVELOPMENT LAND AREA

AGREEMENT TO UNDERTAKE DEVELOPMENT

(Riverfront Redevelopment – Phase 1)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ day of _____, 2021, by and among the City of Stoughton, a Wisconsin municipal corporation (the "City"), the City of Stoughton Redevelopment Authority, a body corporate and politic (the "RDA)") and Curt Vaughn Brink LLC, a Wisconsin limited liability company (the "Developer").

RECITALS

1. The City, the RDA and Developer entered into a Real Estate Purchase and Sale Agreement effective _____ (the "Purchase Agreement").

2. Developer proposes to purchase the real property described as Lot 1 on Attachment A attached hereto (the "Phase 1 Land"), and intends to undertake multi-family residential development on the Phase 1 Land, and construct certain public improvements needed to serve the Phase 1 Land, in accordance with Planned Development District zoning to be approved by the City.

3. The Purchase Agreement and Chapter 66 of the City of Stoughton Municipal Code require that an agreement be made for the installation of improvements needed to serve the Phase 1 Land.

4. Developer is unable to develop the Phase 1 Land and construct the necessary public improvements without financial assistance.

5. The City has created Tax Increment District No. 8, to facilitate redevelopment of the Phase 1 Land.

7. The City finds and determines that unless the City provides the tax increment development assistance described in this Agreement, Developer will not develop the Phase 1 Land.

8. The City finds that the development of the Phase 1 Land and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the City and its residents, by expanding the tax base, remediating environmental contamination and redeveloping the Phase 1 Land, creating needed housing, thereby serving public purposes in accordance with state and local law.

9. The City Council on _____, adopted Resolution No. R-____-2021 approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement.

AGREEMENT

In consideration of the Recitals, and the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, Developer, the RDA and the City agree as follows:

A. **DEFINITIONS.** As used in this Agreement, the following terms, when having an initial capital letter, shall mean:

1. Actual Tax Increment. The tax increment actually received by the City from taxes levied on the Phase 1 Land in a given year, as reasonably calculated by the City. As of the effective date of this Agreement, the Department of Revenue calculates the combined tax increment generated by all tax increment districts in the City, using a methodology reflected on Wisconsin Department of Revenue form PC-202. The parties agree that the City may reasonably calculate the tax increment actually received by the City by multiplying the total "interim rate" from form PC-202 for the applicable year by the Value Increment for that year. The total interim rate is obtained by dividing the combined levies from each taxing jurisdiction (the sum of the apportioned levies in column A on form PC-202) by the total equalized value of all taxable property in the City, excluding the value increment of all tax increment districts in the City (the amount used in column B on form PC-202). If the Wisconsin Department of Revenue discontinues or modifies form PC-202, or otherwise modifies the manner in which it calculates tax increment, the City may calculate tax increment in such other reasonable manner as it determines appropriate. The City may make such adjustments in calculating tax increment needed so that, if tax increment is so calculated for all parcels in the District, the sum does not exceed the total tax increment received by the City from taxes levied on all property in the District.

2. Base Value. The parties agree that the Base Value is zero.

3. Public Improvements. The public improvements described on Attachment B.

4. District. Tax Increment District No. 8.

5. Existing Contamination. Environmental contamination located on the Phase 1 Land and elsewhere within the Riverfront Site, as of the date the Phase 1 Land is conveyed to Developer, including without limitation, the contaminants described in the open DNR files identified as BRRTS number 02-13-583169, 02-13-554724, and 02-13-585835; closed DNR files identified as BRRTS number 02-13-579312, 02-13-258425; and general property DNR file identified as BRRTS number 07-13-563581.

6. Materials Management Plan. A plan to be approved by the Wisconsin Department of Natural Resources for managing the Existing Contamination during construction of the Project and the Public Improvements.

7. Remedial Action Plans. Plans to be approved by the Wisconsin Department of Natural Resources for remediating Existing Contamination on the Phase 1 Land and on the land area on which the Public Improvements will be constructed.

8. Project. The construction of two, multi-family residential buildings in accordance with Planned Development District zoning to be approved by the City.

9. Phase 1 Land. The land described as Lot 1 in Attachment A.

10. Riverfront Site. An approximately 10.9-acre tract of land located in the City of Stoughton, Dane County, Wisconsin, bounded on the west by Fourth Street, on the east by Seventh Street, on the north by South Street and on the south by the Yahara River.

11. Value Increment. The fair market value of the Phase 1 Land in a given year, as shown on the real property tax bill for the Phase 1 Land for that year, minus the Base Value.

B. **DEVELOPER OBLIGATIONS.**

1. Construction of Public Improvements and Remediation of Environmental Contamination.

(a) *Design of Improvements.* Developer shall prepare detailed plans and specifications of the Public Improvements for review by and subject to approval by the City Planning Director. Where standards and/or specifications have not been established by the City, all work shall be designed and constructed in accordance with established engineering practices as designated and approved by the City Planning Director. All Public Improvements shall be designed, constructed and installed in accordance with the standard specifications of the City, except as variances to or waivers of those requirements have been granted, and in accordance with plans and specifications approved by the City Planning Director.

(b) *Construction of Public Improvements*. Developer shall be responsible for the construction and installation of the Public Improvements. Except as otherwise provided in this Agreement, the Public Improvements will be designed, constructed and installed at Developer's sole expense.

(c) *Remediation of Environmental Contamination*.

(1) Developer shall comply with the Materials Management Plan during the course of constructing the Project and the Public Improvements.

(2) Developer shall be responsible for remediation of the Existing Contamination of the Phase 1 Land and the lands on which the Public Improvements are located, in accordance with the Remediation Plans, through case closure by the Wisconsin Department of Natural Resources, in accordance with Wis. Admin. Code § NR 726.

(3) Developer shall be responsible for any continuing obligations relating to the Phase 1 Land, imposed in a closure approval letter, at Developer's cost. The City shall be responsible for any continuing obligations relating to the lands on which the Public Improvements are located, imposed in a closure approval letter, at the City's cost.

(d) *Public Bidding of Public Improvements*. Developer shall publicly advertise, bid and contract for the construction of the Public Improvements in accordance with Wisconsin law governing public construction, including but not limited to Wis. Stat. §§ 62.15, 66.0901 and 779.14, under the supervision of the City Planning Director and City Attorney. Statutory bid bonds, performance bonds and payment bonds shall be required for all Public Improvements in a form, and from sureties, approved by the City, and shall be issued for the express benefit of Developer and the City. Developer shall prepare all public bidding documents, contracts and bonds, subject to review and approval by the City Planning Director and the City Attorney. Construction contracts shall expressly grant the City the same rights to enforce the contract against contractors and sureties as Developer. The bid opening and bid evaluation shall be conducted jointly by the Developer and the City. All contracts for construction of the Public Improvements shall be awarded by Developer to the lowest responsible bidder. In the event of a disagreement between the City and Developer regarding which bid is the lowest responsible bid, the City's determination shall be final. In the case of an asserted mistake, omission or error in a bid, the parties shall follow the requirements of Wisconsin law, including Wis. Stat. § 66.0901(5). In the event of a disagreement regarding whether to allow correction or withdrawal of a bid, the City's determination shall be final.

(e) *Construction Management*. Two copies of the approved, signed and stamped plans and specifications shall be provided to the City Planning Director, and one copy shall be provided to each contractor. Only stamped and signed copies of the plans and specifications shall be used on the job site.

(f) *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Public Improvements are accepted by the City, traffic controls as specified in a traffic control plan to be prepared by Developer and approved by the City Planning Director. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

(g) *City Approval of Starting Dates.* No land disturbances or work on the Public Improvements shall begin without the City Planning Director's approval of a starting date and schedule which shall be submitted by the Developer to the City Planning Director a minimum of 20 calendar days before work is scheduled to begin.

(h) *Change to Work Order*. All change orders for the Public Improvements shall be reviewed and approved by Developer and the City Planning Director. Except as otherwise provided in this Agreement, the City shall not be required to reimburse Developer for costs of any change orders relating to the Public Improvements.

(i) *Time of Completion*. The Public Improvements shall be substantially complete within 18 months after all conditions precedent in Section D have been satisfied, or before the time the Project is completed, whichever is sooner. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

(j) *Acceptance*. After the Public Improvements required by this Agreement have been substantially completed, and within 10 days after receiving written notice that the Developer desires the City to inspect the On-Site Public Improvements, the City Planning Director or his designee shall inspect the improvements and, if acceptable to the City Planning Director, the City Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City. Before obtaining certification of any such improvements, Developer shall: (1) present to the City valid lien waivers from all contractors and subcontractors providing materials or performing work on the improvements for which certification is sought; and (2) provide as-built drawings to the City Planning Director consisting of four hard copies on paper, one electronic copy as a pdf file, and one electronic copy in a digital format that is acceptable to the City. Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and furthermore until lien waivers are received by the City demonstrating that the contractors and their suppliers have been paid in full for all work and materials furnished under this Agreement. Water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, Developer shall clean the storm sewers in accordance with the directives of the City Planning Director.

The Developer agrees to provide for maintenance and repair of all required Public Improvements until such Public Improvements are formally accepted by the City.

The City will provide timely notice to Developer whenever inspection reveals that an improvement does not conform to the required standards and specifications or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure the defect. If Developer is unable to cure the defect within 30 days due to an event or circumstance beyond the reasonable control of and without Developer's fault, neglect or negligence, the time to cure the defect shall be extended for such time as the event or circumstance preventing cure is removed.

(k) *Guarantee of Public Improvements*. The Developer agrees to guarantee and warrant all work performed on the Public Improvements under this Agreement for a period

of one year from the date of final acceptance by the City of the work completed by the Developer against defects in workmanship or materials. If any defect appears during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at its own expense, including total and complete restoration of any disturbed surface or component of the improvements on lands where the repairs or replacement is required, to the standard provided in the approved plans and specifications. All guarantees or warranties for materials or workmanship of suppliers and third-party contractors for work performed under this Agreement which extend beyond the above guarantee period shall be assigned by Developer to the City.

(l) *Surety*. In addition to the statutory performance and payment bonds required in section B.1 (d), Developer shall provide to the City, by not later than the closing on the conveyance of the Phase 1 Land to Developer, a letter of credit as follows:

(1) Letter of Credit. The Developer shall provide the City with an irrevocable Letter of Credit issued pursuant to Chapter 405 of the Wisconsin Statutes in the amount of 125% of the estimated cost of the Public Improvements, to secure Developer's construction of the Public Improvements and Developer's guarantee of the Public Improvements. The letter of credit shall be in a form acceptable to the City, and shall be issued by an entity that is acceptable to the City, or that has a rating of its long-term unsecured debt not lower than A1 by Moody's Investors Service or A+ by Standard and Poor's. The Letter of Credit shall be payable to the City and shall be conditioned upon and guarantee to the City the performance by the Developer of Developer's obligations to construct and guarantee the Public Improvements under this Agreement. The letter of credit shall be approved as to form by the City Attorney. The letter of credit may be reduced from time to time in amounts equal to the value of the Public Improvements that have been installed, completed and accepted by the City. In no event shall the letter of credit be reduced below the aggregate of: 125 percent of the estimated cost of the Public Improvements not yet installed or accepted, plus 25 percent of the cost of Public Improvements that have been accepted.

(2) Payment under Letter of Credit. The Letter of Credit shall be payable to the City at any time upon presentation of (1) a sight draft drawn on the issuing Bank in the amount to which the City is entitled to draw pursuant to the terms of this Agreement; (2) a written statement by a City official that the City is entitled to draw on the Letter of Credit; and (3) the original Letter of Credit.

(3) Accounting. Developer may inspect the City records of payments made using the Letter of Credit upon request at reasonable times. However, the City retains the exclusive right to determine, among other things, questions of design, specifications, construction cost, performance, contract compliance, and payment in connection with the Public Improvements. In the absence of fraud or palpable error on the part of the City, the City's decisions on all such matters shall control and shall be final.

(4) Notice of Expiration. The initial and each renewed or replacement letter of credit shall by express language be automatically extended without amendment for a period of one year from its expiration date, unless at least 45 days before such expiration date the issuer of the letter of credit notifies the City in writing that the letter of credit will not be extended for an additional one year period, or notifies the City in writing that the letter of credit will be renewed or replaced by a letter of credit in an amount that is less than the amount required by this Agreement, which amount shall be specified in such written notice. Upon receipt of notice that the letter of credit will not be extended for an additional one year period, or will be extended, renewed or replaced in an amount that is less than the amount required by this Agreement, the City may draw upon the letter of credit up to the letter of credit amount required by this Agreement.

(5) Remedies Not Exclusive. The remedies provided in this Section are not exclusive. The City may use any other remedies available to it under this Agreement, any performance or payment bonds, or any remedies available in law or equity in addition to, or in lieu of, the remedies provided in this Section.

2. Complete the Project. Developer must complete the Project.

3. Park Land and Park Improvement Impact Fees. Developer acknowledges that as a condition of receiving building permits for the Project, Developer will be required to pay impact fees to the City for the acquisition of parkland and for the improvement of parkland, pursuant to Chapter 67 of the City of Stoughton Code of Ordinances.

C. **CITY OBLIGATIONS.**

1. Reimbursement to Developer for Cost of Material Management and Environmental Remediation.

(a) *WEDC Brownfields Grant.* Pursuant to the Purchase Agreement, Developer is responsible to prepare and submit an application to the Wisconsin Economic Development Corporation ("WEDC") Brownfields Grant Program seeking a grant ("Brownfield Grant") to pay eligible costs that will be incurred in managing materials and remediating the Existing Contamination. Developer, the RDA and the City shall cooperate with one another in pursuing the WEDC Brownfield Grant and in seeking out and maximizing any other potential grant opportunities to address the Existing Conditions on the Phase 1 Land.

(b) *City Payment of Reimbursable Remediation Costs.* For purposes of this Section C. 1., "Reimbursable Remediation Costs" means the sum of the following:

(1) costs reasonably incurred by Developer, pursuant to the contract awarded under Section B.1(d), to comply with the Materials Management Plan, remediate the Existing Contamination and obtain Case Closure from the Wisconsin Department of Natural Resources on the land area on which the Public Improvements will be constructed, to the extent those costs are not covered by the

Brownfield Grant or any other grants that may be awarded for managing materials or remediation of the Existing Conditions; and

(2) costs reasonably incurred by Developer to comply with the Materials Management Plan, remediate the Existing Contamination and obtain Case Closure from the Wisconsin Department of Natural Resources on the Phase 1 Land, to the extent those costs are not covered by the Brownfield Grant or any other grants that may be awarded for managing materials or remediation of the Existing Conditions.

The City shall be responsible to pay Reimbursable Remediation Costs in accordance with this Section C.1.

(c) *Request for Payment:* As work on the Project and Public Improvements progresses, Developer may make requests to the City for payment of Reimbursable Remediation Costs not more than once per month. Developer's application for reimbursement shall be submitted to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work for which payment is requested, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested. Within forty-five days after submittal of a complete application to the City Planning Director demonstrating entitlement to reimbursement under this Section, and subject to approval by the City Planning Director that the payment request is in conformity with the provisions of this Agreement, the City shall make its reimbursement payment to the contractors, subcontractors and material suppliers for whom payment is requested.

2. Municipal Revenue Obligation for Public Improvement Costs. Following the completion and City acceptance of the Public Improvements, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation in the amount of the actual cost of constructing the Public Improvements pursuant to the contract awarded under Section B.1(d) of this Agreement. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, an itemization of the work performed, and copies of all supporting invoices from all contractors, subcontractors and material suppliers who were engaged in constructing the Public Improvements, together with a certification by Developer and Developer's engineer that the request for issuance of the Municipal Revenue Obligation is true and correct; and (2) documentation demonstrating the interest rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements. Within forty-five days after submittal of a complete written request for issuance of the Municipal Revenue Obligation with the required certification and documentation, the City shall issue a Municipal Revenue Obligation to Developer, in the principal amount of the actual cost of constructing the Public Improvements so

demonstrated, and in the form attached hereto as Attachment C, under the following terms and conditions:

(a) The Municipal Revenue Obligation shall bear interest at the lesser of five percent per annum or the rate Developer will pay on Developer's financing of the cost of constructing the Public Improvements.

(b) Any payment on the Municipal Revenue Obligation which is due on any Payment Date shall be payable solely from and only to the extent that the City has received as of such Payment Date Actual Tax Increment, and such Actual Tax Increment has been appropriated by the Common Council to payment of the Municipal Revenue Obligation.

(c) For purposes of the Municipal Revenue Obligation, a "Payment Date" shall mean each of the Scheduled Payment Dates set forth on a schedule to be prepared by the City and attached to the Municipal Revenue Obligation when issued. The scheduled payment dates shall be prepared such that the payments on the Municipal Revenue Obligation are amortized over the remaining number of years that tax increment generated by the District may lawfully be allocated to make payments on the Municipal Revenue Obligation. On each of the Payment Dates, the City shall pay to Developer the Actual Tax Increment, up to the Scheduled Payment Amount shown on the schedule attached to the Municipal Revenue Obligation, together with such additional amounts, if any, deferred from prior years as may be payable on the Payment Date as provided under the terms of the Municipal Revenue Obligation, that has been appropriated for that purpose by the Common Council in accordance with the requirements for revenue obligations.

(d) The City covenants and agrees that Actual Tax Increment held by the City as of a given Payment Date shall not be appropriated for any other use, if not appropriated for the Municipal Revenue Obligation due as of such Payment Date, until the City has paid the Municipal Revenue Obligation payment due on the Payment Date in that year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date), or until said Municipal Revenue Obligation has been paid. The District shall not be terminated until the Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever first occurs.

D. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before either party's obligations under this Agreement shall become effective.

1. The City and Developer must approve and execute this Agreement.

2. Developer must acquire fee simple title to the Phase 1 Land in accordance with the Purchase Agreement.

3. Developer must deliver to the City the letter of credit required by Section B.1.(l)(1) of this Agreement.

4. [A Brownfield Grant must be awarded to Developer in an amount not less than $_____]

5. The Materials Management Plan and Remedial Action Plans must be approved by the Wisconsin Department of Natural Resources.

If the events described in this Section D are not satisfied by July 1, 2021, then this Agreement shall be null and void.

E. **REPRESENTATIONS AND WARRANTIES.**

1. Authorization. Developer warrants that Developer's execution, delivery and performance of this Agreement have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer, or any law, governmental regulation, court decree, or order applicable to Developer or to the Property.

F. **GENERAL CONDITIONS.**

1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights to develop the Project shall inure to Developer by virtue of this Agreement. Nor does the City warrant that Developer is entitled to any City approvals required for development of the Property or construction of the Project as a result of this Agreement.

2. Binding Effect / Assignment. The obligations of Developer and the City under this Agreement shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, and any unapproved assignment is void.

3. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by the City, the RDA and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the other party hereto.

4. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the City, the RDA and Developer.

5. Remedies upon Default. A default is defined herein as a party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting party. The parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses

under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies shall not preclude the exercise of other rights or remedies. Remedies include, but are not limited to, drawing on the letters of credit, and charging Developer, on all amounts due to the City not paid by the due date, interest at the rate of 2 percent over the rate then payable by the City under the City Borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Purchase Agreement, shall constitute the entire Agreement between Developer and the City as of the date hereof.

7. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the Agreement.

8. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.

9. Indemnification. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and the RDA and their officers, agents and employees from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Project or the Public Improvements occasioned wholly or in part by any act or omission on Developer's part or on the part of its agents, contractors, subcontractors, invitees or employees, at any time occurring on, at or in the Property or the Riverfront Site, except as are a result of the gross negligence or willful misconduct of any officer, agent or employee of the City or the RDA. The City and the RDA shall be entitled to appear in any proceedings to defend themselves against such claims, and all costs, expenses and reasonable attorney fees incurred by the City or the RDA in connection with such defense shall be paid by Developer to the City or the RDA, as the case may be. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event the City or the RDA elect to exercise any of the remedies as provided under this Agreement following default hereunder. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment D.

10. Notice. Any notice required or permitted by this Agreement shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail as follows:

To Developer:	Curt Vaughn Brink LLC 701 E. Washington Ave., Ste. 105 Attention: Curt Brink Telephone: 608.575.4845 Email: curtbrink@hotmail.com
Developer's Attorney	Carlson Black O'Callaghan & Battenberg LL 222 West Washington Avenue, Suite705 Madison, WI 53703 Attn: Daniel A. O'Callaghan Telephone: 608.888.1685 Email: dan.ocallaghan@carlsonblack.com
To the City:	Jamin Friedl, Finance Director City of Stoughton 207 S. Forrest Street Stoughton, WI 53589 Telephone: 608.873.6691 Email: jFriedl@city.stoughton.wi.us
City Attorney	Stafford Rosenbaum LLP 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784 Attn: Matthew P. Dregne Telephone: 608.259-2618 Email: mdregne@staffordlaw.com

11. Recordation. The City may record a copy of this Agreement, or a memorandum thereof, in the office of the Dane County Register of Deeds.

12. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party arising out of this Agreement shall be deemed to be proper only if such action is commenced in Circuit Court for Dane County unless it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Dane County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Dane County lack jurisdiction.

13. Ratification. Developer hereby approves and ratifies all actions taken to date by the RDA and the City, their officers, employees and agents in connection with the District, and in connection with the zoning and other approvals relating to the Phase 1 Property and the Project.

14. Compliance with Laws. Developer shall comply with all federal, state and local laws with respect to the Phase 1 Property, the Project, and the Public Improvements, including but not limited to laws governing building and construction, the environment, nondiscrimination, and employment and contracting practices, to the extent they are applicable.

15. No Partnership. The City and the RDA do not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

16. Good Faith. Both parties to this Agreement shall exercise good faith in performing any obligation that party has assumed under the terms of this Agreement including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

17. Applicable Law. This Agreement shall be construed under the laws of the state of Wisconsin.

18. No Private Right or Cause of Action. Nothing in this Agreement shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

19. Effective Date. This Agreement shall be effective as of the date and year first written above.

20. Term. Except as provided in Section D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Section B of this Agreement, and the City's obligations under Section C of this Agreement, have been fully satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

21. Construction of Agreement. Each party participated fully in the drafting of each and every part of this Agreement. This Agreement shall not be construed strictly in favor of or against either party. It shall be construed simply and fairly to each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above, and by so signing this Agreement, certify that they have been duly authorized by their respective entities to execute this Agreement on their behalf.

CITY:
CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Timothy Swadley, Mayor

CITY OF STOUGHTON REDEVELOPMENT AUTHORITY

By_____
Dale Reeves, Chair

ATTEST:

_____
Holly Licht, City Clerk

DEVELOPER:
CURT VAUGHN BRINK LLC

By_____
Curt Brink, Manager

Provision has been made to pay the liability that will accrue under this Agreement:

Countersigned:

_____ _____
Jamin Friedl, Finance Director Date

Approved as to Form:
Stafford Rosenbaum LLP

_____
By: Matthew P. Dregne
City Attorney

Attachments:

A – Certified Survey Map
B Description of Public Improvements
C Form of Municipal Revenue Obligation
D City Contract Insurance Requirements