AGREEMENT TO UNDERTAKE DEVELOPMENT

(STI Holdings)

THIS AGREEMENT TO UNDERTAKE DEVELOPMENT entered into as of the _____ day of _____, _____, by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and STI Holdings, Inc. a Wisconsin corporation (the "Developer").

RECITALS

1. On September 12, 2023, the City Council approved the certified survey map attached as Attachment C hereto (the "CSM") for an area of land located in the City of Stoughton, Dane County, Wisconsin, (the "Property") contingent upon the satisfaction of certain conditions set forth in City Council Resolution No R-138-2023.

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Return to:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

PIN:
See Attachment E

2. Chapter 66 of the City of Stoughton Municipal Code requires that an agreement be made for the installation of improvements needed to serve the Property. Developer proposes to develop the Property in Phases, and now wishes to develop Lot 1, , a portion of Lot 2, and Outlot 1 of the CSM, and install the public improvements needed to serve those lots as described in this Agreement ("Phase 1").

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3. Developer is unable to earn a reasonable return on Developer's investment in developing the Property without financial assistance from the City.

4. The City is willing to facilitate the development of Phase 1, but is unable to do so unless certain conditions are satisfied, including the creation of a Tax Increment Finance District that includes the Property, pursuant to Wis. Stat. § 66.1105.

5. To make development of Phase 1 financially feasible, the City finds it appropriate to enter this Agreement to set forth certain obligations and understandings in the event a Tax Increment District is created and the other conditions set forth in this Agreement are satisfied, all as described in, and subject to the reservations contained in, this Agreement.

6. Developer lacks the necessary permits and approvals to proceed with development of a portion of Lot 2 and Lot 3 of the CSM ("Phase 2") but has nonetheless asked the City to make certain commitments relating to providing financial assistance to develop Phase 2. The City is willing to facilitate the development of Phase 2, but is unwilling and unable to do so unless certain conditions are satisfied, as set forth in this Agreement.

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

8. The City finds that the development of the Property 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 and creating employment and commercial opportunities, thereby serving public purposes in accordance with state and local law.

9. The City Council on _____, _____, adopted Resolution No._____ 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 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 the District, 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. A copy of form PC-202, for 2022 taxes payable in 2023, is attached as Attachment H. The parties agree that the City may reasonably calculate Actual Tax Increment 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 Actual Tax Increment in such other reasonable manner as it determines appropriate and that is consistent with the manner in which the Department of Revenue calculates tax increment. The City may make such adjustments in calculating Actual 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. The calculation of Actual Tax Increment shall not be reduced as a result of the failure of any party (other than the owner of the Property) to timely pay taxes on property in the District, so long as Dane County has paid to the City the amount of such unpaid taxes due to pay the taxes levied by all taxing jurisdictions.

2. Annual Debt Service. The principal and interest payments due in a given year on City Borrowing.

3. Base Value. The Base Value of the District will be determined by the Wisconsin Department of Revenue.

4. CSM. The land division Certified Survey Map attached as Attachment C, as modified to meet the conditions specified in City of Stoughton Common Council Resolution No. R-138-2023.

5. City Administrative Costs. $30,000 in 2026, and $7,500 each year thereafter.

6. City Borrowing. The amount to be borrowed by the City through the issuance of bonds or other forms of debt or borrowing, to fund 65 percent of the cost to construct the Highway 51 Improvements, including three years of capitalized interest, currently estimated to be $1,539,450.00, and as further described in Section D.1of this Agreement.

7. District. A Tax Increment District (expected to be named City of Stoughton Tax Increment District Number 10 or 11) that may be created pursuant to Wis. Stat. § 66.1105, that must include the Property within its boundaries, and that must include within its approved Project Plan, as allowable Project Costs, payment of the cost of the Municipal Revenue Obligations provided for in Section C of this Agreement, and the City Highway 51 Improvements.

8. Excess Tax Increment. Excess Tax Increment has the meaning given in Section C.7(c) of this Agreement.

9. Highway 51 Improvements. Enhanced pedestrian features, wider sidewalks, upgraded street lighting, and trees and landscaping within the Highway 51 corridor, a pedestrian and bicycle underpass, and the reconstruction of the intersection of Highway 51 and Rutland-Dunn Townline Road, including a round-about at that intersection.~~The Developer's obligation to fund the Highway 51 Improvements shall be limited to no more than $1.6 million.~~

10. MRO Increment. MRO Increment has the meaning given in Section C.7.(b) of this Agreement.

11. Phase 1 Lots. Lot 1, Lot 2, Lot 3 and Outlot 1 within the CSM, except that the Phase 1 Lots include only that portion of Lot 2 to be developed as ~~single-family and two-family residential Lots accessed from Greenbriar and Kings Lynn and portion of Lot 3 to be developed as single-family Lots accessed by Kings Lynn~~as~~two-family residences, as~~ shown on the concept plan attached as Attachment J.

12. Phase 1 Improvements. The Public Improvements needed to serve the Phase 1 Lots, including but not limited to Greenbriar Drive, Kings Lynn Road and Street A shown on the CSM, ~~a multi-use trail through Outlot 1,~~ Stormwater Management Facilities, and such other Public Improvements reasonably deemed necessary to serve the Phase 1 Lots by the City Planning Director or the Utilities Director. For purposes of this Agreement, the terms "City Planning Director" and "Utilities Director" shall mean the person appointed by the City to perform the duties of those positions, whether on a permanent or interim basis.

Commented [MD1]: See above definition of City Borrowing, which makes it clear that Developer's guarantee obligation for HWY 51 Improvements is limited to 65 percent of the cost of the improvements.

Commented [WC2R1]: We respectfully disagree that the definition in A.6. is clear as to such limited obligation. We request STI's obligations in this regard be clear. We are willing to discuss the amount if that is in dispute.

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Commented [MD3]: Developer requested this "reasonability" standard, which could lead to disagreement later over whether a decision is reasonable. "Reasonable" is a somewhat ambiguous standard.

Commented [WC4R3]: We requested insertion of the term "reasonable" to make clear the decision is not to be based on unfettered discretion of the City official. We are open to use of another term if that is desired.

Commented [DT5R3]: In addition, the multi-use trail will be built in a future phase as it will not tie into anything on either side per discussions with the City and Strand.

13. Phase 2. The subdivision, rezoning and development of the lands within Lot 3 of the CSM, and that portion of Lot 2 of the CSM that is not part of the Phase 1 Lots, in a matter that conforms to the conceptual plan attached as Attachment J.

14. Property. The lands described in the CSM as Lots 1, 2 and 3 and Outlot 1.

15. Public Improvements. Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; storm sewer and Stormwater Management Facilities; public streets; sidewalks; street signs; and, improvements required to connect the Property to existing Public Improvements, facilities or utilities, including any improvements required outside the boundaries of the CSM.

16. Stormwater Management Facilities. Forebay and infiltration ponds and associated vegetation, with the wet forebay ponds to be designed and constructed in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director.

17. Value Increment. The equalized value of the District in a given year, minus the Base Value.

B. DEVELOPER OBLIGATIONS.

1. Construction of Phase 1 Improvements.

(a) *Design of Improvements.* Developer shall prepare detailed plans and specifications of the Phase 1 Improvements for review by and subject to approval by the City Planning Director and the Utilities Director. In addition, Developer shall prepare preliminary plans for improvements beyond the boundaries of Phase 1, as reasonably directed by the City Planning Director or the Utilities Director, to evaluate the sizing of Phase 1 Improvements. 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 and Utilities Director. All Phase 1 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 and Utilities Director, such approval not to be unreasonably delayed or withheld. The City shall have the right to use the plans and specifications of the Phase 1 Improvements, without restriction, for any purpose relating to the construction, installation, repair or maintenance of the Phase 1 Improvements.

Commented [MD6]: Same comment about "reasonably."

Commented [MD7]: Same comment about "reasonableness" standard.

Commented [WC8R7]: Matt, as you are aware, this is a very common phrase in contracting simply to ensure any decision authority is not interpreted to mean I is within the absolute discretion of the city official

(b) *Construction of Phase 1 Improvements.* Developer shall be responsible for the construction and installation of the Phase 1 Improvements. Except as otherwise provided in this Agreement, the Phase 1 Improvements will be designed, constructed and installed at Developer's sole expense.

(c) *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.

(d) *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Phase 1 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 and the Wisconsin Department of Transportation. The traffic control plan shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration.

(e) *City Approval of Starting Dates.* No work on the Phase 1 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. Nothing in the section prevents Developer from lawfully engaging in land disturbing activities, after receiving any required approvals or permits such as an erosion control permit.

(f) *Change to Work Order.* No change may be made to the approved plans and specifications for the Improvements without the written approval of the City Planning Director.

(g) *Time of Completion*. The Phase 1 Improvements shall be substantially complete within twenty-four months after this Agreement is executed and the CSM is recorded, subject to force majeure extension as provided in section 23 below.~~.~~ No damages may be recovered by Developer or any person against the City for delay in completion of the Phase 1 Improvements.

(h) *Acceptance (other than Stormwater Management Facilities).* After the Phase 1 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 Phase 1 Improvements, the City Planning Director or the Planning Director's designee shall inspect the improvements. The City Planning Director shall recommend that the Phase 1 Improvements be accepted, conditionally accepted or not accepted. Upon receipt of the Planning Director's recommendation that the Phase 1 Improvements be accepted, the City Council shall by resolution accept such completed Phase 1 Improvements. Before obtaining city council acceptance 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 (see Attachment G). Acceptance 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 acceptance.

The Developer agrees that Phase 1 Improvements will not be accepted by the City until the Phase 1 Improvements have been inspected and approved by the City Planning Director and furthermore until all affidavits and 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 system and sanitary sewer improvements 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. Sanitary sewer improvements shall not be accepted until they have been flushed, televised at Developer's cost, and determined to be in good condition. In addition, Developer shall clean the storm sewers prior to acceptance by the City in accordance with the reasonable directives of the City Planning Director.

Commented [MD9]: Same comment about "reasonable" standard.

The Developer agrees to provide for maintenance and repair of all required Phase 1 Improvements until such Phase 1 Improvements are formally accepted by the City. Developer shall be responsible for locating sanitary sewer, water and stormwater infrastructure, in response to utility locate (digger's hotline) requests, until such improvements have been 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.

(i) *Acceptance of Stormwater Management Facilities.*

(1) Conditional Acceptance. After the Stormwater Management Facilities have been completed, and within 10 days after receiving written notice that the Developer desires the City to conditionally accept Stormwater Management Facilities, the City Planning Director or the Planning Director's designee shall inspect the Stormwater Management Facilities. The Planning Director shall conditionally accept the Stormwater Management Facilities upon the Planning Director's determination that the following conditions have been satisfied:

a. The Stormwater Management Facilities have been constructed in accordance with the approved plans and specifications, all as verified by as-built certification including a set of drawings that compares the approved improvements to the improvements as built, stamped by a professional engineer, and approved by Dane County Land and Water Resources Department staff.

b. The Stormwater Management Facilities are protected from erosion from the land area served by the Facilities, through the establishment of

vegetation, the approval and implementation of one or more erosion control plans, or a combination of vegetation and erosion control measures.

c. Developer has entered into and pre-paid a contract that is acceptable to the City Planning Director and that provides for the maintenance of the Stormwater Management Facilities for a period of not less than 36 months from the date of conditional acceptance. The contract shall require, at a minimum, establishing and maintaining vegetation, weed removal, mowing, and erosion damage repair.

Upon the City Planning Director's conditional acceptance of Stormwater Management Facilities, the letter of credit required under Section B.1.(l) of this Agreement may be reduced by the estimated cost of such Facilities used to calculate the amount of the original letter of credit, but the reduced letter of credit shall still equal not less than 120 percent of the estimated cost of the Phase 1 Improvements not yet accepted, plus 25 percent of the cost of Phase 1 Improvements that have been accepted or conditionally accepted.

(2) Acceptance. After Stormwater Management Facilities have been maintained for a period of not less than 36 months pursuant to a contract approved in connection with conditional acceptance, and within 10 days after receiving written notice that Developer desires the City to accept such Stormwater Management Facilities, the City Planning Director or his designee shall inspect the Stormwater Management Facilities. The Planning Director shall recommend acceptance of the Stormwater Management Facilities upon the Planning Director's determination that: (1) the Stormwater Management Facilities continue to conform to the approved plans and specifications (except that wet forebay ponds shall not be less than six feet below normal water elevation, as verified by as-built certification including a set of drawings that compares the approved improvements to the improvements as built, stamped by a professional engineer; (2) are erosion free and in good and operable condition; and, (3) that all required vegetation has been established. Upon receipt of the Planning Director's recommendation that the Stormwater Management Facilities be accepted, the City Council shall by resolution accept such completed Stormwater Management Facilities, and the remaining letter of credit amount associated with the accepted Stormwater Management Facilities may be reduced to zero.

(j) *Guarantee of Phase 1 Improvements*. Developer guarantees and warrants the Phase 1 Improvements, other than the Stormwater Management Facilities, against defects in workmanship or materials, for a period of one year from the date such Public Improvements are finally accepted by the City (the "guarantee period"). If any defect appears during the guarantee period, Developer shall make required replacement or acceptable repairs of the defective work or materials 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. Following completion of the guarantee period, the remaining letter of credit amount

associated with Phase 1 Improvements other than the Stormwater Management Facilities shall be reduced to zero.

(k) *Surety*. Before a starting date for construction will be approved, Developer shall provide the City with a letter of credit or performance bond in the amount of 120 percent of the estimated cost of constructing the Phase 1 Improvements. If a performance bond is provided, is shall conform substantially to the form of bond attached as Attachment M. Any letter of credit or performance bond shall be acceptable to the City Attorney, in both form and substance. If a letter of credit is provided, the following terms shall apply:

(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 120% of the estimated cost of the Phase 1 Improvements, to secure Developer's construction of the Phase 1 Improvements and Developer's guarantee of the Phase 1 Improvements. The City and Developer agree that the estimated cost of the Stormwater Management Facilities serving the Phase 1 Lots is set forth on Attachment F. 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 Phase 1 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 Phase 1 Improvements that have been installed, completed and accepted by the City. If Phase 1 Improvements are accepted subject to one or more conditions, the conditional acceptance may authorize a reduction in the letter of credit. In no event shall the letter of credit be reduced below the aggregate of: 120 percent of the estimated cost of the Phase 1 Improvements not yet installed or accepted, or in the case of conditional acceptance such amount as the City may approve, plus 25 percent of the cost of Phase 1 Improvements that have been accepted.

Commented [MD10]: We are still waiting for this exhibit.

Commented [MD11]: If we use the two tier approach to accepting Public Improvements, we'll need this exhibit.

(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 Phase 1 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) Term, Renewal and Extension. The term of the initial letter of credit shall be not shorter than 24 months. 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 an amount sufficient to secure performance of Developer's remaining obligations.

(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, or any remedies available in law or equity in addition to, or in lieu of, the remedies provided in this Section.

2. Electric and Street Light Infrastructure. Developer shall, before the City will sign the CSM, provide a deposit to Stoughton Utilities, in the amount of $_____, to pay the cost of installing the electric distribution facilities and the street lighting needed to serve the Phase 1 Lots.

3. Oversized Stormwater Management Facility. [Insert text re constructing oversized stormwater facility to accommodate DOT project, including text regarding compensation for land. Consider need for City to have agreement with DOT, consider timing issues.]

4. Building Permits. Except as provided in Wis. Stat. § 236.13(2)(am)3.c., no building permit may be issued for any lot in Phase 1 until all Phase 1 Improvements have been completed, the Stormwater Management Facilities needed to serve the Phase 1 Lots have been conditionally accepted or accepted, and the City Planning Director has recommended that the Phase 1 Improvements other than Stormwater Management Facilities be accepted.

5. Cost Reimbursement Agreement. The Cost Reimbursement Agreement attached as Attachment D remains in full force and effect, except that Section 3. B. of that agreement is hereby deleted, and the Cost Reimbursement Agreement shall remain in effect until the one year guarantee period provided for in Section B. 1. (j) of this Agreement expires, at which time the Cost Reimbursement Agreement will terminate. The City shall not charge any costs pursuant to the Cost Reimbursement Agreement which may be recovered as City Administrative Costs pursuant to section A.5. above.

C. **MUNICIPAL REVENUE OBLIGATIONS.**

1. Phase 1 Municipal Revenue Obligation. Within 45 days after the conditions in Section C. 1. (a), below, have been satisfied, the City shall issue a Municipal Revenue Obligation to Developer in the principal amount of $_____, as adjusted

Commented [MD12]: I'll need direction from the Developer and the DOT on this. We may also need an agreement with the DOT on this.

Commented [MD13]: I'll need direction from the Developer and the City on this. We will also need an agreement with the DOT on this.

Commented [DT14]: It is imperative that the Phase 1 improvements and headquarter construction are able to run concurrently. We are open to discuss how this is accomplished.

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Commented [MD15]: Policy decision for the City Council.

pursuant to Section C.3. of this Agreement (the Phase 1 Municipal Revenue Obligation), in the form attached hereto as Attachment A, under the terms and conditions in this Section C. 1.

(a) The following conditions must be satisfied before the City will be obligated to issue the Phase 1 Municipal Revenue Obligation:

(1) This Agreement must be approved and executed by the City and Developer;

(2) The CSM must be approved and recorded with the Register of Deeds for Dane County.

(3) The District must be created and approved by the City, the Joint Review Board, and the Wisconsin Department of Revenue.

(4) Developer must provide the surety required by Section B. 1. (l) of this Agreement to the City.

(5) The Phase 1 Improvements must be completed and accepted by the City, and the lookback calculation described in Section C.3. of this Agreement must be completed.

(6) The new corporate headquarters building for Stoughton Trailers, Inc., not smaller than _____square feet, must be constructed on the land shown as Lot 1 on the CSM, and a certificate of occupancy must be issued for such new corporate headquarters building.

(b) The Phase 1 Municipal Revenue Obligation shall bear simple interest at an annual rate of ___5 %_____%. Interest shall not accrue on unpaid interest.

2. Phase 2 Municipal Revenue Obligation. Developer is not obligated to undertake Phase 2. This section addresses the use of tax increment financing to facilitate the development of Phase 2 in the event Developer choses to undertake Phase 2. Within 45 days after the conditions in Section C. 2. (a), below, have been satisfied, the City shall issue a Municipal Revenue Obligation to Developer in the principal amount of $_____, as adjusted pursuant to Section C.3. of this Agreement (the Phase 2 Municipal Revenue Obligation), in the form attached hereto as Attachment A, under the terms and conditions in this Section C. 1.

Commented [MD16]: Policy decision for the council.

(a) The conditions set forth in section C. 2. (a) below must be satisfied before the City will be obligated to issue the Phase 2 Municipal Revenue Obligation.

(1) This Agreement must be approved and executed by the City and Developer;

(2) Developer must record the CSM with the Register of Deeds for Dane County.

(3) Developer must obtain approval of and record a plat further subdividing Lot 3 that conforms to the conceptual plan attached as Attachment J, which approval shall not be unreasonably withheld or delayed.

(4) Developer must obtain approval of zoning changes of the lands within Lot 3 of the CSM that conform to the zoning classifications shown on the conceptual plan attached as Attachment J, which approval shall not be unreasonably withheld or delayed.

(5) Developer must, within Phase 1 and Phase 2 combined, dedicate not less than 64.92 acres for stormwater management, and dedicate and shall obtain credit from the City for dedicating, pursuant to Section F of this Agreement, not less than 32 acres of land for park and recreation uses.

(6) Developer and the City must enter into a mutually acceptable development agreement that requires Developer to construct and install all public improvements needed to serve the development of Phase 2. The City shall not unreasonably delay or withhold entry into such agreement provided it provides for the construction and installation of public improvements to serve the development of Phase 2 in substantially the same manner as the installation of public improvements to serve the development of the Phase 1 Lots.

(7) Developer must complete the construction of all public improvements needed to serve Phase 2, and those improvements must be accepted by the City, all in accordance with the development agreement referred to in subsection 2.(a)(6), above.

(8) The City must complete the lookback calculation described in Section C.3. of this Agreement.

(9) The District must be created and approved by the City, the Joint Review Board, and the Wisconsin Department of Revenue.

(b) The Phase 2 Municipal Revenue Obligation shall bear simple interest at an annual rate of ____5 %~~_____%.~~ Interest shall not accrue on unpaid interest.

3. Look Back. Attached hereto as Attachment B is a financial pro forma, (the "Original Development Pro Forma"), which shows, among other things, the *estimated* cost of constructing the Phase 1 Improvements and the Phase 2 Improvements. Based on the Original Development Pro Forma, the estimated cost of the Phase 1 Improvements is $_____, and the estimated cost of the Phase 2 Improvements is $_____. Following the City's acceptance of the Phase 1 Improvements, or the Phase 2 Improvements, Developer shall submit to the City an updated statement, in the same form and containing the same items of expenses used in the Original Development Pro Forma, but certifying the *actual* cost of constructing the Phase 1 Improvements or the Phase 2 Improvements, as applicable, (the "Updated Development Pro Forma") as of the date the City accepts the Phase 1 Improvements or

Commented [MD17]: This language was requested by Developer. It effectively requires the City to decide now, when approving this agreement, to bind the City Council to approving a plat (and the associated park and other dedications) at some future date, before the usual and legally prescribed process.

Commented [MD18]: This language was requested by Developer. It may not be legally enforceable, because it appears to bind the City to approve zoning decisions in the future, before the legal zoning process including public hearings.

Commented [MD19]: This condition is needed because the amount of TIF funding is based, in part, on the amount on land that will be dedicated for stormwater and park related uses. If less land is dedicated for those uses, and more land is developed, the financial review supporting the TIF analysis would no longer match the facts on the ground. The conceptual plan says that in Outlot 3, 28.3 acres will be for parks, 2 acres will be for trails, and 36.1 acres will be dedicated for stormwater. On December 18, Daniele Thompson said that about 1,600 feet of trail will be constructed on Outlot 1. At a width of 50 feet, that results in about 1.83 acres of land for trail use in Outlot 1. That leaves 28.82 acres in Outlot 1 for stormwater.

Commented [MD20]: Developer requested the highlighted text. The meaning is not entirely clear, but the intent seems to be to say that the City would be required to give the Developer credit for dedicating 32 acres of parkland, even if fewer acres are actually dedicated.

Commented [WSC21]: Issue for discussion

Commented [DT22R21]: I do not believe the 64.92 acre number is correct.

Commented [MD23]: Developer quested this highlighted text. This text limits the City's future flexibility in negotiating a development agreement for Phase 2, before the City has gone through the Phase 2 entitlement process (mainly land divisions, zoning, stormwater). Importantly, this agreement would also commit the City to providing TIF funding for Phase 2, meaning the use of TIF will not be available as a tool to negotiate more favorable terms in the Phase 2 agreement.

Commented [MD24]: Note that this lookback considers only costs, and not revenues. Because cost savings would reduce the MRO by only 50%, the TIF funding may result in a higher than projected rate of return. In addition, if costs are higher than projected, the MRO would increase, but only by 50 %.

the Phase 2 Improvements (the "Lookback Date"). Developer shall provide to the City such invoices, documents and other evidence supporting the Updated Development Pro Forma as the City may reasonably request. If the actual cost of constructing the Phase 1 Improvements is less than the estimated cost as shown in the Original Development Pro Forma, then the principal amount of the Phase 1 Municipal Revenue Obligation shall be reduced by 50% of the difference between the estimated cost and the actual cost of the Phase 1 Improvements. If the actual cost of constructing the Phase 1 Improvements is greater than the estimated cost as shown in the Original Development Pro Forma, then the principal amount of the Phase 1 Municipal Revenue Obligation shall be increased by 50% of the difference between the estimated cost and the actual cost of the Phase 1 Improvements. If the actual cost of constructing the Phase 2 Improvements is less than the estimated cost as shown in the Original Development Pro Forma, then the principal amount of the Phase 2 Municipal Revenue Obligation shall be reduced by 50 % of the difference between the estimated cost and the actual cost of the Phase 2 Improvements. If the actual cost of constructing the Phase 2 Improvements is greater than the estimated cost as shown in the Original Development Pro Forma, then the principal amount of the Phase 2 Municipal Revenue Obligation shall be increased by 50% of the difference between the estimated cost and the actual cost of the Phase 2~~1~~ Improvements.

Commented [WC25]: I believe this should refer to Phase 2

4. Limited Obligation. The Municipal Revenue Obligations will not be general obligations of the City, and will not constitute a charge against the City's general credit or taxing power. The Municipal Revenue Obligations shall be payable solely from and only to the extent that the City has received MRO Tax Increment as of October 1 in a given year, and MRO Tax Increment has been appropriated by the City Council to payment of a Municipal Revenue Obligation.

5. Payment Dates. Beginning on the first November 1 after a Municipal Revenue Obligation is issued, and on each November 1 thereafter, One Hundred Percent (100%) of the MRO Tax Increment received by the City in that calendar year and appropriated by the City Council for payment of a Municipal Revenue Obligation shall be paid to Developer, until the sooner of (1) when the City has paid Developer the full principal amount of plus accrued interest on the Phase 1 Municipal Revenue Obligation and the Phase 2 Municipal Revenue Obligation, or (2) Wisconsin law prohibits further payments of Actual Tax Increment from the District.

6. Covenant re Annual Appropriation. The City covenants and agrees that MRO 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 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. To the extent permitted by then current law, if the life of the District may be extended, the Developer may request the City ot so extend the life of the District in order to facilitate full payment of the Municipal Revenue Obligation. While the City shall not be obligated to so extend the District, the parties contemplate that the City will do so, unless in good faith there are pressing and imperative needs of the City which preclude such extension.

Commented [MD26]: The highlighted text was requested by Developer. It is an attempt to limit the City's future discretion in deciding whether to extend the life of the District.

Commented [WC27R26]: From the Developer's standpoint, we are not attempting to limit the City's discretion if there is any good faith reason the City believes the District should not be extended. Our intent is to simply be able to request the extension if the MRO will not be paid in full by the end of the District life and that the City will consider the extension in good faith. We are open to different language is desired.

7. Allocation of Actual Tax Increment. Actual Tax Increment shall be applied as follows:

(a) First, to pay City Administrative Costs.

(b) Second, 90 percent of Actual Tax Increment remaining after paying City Administrative Costs shall be available for payment of any Municipal Revenue Obligation that has been issued pursuant to this Agreement. For purposes of this Agreement, "MRO Tax Increment" shall mean 90% of Actual Tax Increment remaining each year after paying Administrative Costs each year.

(c) Third, Actual Tax Increment that remains after paying City Administrative Costs and after allocating MRO Tax Increment toward payment of any Municipal Revenue Obligation that has been issued pursuant to this Agreement, shall be allocated to the City to pay Annual Debt Service on City Borrowing. For purposes of this Agreement, "Excess Tax Increment" shall mean Actual Tax Increment remaining each year after paying Administrative Costs and after allocating MRO Tax Increment to payment of any Municipal Revenue Obligation that has been issued pursuant to this Agreement.

(d) Fourth, except as described in subsection (e) below, Actual Tax Increment that remains after paying City Administrative Costs, and after allocating MRO Tax Increment toward payment of any Municipal Revenue Obligation, and after allocating Excess Tax Increment to pay Annual Debt Service on City Borrowing, may be used to pay any other District project costs.

(e) Fifth, if in any calendar year beginning with calendar year 2029 Excess Tax Increment is sufficient to pay 200 percent or more of the Annual Debt Service due that year, then the City shall pay to the Developer 50 percent of the excess amount over the amount necessary to pay the Annual Debt Service due that year. This payment shall be in addition to any Phase 1 or Phase 2 Municipal Revenue Obligation payments due that year.

Commented [MD28]: Developer requests this language. This provision would allow the develop to receive more tax increment than needed to support a 12 percent rate of return, with no upper limit.

D. **TAX INCREMENT GUARANTEES.**

1. Anticipated City Borrowing.

(a) The City intends to enter into the City Borrowing for the purposes of financing the Highway 51 Improvements.

(b) The City intends to pay off the City Borrowing generally in accordance with the schedule shown on Attachment K. The parties agree that Attachment K is based on estimates and forecasts that may or may not accurately reflect the actual City Borrowing or the final schedule of payments. Accordingly, the parties agree that the City may amend Attachment B to reflect the actual City Borrowing schedule and Annual Debt service schedule when City Borrowings are finalized. It is further understood and agreed that this paragraph shall not preclude the City from any refinancing or restructuring of City Borrowing in order to take advantage of any increased cash flow to the District or lower interest rates.

2. Developer Guarantees to City.

(a) *Guarantee of Tax Increment*. Developer acknowledges and agrees that the Excess Tax Increment received by the City from the District is intended to be sufficient to pay the Annual Debt Service on the City Borrowing. It is further agreed that the Annual Debt Service on the City Borrowing be paid from Excess Tax Increment generated by the District, and/or capitalized interest available under the City Borrowing, in accordance with Wis. Stat. sec. 66.1105.

(b) *Guarantee of Sufficient Excess Tax Increment to Pay Annual Debt Service.* Developer guarantees that, beginning in the calendar year 2029, the Excess Tax Increment will be sufficient to fully pay the Annual Debt Service on City Borrowing. If, in any calendar year beginning with calendar year 2029, the Excess Tax Increment received by the City and allocated as described in Section C.7 of this Agreement is insufficient to pay the Annual Debt Service due that year, then Developer shall be required to pay to the City the amount by which the Actual Tax Increment is insufficient to pay the Annual Debt Service due that year. Developer's due date for making any required payment on Developer's guarantee shall be 31 days before the due date of an Annual Debt Service payment. The City shall provide Developer with written notice of any insufficiency in the Actual Tax Increment 45 days prior to the due date of an Annual Debt Service payment, or as soon thereafter as the amount of the insufficiency is known to the City. If Developer does not make a required payment on Developer's guarantee obligation when due, then the City may retain MRO Tax Increment in the amount past due and use such MRO Tax Increment to pay Annual Debt Service or to reimburse the City for having paid such Annual Debt Service.

3. Tax Agreement. Developer shall execute and deliver to the City for recording with the Dane County Register of Deeds the Tax Agreement attached as Attachment L.

E. **CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.**

Commented [WC29]: Matt, aren't these redundant with the MRO precendential conditions? We should be able to delete one or the other.

All of the following must occur before either party's obligations under this Agreement will be effective and before the CSM will be signed by the City.

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

2. The conditions of approving the CSM attached as Attachment C, set forth in Resolution No. R-138-2023, must be satisfied, and the CSM must be recorded.

3. A Tax Increment District must be fully and finally approved by the City, the Joint Review Board. The Tax Increment District must include the Property within its boundaries. The project plan for the District must include, as eligible project costs, payment of the Municipal Revenue Obligation described in Section C.1. of this Agreement, and the City Highway 51 Improvements.

4. Developer shall provide to the City the surety required by Section B. 1. (k) of this Agreement.

5. Developer shall provide to Stoughton Utilities the deposit required by Section B. 2. of this Agreement.

6. The City and the Wisconsin Department of Transportation ("DOT") must enter into an agreement that is satisfactory to the City and that requires the DOT to pay $_____ to the City by not later than _____, to allow the City to compensate Developer for the oversizing of stormwater management facilities pursuant to Section B.3. of this Agreement.

If the conditions described in this Section D are not satisfied by_____, then this Agreement shall be null and void. If satisfaction of one or more of the conditions is delayed by war, natural disaster or other similar force majeure event that is beyond the parties' control and prevents satisfaction of the condition or conditions, then the time for satisfying such condition or conditions shall be extended by the number of days such event prevents the satisfaction of the condition or conditions.

Commented [MD30]: What is a reasonable deadline?

Commented [MD31]: Developer requested this "force majeure" language. A force majeure clause frees parties from obligations if an extraordinary event prevents one or both parties from performing. It seems unnecessary and out of place to extend the time for satisfying these conditions. Inclusion of this language also seems to present minimal risk to the City.

Commented [WC32R31]: We emphasize the force majeure provision only extends deadlines, it does not excuse the obligation. We further emphasize it only applies to delays due to events beyond our control. Lastly, as you are aware, force majeure provisions are very common in contracting.

F. **PARK DEDICATION AND IMPACT FEES.**

1. City Requirements. Developer acknowledges all of the following:

(a) Section 66.1101 (1) of the City's Municipal Code states as follows: "After consultation with the parks and recreation committee, the plan commission shall determine whether the dedication of land for parks or monies in lieu thereof will better serve the public interest. Where land is to be dedicated, 1,468 square feet of land shall be dedicated for each single family dwelling, 1,019 square feet of land shall be dedicated for each dwelling unit in a two-family or multi-family development, and 528 square feet of land shall be dedicated for each dwelling unit in a Group Quarters. For purposes of this Section, "Group Quarters" has the meaning set forth in section 67-3. These dedication requirements are based on the Park Impact Fee, Fee in Lieu of Land Dedication and Public Facility Needs Assessment dated March 8, 2021 by Baker Tilly US, LLP."

(b) Section 66.1101 (2) of the City's Municipal Code states as follows: "The amount of any fee imposed under this section shall be $2,647 for each single family dwelling, $1,838 for each dwelling unit in a two-family or multi-family development, and $952 for each dwelling unit in a Group Quarters. Such fees are based on the Park Impact Fee, Fee in Lieu of Land Dedication and Public Facility Needs Assessment dated March 8, 2021 by Baker Tilly US, LLP."

(c) Section 67-5 (b) of the City's Municipal Code establishes impact fees per residential dwelling unit, adjusted as of January 4, 2024, as follows:

(1) For single-family residential development, the fee shall be $4,057 for park facilities improvements, $97 for trails, and $2,647 for park land acquisition.

(2) For two-family and multi-family residential development, the fee shall be $2,816 for park facilities improvements, $67 for trails, and $1,838 for park land acquisition.

(3) For Group Quarters, the fee shall be $1,459 for park facilities improvements, $35 for trails, and $952 for park land acquisition.

2. Park dedication in Phase 1. The development of the Phase 1 lots will include the construction of a multi-use trail within Outlot 1, currently estimated at a length of approximately 1,600 feet. Developer shall be credited with dedicating lands for park use equal to the square footage within the fifty-foot-wide corridor within which the multi-use trail is located, currently projected to be 80,000 square feet. The actual amount of park land dedication shall be calculated based on the actual, final length of the multi-use trail as shown by the final approved plans and specifications for the construction of Public Improvements serving the Phase 1 Lots. Developer shall not be credited with dedicating any other lands for park purposes within the Phase 1 Lots.

3. Park dedication in Phase 2. The amount and location of lands to be dedicated for park use in Phase 2 shall be determined during the City's review of the land division, zoning, stormwater and other development plans for Phase 2, and shall be documented in a development agreement for Phase 2. Although the conceptual plan attached as Attachment J shows, in Outlot 3, 28.3 acres of land for park use and 2 acres of land for trails, the City has not yet decided what if any lands in Phase 2 should be accepted for park dedication.

4. Relation between dedications and impact fees. Pursuant to Wis. Stat. § 66.0617(6)(d), impact fees due in connection with the issuance of building permits for dwelling units within the CSM shall be reduced to compensate for the dedication of land for park use, and for the construction of trails, as follows:

(a) For each square foot of land dedicated for park use, $1.80 will be available to reduce future impact fees for park land acquisition.

(b) For each linear foot of public trail constructed within the CSM, $24.33 will be available to reduce future impact fees for trails.

Commented [MD33]: $1.80 per square foot is based on Section C to the Needs Assessment, which states that the cost standard for land acquisition is $78,585 per acre.

Commented [MD34]: $24.33 is based on Section C to the Needs Assessment, which states that the cost standard per foot for trails is $22.42. It appears that the impact fees have increased by 8.51% since the Needs Assessment was prepared, so I increased the cost standard by 8.51%.

(c) The amounts available to reduce future impact fees, based on dedications and trail construction within the CSM, may be used only to reduce impact fees due for development on the lands within the CSM, and may not be used to as a credit against land dedication requirements or to reduce impact fees associated with land development outside the boundaries of the CSM. The amounts available to reduce future impact fees shall be used to reduce impact fees in the order in which building permits are applied for, until no credits remain available.

G. **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.

2. Title to the Property. Developer warrants that Developer owns the Property.

H. **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. The conceptual plan attached as Attachment J is not intended to and shall not indicate that Developer is entitled to any approval whether consistent with the conceptual plan or not. Developer is not entitled to any City approvals required for development of the Property as a result of this Agreement, including but not limited to any City approvals required before the City would have an obligation to issue a Municipal Revenue Obligation to Developer, or any approvals relating to the dedication of lands for parks or other purposes.

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, which shall not be unreasonably withheld or delayed, and any unapproved assignment is void. Developer may, without the City's prior consent, assign its rights under this Agreement to a lender providing financing for the development of Phase 1 or Phase 2, or to a development entity controlled by the Developer, but no such assignment shall relieve Developer from its obligations under this Agreement.

Commented [WC35]: As we have discussed, STI requests the option to develop this project through an separate development entity. As you are aware, this is very commonly done. We emphasize that in the event of any such assignment, STI would remain liable to the City for all obligations under this agreement.

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 both the City 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 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 12 percent per annum until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Cost Reimbursement Agreement between the City and Developer attached as Attachment D, 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 its officers, agents and employees, including but not limited to the City's contracted engineering consultants, 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 Phase 1 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, except as are a result of the intentional or negligent acts or omissions of any officer, agent or employee of the City. The City shall be entitled to appear in any proceedings to defend itself against such claims, and all costs, expenses and reasonable attorney fees incurred by the City in connection with such defense shall be paid by Developer to the City. 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 elects to exercise any of the remedies as provided under this Agreement following default hereunder.

Commented [WC36]: Please explain the concern here. We agree to defend the City on all such claims. If we refuse to do so, it makes perfect sense the City can do so on its own and we would be responsible for those costs. However, if we are providing a defense to the City, it is excessive for the City to insist on a second, duplicative, attorney at the Developer's cost

10. Insurance.

(a) *General requirements*. Except as expressly provided otherwise below, Developer and Developer's engineering consultants and contractors designing or performing any work on the Phase 1 Improvements shall, at no cost to the City, maintain in effect at all times

during the construction of the Phase 1 Improvements insurance coverage of the types and with limits not less than those set forth in this Section F. 10. A start date for construction shall not be approved until a list of Developer's contractors and proof of insurance have been provided to the Planning Director. Proof of insurance shall include a certificate of insurance (Acord Form or equivalent for all coverages) signed by the insurer's representative evidencing the coverage required by this Agreement. The Commercial General Liability coverage must include the coverages described in form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure or their equivalent. In addition, Developer shall provide endorsements acceptable to the City demonstrating that the requirements of Section F. 10. (e), relating to naming additional insureds, have been satisfied.

(b) *Waivers of subrogation*. All policies of insurance required by this Section F. 10 shall be primary and non-contributing coverage, and no insurance or self-insurance maintained by the City or its officers, council members, board members, agents, employees or authorized volunteers, will contribute to coverage of any loss. All liability and workers compensation policies must be endorsed with a waiver of subrogation in favor of the City, its officers, council members, agents, employees, and authorized volunteers.

(c) *Deductibles and self-insured retentions*. Any deductible or self-insured retention in any of the policies of insurance required by this Section F. 10 must be declared to the City and satisfied by Developer.

(d) *Acceptability of insurers*. All policies of insurance required by this Section F. 10 shall be placed with insurers who have an A.M. Best rating of not less than A- and a Financial Size Category of not less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.

(e) *Additional insureds requirements*. The following must be named as additional insureds on all policies of insurance required by this Section F. 10, excepting professional liability insurance, for liability arising out of the construction of the Phase 1 Improvements: the City and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be as broad as ISO form CG 20 10 04 13 and also include Products – Completed Operations additional insured coverage as broad as ISO form CG 20 37 04 13 or their equivalents for a minimum of three years after acceptance of the Phase 1 Improvements. The preceding sentence does not apply to Workers Compensation and Professional Liability Policies.

(f) *Limits and coverage*. The insurance requirements under this Agreement shall be the greater of the minimum limits and coverage specified herein, or the broader coverage and maximum limits of coverage of any insurance policy of proceeds available to the Named Insured. The parties agree that the insurance requirements in this Agreement shall not in any way act to reduce coverage that is broader or that includes higher limits. No representation is made that the minimum insurance requirements specified in this Agreement are sufficient to cover the obligations of Developer under this Agreement.

(g) *Claims Made Coverage*. If any insurance policy required by this Agreement is maintained on a claims-made basis, then the following additional requirements shall apply:

(1) The retroactive date must be shown, and must be before the date of this Agreement or the approved construction start date;

(1) Insurance must be maintained and evidence of insurance must be provided for a minimum of three years after the City has accepted the Phase 1 Improvements.

(2) If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement or the prior to the approved construction start date, the Developer or other party required to provide the insurance coverage shall purchase an extended reporting period for a minimum of three years after the date the City has accepted the Phase 1 Improvements.

(h) *Termination, cancellation or non-renewal*. Developer shall provide endorsements to the policies of insurance required to be maintained under this Agreement that provide that such policies shall not be cancelled, non-renewed, or voided without 30 days prior written notice to the City, except where cancellation is due to the non-payment of premiums, in which event 10 days-prior written notice shall be provided.

(i) *Coverage types and policy limits*. Developer and Developer's contractors shall maintain the following types of insurance coverage with not less than the following limits:

(2) Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01, including coverage for Products Liability, Completed Operations, Contractual Liability, and Explosion, Collapse, Underground coverage with the following minimum limits and coverage:

a.	Each Occurrence Limit	$1,000,000
b.	Personal Advertising Injury Limit	$1,000,000
c.	General aggregate limit (other than Products-Completed Operations) per project	$2,000,000
d.	Products-Completed Operations aggregate	$2,000,000
e.	Fire Damage limit – any one fire	$50,000
f.	Products – Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work	

(3) Business Automobile Coverage. Automobile Liability coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of $1,000,000 combined single limit per accident for Bodily Injury and Property Damage, provided on a Symbol #1-"Any Auto" basis.

(4) Workers Compensation and Employers Liability. As required by Wisconsin State Statute.

(5) Umbrella Liability providing coverage at least as broad as all the underlying liability policies with a minimum limit of $2,000,000 each occurrence and $2,000,000 aggregate, and a maximum self-insured retention of $25,000. The umbrella must be primary and non-contributory to any insurance or self-insurance carried by the City. Products-Completed Operations coverage must be carried for a minimum of three years after acceptance of completed work.

(6) Professional Liability Coverage. Developer's engineering consultants engaged in designing the Phase 1 Improvements, but not Developer and not Developer's construction contractors, shall maintain professional liability insurance coverage as follows:

g. Limits
   i. $1,000,000 each claim
   ii. $1,000,000 annual aggregate

h. Must comply with claims-made requirements in Section F. (10) (g), above.

11. 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:	St. Marie Law, LLC Attn: Daniele Thompson 214 S. Forrest Street, Suite 8 Stoughton, WI 53589
Developer's Attorney	William Cole Axley Brynelson, LLP 2 E. Mifflin St. #200 Madison, WI 53703
To the City:	Finance Director City of Stoughton 207 S. Forrest Street Stoughton, WI 53589
City Attorney	Matthew P. Dregne or Rick Manthe 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784

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

13. 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.

14. Ratification. Developer hereby approves and ratifies all actions taken to date by the City, its officers, employees and agents in connection with the District, and in connection with the subdivision, zoning and other approvals relating to the Property.

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

16. No Partnership. The City does not, in any way or for any purpose, become a partner, employer, principal, agent or joint venturer of or with Developer.

17. 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.

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

19. 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.

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

21. Term. Except as provided in Section D, this Agreement shall continue in full force and effect until such time as Developer's obligations under Sections 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.

22. 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.

23. Force Majuere. If a party's ability to perform an obligation under this Agreement is delayed by act of any god, flood, fire, windstorm, hurricane, tornado, explosion, earthquake, natural disaster, pandemic or epidemic (including but not limited to COVID-19 and its variants), adverse weather conditions of atypical severity, duration, or frequency, casualty, accident, war, terrorism, revolution, riot, civil commotion, blockade or embargo, strikes, lockouts, labor dispute, supply interruption, inability to procure labor or materials, regulatory or code changes from any governmental or quasi-governmental authority having jurisdiction over the Development, injunction, quarantine or "shelter in place" orders, law, proclamation, order, regulation or governmental demand ~~If a party's ability to perform an obligation under this Agreement is delayed by war, natural disaster~~ or other similar force majeure event that is beyond the party's reasonable control, then the time for performing such obligation shall be extended by the number of days such event prevents performance, provided that that party unable to perform gives prompt written notice explaining the delay and the reason for the delay.

24. Street Naming. Developer may ask the City to name or rename streets within the CSM, including renaming Greenbriar Drive, using names requested by Developer. The City will name or rename streets within the CSM using the names requested by Developer unless a name is the same or similar to another street in the City or the City has another reasonable basis for not using a name requested by Developer.

Commented [DT37]: The Developer wants the ability to name and re-name streets that impact the development as long as the names are not in conflict with EMS and Fire and follow existing ordinances and statutory requirements.

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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_____
Tim Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

DEVELOPER:
STI Holdings, Inc.

By _____

I, _____, certify that I am the _____ (title of office) of STI Holdings, Inc., and that _____, who signed the foregoing contract on behalf of said corporation was then _____ (title of office) of said corporation, and that said contract was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

By:_____

_____
(Print name)

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

Countersigned:

_____
David Ehlinger, Finance Director

_____
Date

Approved as to form:
Stafford Rosenbaum, LLP

By:_____
Matthew P. Dregne, City Attorney

Attachments:

A	Form of Municipal Revenue Obligation
B	Original Development Pro Forma
C	Certified Survey Map
D	Cost Reimbursement Agreement
E	Parcel ID Numbers
F	Estimated Cost of Stormwater Management Facilities
G	Stoughton Utilities/City of Stoughton GIS Standard Specification
H	WI DOR Form PC-202
I	[Intentionally Left Blank]
J	Conceptual Plan of Development
K.	Estimated Schedule of Annual Debt Service on City Borrowing
L	Form of Tax Agreement
M	Form of Performance Bond

Attachment A

FORM OF MUNICIPAL REVENUE OBLIGATION
TO AGREEMENT TO UNDERTAKE DEVELOPMENT

(STI Holdings – Phase 1)

FORM OF MUNICIPAL REVENUE OBLIGATION

CITY OF STOUGHTON
MUNICIPAL REVENUE OBLIGATION SERIES 20___
$_____

THIS MUNICIPAL REVENUE OBLIGATION (the "Obligation") is issued pursuant to Wis. Stat. § 66.0621 this _____ day of _____, 20___ by the City of Stoughton, Dane County, Wisconsin (the "City") to STI Holdings, Inc., its successors and assigns ("Developer").

WITNESSETH:

A. The City and Developer have entered into an Agreement to Undertake Development dated _____, _____ (the "Development Agreement").

B. This Obligation is issued by the City pursuant to the Development Agreement.

C. Terms that are capitalized in this Obligation that are not defined in this Obligation and that are defined in the Development Agreement shall have the meanings assigned to such terms by the Development Agreement.

D. *Promise to Pay*. The City shall pay to Developer the principal amount of $_____, with simple interest thereon at a rate of _____ percent (___ %) per annum, solely from MRO Tax Increment, in accordance with the terms and conditions of this Obligation. Beginning on the first November 1 after the date of this Obligation, and on each November 1 thereafter, One Hundred Percent (100%) of the MRO Tax Increment received by the City in that calendar year and appropriated by the City Council for payment of this Obligation shall be paid to Developer, until the sooner of (1) when the City has paid Developer the principal amount of $_____ plus interest accrued thereon, or (2) when the City is precluded by law from making further payments from the District. Any payments on the Municipal Revenue Obligation shall be payable solely from and only to the extent that, as of November 1 each year after the date of this Obligation, the City has received MRO Tax Increment. In no case shall the term of this Obligation and the City's obligation to make payments hereunder extend beyond the termination date of the District. Nor shall the City be obligated to pay any amount not appropriated for such purpose by the City Council. This Obligation shall terminate and the City's obligation to make payments under this Obligation shall be discharged, and the City shall have no obligation and incur no liability to make any payments hereunder, after the earlier of: (i) the termination date of the District; or (ii) Developer's receipt of $_____ plus interest accrued thereon.

E. *Limited Obligation of City*. This Obligation shall be payable solely from MRO Tax Increment, and shall not constitute a charge against the City's general credit or taxing power. The City shall not be subject to any liability hereunder, or be deemed to have obligated itself to pay Developer any amounts from any funds, except the MRO Tax Increment, and then only to the extent and in the manner herein specified.

F. *Subject to Annual Appropriations*. Each payment under this Obligation shall be subject to annual appropriation by the City Council in accordance with the requirements for revenue obligations and in a manner approved by the City's bond counsel.

G. *Prepayment Option.* To satisfy in full the City's obligations under this Obligation, the City shall have the right to prepay all or a portion of the outstanding principal balance of this Obligation at any time, at par and without penalty.

H. *Miscellaneous.* This Obligation is subject to the Tax Increment Law and to the Development Agreement.

Dated this _____ day of _____, _____.

CITY OF STOUGHTON

By_____
Tim Swadley, Mayor

ATTEST:

_____
Candee Christen, City Clerk

Attachment B

Original Development Pro Forma

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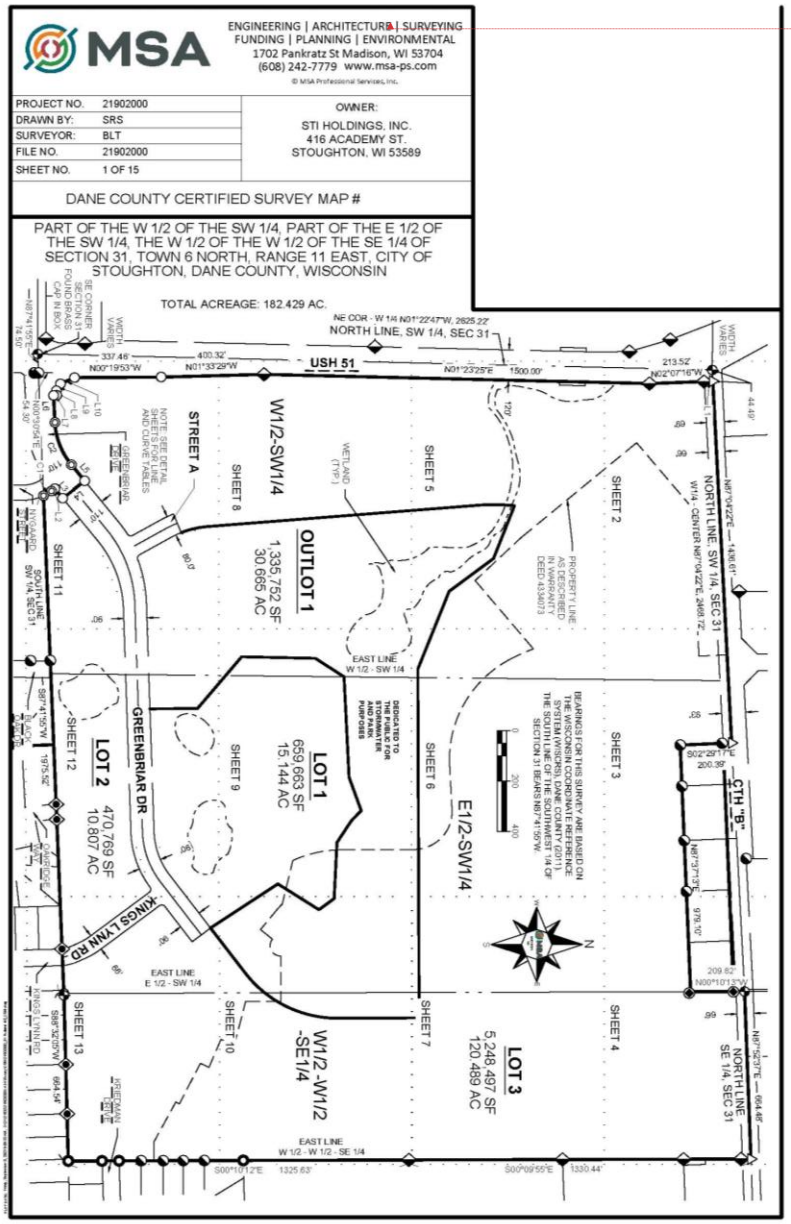
Attachment C

CERTIFIED SURVEY MAP



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Attachment D

COST REIMBURSEMENT AGREEMENT

STOUGHTON TRAILERS HWY 51 DEVELOPMENT

This Agreement is made and entered into by the City of Stoughton, a Wisconsin municipal corporation (the "City"), and STI Holdings, Inc., a Wisconsin corporation (hereafter referred to as the "Developer").

RECITALS

A. This Cost Reimbursement Agreement arises from Developer's wish to develop certain property located in Stoughton, Wisconsin, and generally described in the Draft Concept map attached as Exhibit B (the "Property").

B. Developer would like the City to apply to the Capital Area Regional Planning Commission and the Wisconsin Department of Natural Resources to add the Property to the Urban Service Area, and intends to ask the City to amend the City's comprehensive plan, to approve land division, zoning, and stormwater management applications, and to provide tax increment financing for the development, all of which will require the City to incur costs for internal review and for professional review.

C. Developer and the City acknowledge that Developer would like to develop the Property in phases, and that whether and how phasing may occur will be determined in the course of the review and action on Developer's proposed division and development of the Property.

D. The City requires Developer to enter into this Agreement to avoid undue expense to the City.

AGREEMENT

In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, the parties agree as follows.

1. DEVELOPMENT OF THE PROPERTY.

A. Zoning and Compliance with Plans and Regulations. The parties anticipate that Developer will ask the City to amend its Comprehensive Plan and to apply for zoning of the Property that is consistent with the City's Comprehensive Plan as amended. Any development of the Property shall be

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consistent with the City's Comprehensive Plan, and shall be reviewed and considered in accordance with the City's Comprehensive Plan, and land division, zoning, stormwater management, building and other regulations relating to the development of the Property.

B. Public Improvements. Developer shall be solely responsible for the cost of constructing any and all public improvements needed to serve the development of the Property, including the cost of extending any off-site improvements to the Property. The City shall have no obligation to obtain any interests needed to extend public improvements to the Property, through the exercise of eminent domain or otherwise.

C. Water Main Looping. Development of the Property shall require the looping of water main. Developer shall be responsible for the cost of any water modeling the City deems necessary, and for the cost of constructing any off-site water infrastructure the City seems necessary to provide adequate water quality, capacity and pressures to serve the Property when developed.

D. Sanitary sewer capacity. Development of the Property shall require evaluation of the capacity of the sanitary sewer infrastructure downstream of the Property. Developer shall be responsible for the cost of any sanitary sewer capacity study deemed necessary by the City, and for the cost of any off-site sanitary sewer infrastructure the City deems necessary to provide adequate sanitary sewer capacity to serve the development of the Property. For purposes of this section, "development" means the construction of public or private improvements within the Property.

E. Other Requirements Apply. Nothing in this Agreement is intended to relieve, nor shall it be construed as relieving, or in any way satisfying, obligations, procedures or requirements to the City of Stoughton pertaining to the future development or division of the Property.

2. FEES AND COSTS.

A. Application, Review and Administrative Fees. Developer shall pay to the City, within 30 days after delivery of a written request for payment, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred or accrued before or after the execution of this Agreement in connection with: (1) the review and processing of petitions, applications and plans for the, zoning, division or development of the Property, amending the City's Comprehensive Plan, and tax increment financing; (2) the negotiation, preparation, consideration and review of this Agreement and other agreements relating to the Development of the Property; (3) the development

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of the Property, including costs incurred in connection with the construction, inspection or acceptance of public improvements. Consulting, planning, engineering, and legal fees shall be the actual costs to the City on the basis of submitted invoices, copies of which shall be provided to Developer with the City's request for reimbursement of such costs. Administrative fees including city staff time shall be calculated on an hourly basis, using the effective rate the City pays for City employee staff time, which includes wages and benefits paid to City employees. The City shall provide itemized statements showing City staff time for which Developer is responsible upon request. Inspection and observation fees during construction shall be the actual cost to the City on the basis of submitted invoices, copies of which shall be provided to Developer with the City's request for reimbursement of such costs. Before processing any application for approval of any Comprehensive Plan amendment, land division, change in zoning, erosion control or stormwater management plan, or other approval, Developer shall deposit $10,000.00 with the City to secure Developer's payment of costs pursuant to this Section. The City may apply the deposit to pay costs that are past due, in the City's sole discretion. If the deposit amount falls below $5,000.00, the City may require Developer to supplement the deposit by such amount as the City may request, up to a total deposit of not more than $10,000.00. If Developer fails to pay any cost when due, the City may increase the maximum amount of the required deposit up to $25,000.00. If Developer fails to pay any deposit or pay any cost when due, the City may suspend the processing of any and all pending applications, and may order Developer to suspend the construction of public improvements within the Property, and Developer hereby agrees that any legally or contractually imposed time periods for acting on any land division, zoning, acceptance of public improvements or other approvals will be tolled until Developer makes any required deposit or pays any required costs pursuant to this Section. Nothing in this Agreement prevents the City from requiring, in subsequent agreements relating to the division or development of the Property, a letter of credit, performance bond, deposit or other surety to secure the performance of Developer's obligations under this Agreement, subsequent agreements or both. Upon the earlier of the termination of this Agreement, Developer's withdraw of all applications and requests relating to any proposed development of the Property, or the eventual acceptance of all public improvements to be constructed within the Property pursuant to any subsequently executed development agreement, the City shall return any unused portion of the deposit to Developer.

B. Developer shall pay to the City, within 30 days after delivery of a written request for payment, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred by the City in connection

with an application to amend the Stoughton Urban Service Area, the Dane County Water Quality Plan or the Dane County Land Use and Transportation Plan to facilitate development of the Property. Prior to the City applying to add the Property to the Stoughton Urban Service Area, Developer shall deposit $15,000.00 with the City which the City shall apply to pay the costs it may incur in connection with the Urban Service Area amendment process. The City shall use the deposit before billing Developer for such costs. If the City's total costs in connection with the Urban Service Area amendment process are less than $15,000.00, then the balance of the deposit shall be returned to Developer. At the time of any City billing to Developer for costs pursuant to this section, and following the completion of the Urban Service Area amendment process, the City shall provide to Developer copies of invoices for outside consultants and a statement of City staff time that support the billing or that were incurred by the City in the process of seeking to amend the Urban Service Area.

C. Impact and Connection Fees. The City requires the payment of certain impact fees pursuant to Chapter 67 of the Municipal Code of the City of Stoughton. As of the effective date of this Agreement, the City does not require the payment of a fee to connect to the City's sanitary sewer system or water system. Nothing in this Agreement is intended to relieve Developer from paying to the City fees and costs related to the zoning, division or development of the Property, and required by the City's ordinances or policies.

D. Interest on unpaid fees and costs. Any amounts not paid when due under this Agreement shall accrue interest at the rate of one percent per month.

E. Stoughton Utilities Reimbursement Agreement. At or before the time this Agreement is executed, Developer shall execute a Reimbursement Agreement with the City, acting through Stoughton Utilities, in the form attached as Exhibit A.

3. OTHER PROVISIONS.

A. Effective Date. This Agreement shall be effective upon execution.

B. Duration. Either party may terminate this Agreement at any time by giving written notice of termination to the other party. If this Agreement is terminated, Developer shall be responsible to reimburse the City pursuant to this Agreement for all costs, expenses and staff time incurred by the City through the date of termination.

C. Delivery of Notices and Requests for Payment. Requests for payment and other notices authorized or required by this Agreement shall be made by U.S. Mail, personal delivery or by email as follows:

(1) If to Developer: St. Marie Law, LLC
Attn: Daniele Thompson
214 S. Forrest Street, Suite 8
Stoughton, WI 53589
dst@stmarie-law.com

(2) If to the City: Rodney Scheel, Planning Director
207 S. Forrest Street
Stoughton, WI 53589
rjscheel@ci.stoughton.wi.us

D. Governing Law. This Agreement shall be governed by, and enforced in accordance with the laws of the State of Wisconsin. Any claim arising under this Agreement shall be brought in Dane County Circuit Court, Dane County, Wisconsin.

E. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person shall be valid against the City or Developer.

F. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement.

G. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement. This Agreement shall be construed simply and fairly to both parties.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Severability. If any part of this Agreement or its application to any person or be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be impaired thereby, and the remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purpose and intent of the Agreement to the greatest extent permitted by applicable law.

IN WITNESS WHEREOF, the parties have executed this Agreement.

DEVELOPER:
STI HOLDINGS, INC.

By: Sue Vandenberg 3/28/23

3WL3439-Cost Reimbursement Agreement (2 02)

CITY:

CITY OF STOUGHTON
Dane County, Wisconsin

By_____
Tim Swadley, Mayor

By:_____
Candee Christen, City Clerk

Exhibits:
A - Stoughton Utilities Reimbursement Agreement
B - General Concept Plan

Approved as to Form:

STAFFORD ROSENBAUM LLP
Attorneys for the City of Stoughton

By_____
Matthew P. Dregne

3WL3439-Cost Reimbursement Agreement (2 02)

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EXHIBIT A

STOUGHTON UTILITIES
DEVELOPMENT PLAN REVIEW COST REIMBURSEMENT AGREEMENT

Agreement entered into this 28th day of March, 2023 by and between STI Holdings ("Developer") and the City of Stoughton, a Wisconsin municipal corporation, acting by and through Stoughton Utilities ("Utility").

RECITALS

E. This Cost Reimbursement Agreement arises from Developer's wish to develop the Property at _____, Stoughton, Wisconsin.

F. Developer would like the Utility to review the proposed development plan ("Development Plan") to identify the impacts it will have on utility services, including any increased need for services, which will require the Utility to incur costs for internal review and for professional review.

G. The Utility requires Developer to enter into this Agreement to avoid undue expense to the Utility rate payers.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, Developer agrees as follows:

SECTION 1. PAYMENT FOR REVIEW SERVICES

1.1. Developer shall pay all costs ("Administrative Costs") incurred by the Utility for internal staff review time and for professional services performed by outside consultants on behalf of the Utility in conjunction with the Development Plan, including but not limited to planning, engineering, inspection, and legal consultation. Developer acknowledges that Administrative Costs will be incurred in connection with, among other things: review of existing utilities; new or proposed utilities construction; review of developments concepts, plans and specifications; review of potential utility infrastructure impacts and all other professional services necessary. Administrative Costs shall be the actual costs for the internal work performed and the actual costs to the Utility on the basis of submitted invoices.

3WL3439-Cost Reimbursement Agreement (2 02)

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1.2. Bills shall be considered delivered upon personal delivery to Developer or upon mailing to Developer at the following address:

St Marie Law Att: Daniele Thompson 214 S. Forrest St, Suite 8
Stoughton WI 53589 dst@stmarie-law.com

1.3. Developer shall pay the Administrative Costs within thirty (30) days of the time when the Utility delivers its bill. Failure to do so entitles the Utility to withdraw the amount of such unpaid bill from the guarantee of payment under section 2 below.

1.4. Developer acknowledges and understands that the professional consultants retained by the Utility are acting exclusively on behalf of the Utility and not Developer.

SECTION 2. GUARANTEE OF PAYMENT

2.1. Developer shall guarantee reimbursement of the Administrative Costs by depositing with the Stoughton Utilities Finance Manager cash or a cashier's check payable to the Utility in the amount of $10,000.00, subject to refund or release of unused amounts within 60 days following termination of this Agreement as defined in Section 3.

2.2. If at any time the monies on deposit with the Utility pursuant to section 2.1 are insufficient to pay expenses incurred or anticipated by the Utility for Administrative Costs, Developer shall deposit additional amounts within thirty (30) days of written demand by the Utility.

2.3. Violation of this Agreement, including but not limited to failure to pay amounts when due or failure to deposit amounts required under this section 2, shall entitle the Utility to suspend the Utility's work relating to the proposed development plan.

2.4. The remedies provided in this Agreement are cumulative and not exclusive and shall be in addition to, and not in lieu of, any other remedies available to the Utility at law or in equity.

SECTION 3. TERMINATION

3.1. This Agreement shall terminate upon (a) final rejection of the Development Plan by the City Council (b) City Council final approval of the utility infrastructure proposed after Utility review of the Development Plan, or (c) Utility receipt of a written statement from Developer withdrawing the Development Plan from further consideration.

3.2. Developer's obligation to reimburse the Utility for Administrative Costs incurred to and including the date of termination and the Utility's rights and remedies to enforce such reimbursement shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Cost Reimbursement Agreement to be effective when executed by Developer.

3/28/23
Date

By Sue Vanderbilt
(print name) Sue Vanderbilt

CITY OF STOUGHTON,
acting through Stoughton Utilities

_____
Date

By _____
Jill Weiss, Utilities Director

3WL3439-Cost Reimbursement Agreement (2 02)

IN WITNESS WHEREOF, the parties have executed this Cost Reimbursement Agreement to be effective when executed by Developer.

3/28/23
Date

By Sue Vanderbilt
(print name) Sue Vanderbilt

CITY OF STOUGHTON,
acting through Stoughton Utilities

04/05/2023
Date

By
Jill Weiss, Utilities Director

3WL3439-Cost Reimbursement Agreement (2 02)

EXHIBIT B

General Concept Plan

3WL3439-Cost Reimbursement Agreement (2 02)

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Attachment E

Parcel ID Numbers

Attachment F

Estimated Cost of Stormwater Management Facilities

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MSA

51 West Exhibit ___

Pond Surety Calculation

March 29, 2022

Pond Construction Costs

		Phase 1	Phase 2	Phase 3
A	Overexcavation and backfill	$ 434,000	$ 496,000	$ -
B	Forebay clay liner	$ 60,000	$ 90,000	$ 30,000
C	Infiltration basin compost	$ 35,000	$ 57,500	$ 20,000
D	Infiltration basin drain tile	$ 34,000	$ 40,100	$ 10,500
E	General seed mix	$ 12,733	$ 9,320	$ 3,514
F	Infiltration basin seed mix	$ 3,020	$ 5,762	$ 1,022
G	Bio-blanket matting	$ 32,412	$ 23,725	$ 8,944
	Total by Phase	$ 611,165	$ 722,407	$ 73,980
	20% of Construction Cost	**$ 122,233**	**$ 144,481**	**$ 14,796**

Attachment G

Stoughton Utilities / City of Stoughton
GIS Standard Specification

1. GENERAL

This standard specification sets out the standard requirements for GIS deliverables provided to Stoughton Utilities (sanitary sewer and water) and the City of Stoughton (storm sewer). This standard is meant to supplement, and not replace any requirements that may be specified in individual project contracts.

Please contact Stoughton Utilities if conflicts arise in understanding or meeting these standards.

2. COORDINATE PROJECTS AND DATUMS

Projected Coordinate System:	NAD_1983_HARN_WISCRS_Dane_County_Feet
Projection:	Lambert_Conformal_Conic
Linear Unit:	Foot_US
Geographic Coordinate System:	GCS_North_American_1983_HARN
Datum:	D_North_American_1983_HARN
Prime Meridian:	Greenwich
Angular Unit:	Degree

3. DATA ACCURACY

It is expected that all feature points are placed using GPS coordinates. All data deliverables shall be accompanied by a reported data accuracy value. Accuracies shall be defined in feet, and satisfy a 95% confidence level. A minimum of three preexisting utility infrastructure points that were not altered as part of the project shall be included as accuracy reference points.

4. DELIVERABLES

Unless otherwise specified, all data shall be provided in an ESRI based formats

Refer to the online help site for ESRI based formats and resources. https://desktop.arcgis.com/en/arcmap

Accepted formats include:

- ESRI Geodatabase feature class types (file or personal Geodatabase accepted)
- Shapefile (.shp, .shx, .sbn, .sbx, .prj, .dbf)

Data files shall be accompanied with their relevant symbology layer (.lyr) files. When requested, MXD Map documents shall be delivered as a package with all dataset links intact.

5. ATTRIBUTE DATA

All features shall include correct attribute data records. See Exhibit A for minimum attribute data expectations.

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EXHIBIT A- Minimum Attribute Expectations

WATER

Curb Stop Valves
- Date Installed
- Diameter
- Type

Hydrants
- Date Installed
- Main Size
- Manufacturer

Lateral Lines
- Date Installed
- Diameter
- Length
- Line Type *(Commercial, Domestic, Fire)*
- Material

Mains
- Date Installed
- Diameter
- Length
- Material
- Type *(Distribution, Hydrant)*

System Valves
- Class *(Distribution, Service, Hydrant)*
- Date Installed
- Diameter
- Manufacturer

SANITARY SEWER

Lateral Lines
- Date Installed
- Diameter
- Material

Mains
- Date Installed
- Diameter
- Downstream Elevation
- Length
- Material
- Shape
- Slope
- Street Name
- Type *(Gravity, Force)*
- Upstream Elevation

Manholes
- Cover Type
- Date Installed
- Diameter
- Invert Elevation(s)
- Material
- Rim Elevation

STORM SEWER

Pipes
- Date Installed
- Diameter
- Downstream Elevation
- Length
- Material
- Shape
- Slope
- Street Name
- Type *(Gravity, Force)*
- Upstream Elevation

Structures
- Cover Type
- Date Installed
- Diameter
- Invert Elevation(s)
- Material
- Rim Elevation

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Attachment H

WI DOR Form PC-202

Form PC-202

2022 Tax Increment Worksheet

WI Dept of Revenue

Report Type	Co-muni Code	County	Account No.	Total Equalized TID Value Increment	This worksheet is for all TIDs in this municipality
ORIGINAL	13281	DANE	0393	68,340,500	
		Muni Type: CITY			
		Municipality: STOUGHTON			

Taxing Jurisdiction	Col. A Apportioned Levy	/	Col. B Equalized Value (less TID Value Increment)	=	Col. C Interim Rate	X	Col. D Equalized Value (with TID Value Increment)	=	Col. E Total Levy Amount *(use on Mill Rate Worksheet)*	Col. F Col. E - A = Tax Increment
1. County										
DANE	$4,072,913.85	/	1,499,453,200.00	=	0.002716266	X	1,567,793,700.00	=	$4,258,544.72	$185,630.87
2. Special Districts (metro, sanitary, lake)										
3. Tax District (town, village, city)										
STOUGHTON	$10,511,294.00	/	1,499,453,200.00	=	0.007010085	X	1,567,793,700.00	=	$10,990,367.10	$479,073.10
4. School Districts										
SCH D OF STOUGHTON AREA	$11,387,876.87	/	1,499,453,200.00	=	0.007594686	X	1,567,793,700.00	=	$11,906,900.86	$519,023.99
5. Technical College Districts										
MADISON AREA TECHNICAL COLLEGE MADN	$1,081,888.59	/	1,499,453,200.00	=	0.000721522	X	1,567,793,700.00	=	$1,131,197.85	$49,309.06
6. Tax Increment Total										
	$27,053,973.31								$28,287,010.33	$1,233,037.02

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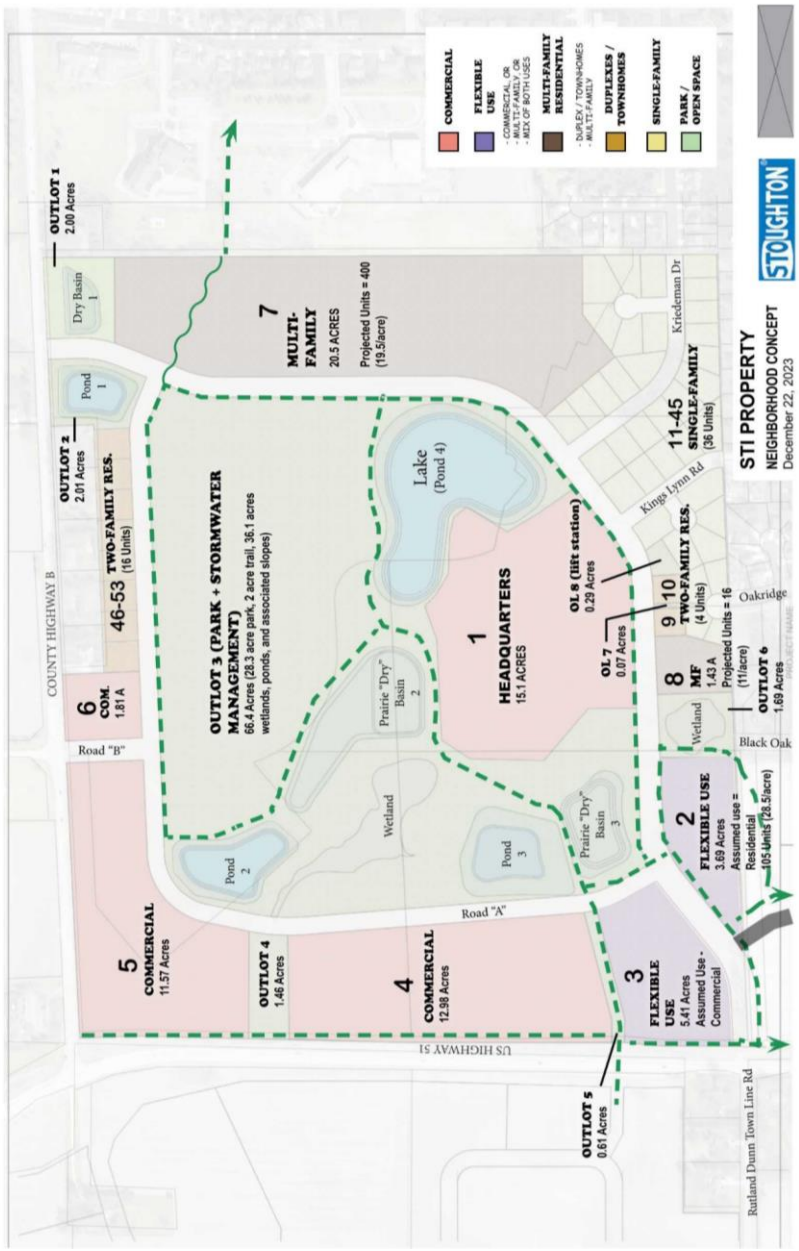
Attachment I

Attachment J

Conceptual Plan of Development



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Attachment K

Estimated Schedule of Annual Debt Service on City Borrowing

Year	Taxable G.O. Bond 1,610,000			
	Dated Date:			Total
	Principal	Est. Rate	Interest	Debt Service
2026		5.50%	118,067	118,067
2027		5.50%	88,550	88,550
2028		5.50%	88,550	88,550
2029	20,000	5.50%	88,000	108,000
2030	20,000	5.50%	86,900	106,900
2031	20,000	5.50%	85,800	105,800
2032	50,000	5.50%	83,875	133,875
2033	50,000	5.50%	81,125	131,125
2034	75,000	5.50%	77,688	152,688
2035	75,000	5.50%	73,563	148,563
2036	100,000	5.50%	68,750	168,750
2037	105,000	5.50%	63,113	168,113
2038	110,000	5.50%	57,200	167,200
2039	115,000	5.50%	51,013	166,013
2040	120,000	5.50%	44,550	164,550
2041	125,000	5.50%	37,813	162,813
2042	150,000	5.50%	30,250	180,250
2043	155,000	5.50%	21,863	176,863
2044	160,000	5.50%	13,200	173,200
2045	160,000	5.50%	4,400	164,400
Total	1,610,000		1,264,267	2,874,267

Attachment L

Form of Tax Agreement

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TAX AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 2024 (the "Agreement"), by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and STI Holdings, Inc., a Wisconsin corporation (the "Owner").

RECITALS

A. Owner is the sole owner of property (the "Property") in the City of Stoughton, more particularly described in Exhibit A.

B. Owner and the City have entered into or are simultaneously entering into an agreement relating to the development of the Property entitled Agreement to Undertake Development (STI Holdings) (hereafter the "TID Agreement").

THIS SPACE RESERVED FOR RECORDING DATA

Return to:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

PIN:

C. The City's obligations under the TID Agreement are conditioned on Owner signing and recording this Agreement. The Property is located in Tax Increment District No. ___ (the "District").

D. The City has provided and shall continue to provide public health, safety, fire and police protection, streets and street maintenance, snow removal, and other governmental services ("Municipal Services") with respect to the Property that are funded by property taxes.

NOW, THEREFORE, in consideration of the Recitals, and the mutual promises, obligations and benefits provided under this Agreement and the TID Agreement, the receipt and adequacy of which are hereby acknowledged, Owner and the City agree as follows:

1. Recitals Incorporated. The recitals stated above are incorporated in this Agreement by reference.

2. Representations and Warranties by Owner. Owner represents and warrants that Owner: (1) is a Wisconsin corporation organized and existing under the laws of the State of Wisconsin; (2) has taken all action necessary to enter into this Agreement; (3) has duly authorized the individual signers of this Agreement to do so; and (4) is the sole owner of the Property, in fee simple.

3. Tax Status of the Property. The Property shall be subject to property taxation and shall not be exempt from property taxation, in full or in part, except as required by law or as expressly set forth in this Agreement until the District is closed. Owner shall take all reasonable actions to assure that the Property shall not be exempt from property taxation, in full or in part, except as required by law or as expressly set forth in this Agreement until the District is closed. Owner shall not submit any request or application for property tax exemption of the Property, in

full or in part, challenge the status of the Property as fully subject to property taxation, or seek any ruling by a court or any statutory change that would entitle the Property to exemption, in full or part.

4. Payment for Municipal Services If Property Becomes Tax Exempt. If in any year (the "Valuation Year") prior to the time the District closes, the Property is exempt from property taxation, in full or in part, Owner shall pay the City, as a payment for Municipal Services provided by the City with respect to the Property ("Payment for Municipal Services"), the difference between (1) the amount of property taxes, if any, on the Property, actually received by the City from Owner for the Valuation Year, and (2) the amount of property taxes on the Property that the City would have received for the Valuation Year if the Property were fully subject to property taxation. The City shall send Owner an invoice for the Payment for Municipal Services due. One-half of the Payment for Municipal Services shall be due on January 31 of the year after the Valuation Year. The balance of the Payment for Municipal Services shall be due on July 31 of the year after the Valuation Year. Each payment shall be deemed made when actually received by the City. Any payment made by check shall not be deemed made until the check has cleared all banks. Any amount due that is not paid on time shall bear interest in the same manner and at the same rate as provided by law for unpaid property taxes. The Payment for Municipal Services shall constitute payment for Municipal Services provided with respect to the Property during the Valuation Year. The City and Owner acknowledge and agree that this Payment for Municipal Services would constitute a reasonable and appropriate means of carrying out the intent of the parties and would fairly and reasonably compensate the City for the Municipal Services provided during the Valuation Year.

5. Calculation of Property Taxes As If Property Were Not Exempt Prior to the time the District Closes. Prior to the time the District Closes, if it becomes necessary to calculate the amount of property taxes on the Property or any part thereof that the City would have received if the Property were fully subject to property taxation, this amount shall be calculated as follows: (1) The fair market value of the Property or applicable part of the Property as of January 1 of the Valuation Year shall be determined, in the same manner as provided by law for property that is fully taxable, by the City Assessor or, if the City Assessor is unable or unwilling to do so, by a competent and impartial appraiser selected by the City in its sole discretion. (2) The fair market value, as so determined, shall be divided by the average assessment ratio for the year for property in the City, as determined by the Wisconsin Department of Revenue (for purposes of this Agreement the result shall be the "Equalized Value"). (3) The Equalized Value shall be multiplied by the mil rate at which taxable property in the City is taxed to levy taxes for the City to which the Property or applicable part of the Property is subject for the Valuation Year. That amount shall be deemed the amount of property taxes on the Property or applicable part of the property that the City would have received if the Property were fully taxable.

6. Binding Effect of Calculation; Dispute Resolution. The amount of any Payment for Municipal Services, determined as provided in this Agreement, shall be binding on the parties unless determined to be excessive in an arbitration proceeding conducted in accordance with chapter 788, Wisconsin Statutes, or any successor statute, by a single arbitrator, chosen by mutual agreement of the Parties or, if they do not agree, by the Circuit Court for Dane County, Wisconsin, on application of either party. The arbitrator shall be an assessor or appraiser licensed by the State of Wisconsin with at least ten years experience in the valuation of

commercial property. Any demand for arbitration shall be made within thirty days after an invoice for Payment of Municipal Services is sent by the City to Owner. If a demand for arbitration is not made within that time, the parties shall be deemed to have waived arbitration. The party other than the party who substantially prevails in the arbitration shall bear all the costs of arbitration. Chapter 788, Wisconsin Statutes, or any successor statute, shall govern the arbitration proceeding, except that Owner and the City each waive any right to trial by jury. Any other dispute between the parties arising out of, related to, or connected with this Agreement shall be arbitrated in the same manner.

7. Special Assessment If Any Required Payment for Municipal Services Is Not Timely Made. Any Payment for Municipal Services that is not made when due shall entitle the City to levy a special assessment against the Property or applicable part of the Property for the amount due, plus interest. Owner hereby consents to the levy of any such special assessment, and pursuant to Wis. Stat. § 66.0703(7)(b), waives any right to notice of or any hearing on any such special assessment.

8. Indemnification. Owner shall indemnify the City for all amounts of attorneys' fees and expenses and expert fees and expenses incurred in enforcing this Agreement.

9. Remedies. The City shall have all remedies provided by this Agreement, and provided at law or in equity, necessary to cure any default or remedy any damages under this Agreement.

10. Term of Agreement. The term of this Agreement shall begin on the date the Agreement is signed by both parties and shall continue until the District is closed.

11. Successors and Assigns. This Agreement is binding on the successors and assigns of the parties, including, but not limited to, any subsequent owner of the Property, any part of the Property, or any real property interest in the Property or any part of the Property.

12. Recording. The City may record this Agreement with the Register of Deeds for Dane County. Owner shall pay the cost of recording this Agreement.

13. Entire Agreement; Amendments. This Agreement encompasses the entire agreement of the parties. Any amendment hereto shall be made in writing, signed by both parties.

14. Severability. If any part of this Agreement is determined to be invalid or unenforceable, the rest of the Agreement shall remain in effect.

15. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

16. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement, neither party shall be deemed the drafter of this Agreement for purposes of its interpretation.

17. Notices. Any notice required to be given under this Agreement shall be deemed given when deposited in the United States mail, postage prepaid, to the party at the address stated below or when actually received by the party, whichever is first. The addresses are:

To City:	Finance Director City of Stoughton 381 East Main Street Stoughton, WI 53589
City Attorney:	Matthew P. Dregne and Rick Manthe 222 W. Washington Avenue, Suite 900 P.O. Box 1784 Madison, WI 53701-1784
To Owner:	St. Marie Law, LLC Attn: Daniele Thompson 214 S. Forrest Street, Suite 8 Stoughton, WI 53589 Developer's Attorney William Cole Axley Brynelson, LLP 2 E. Mifflin St. #200 Madison, WI 53703

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Addresses may be changed by notice given in the manner provided in this section.

18. Governing Law. This Agreement has been negotiated and signed in the State of Wisconsin and shall be governed, interpreted, and enforced in accordance with the laws of the United States and the State of Wisconsin.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY:
CITY OF STOUGHTON

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By_____
Tim Swadley, Mayor

By_____
Candee Christen, City Clerk

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2024, the above-named Tim Swadley and Candee Christen, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, State of Wisconsin
My Commission:_____

Approved as to form:

_____
Matthew P. Dregne
City Attorney

OWNER: STI HOLDINGS, INC. a Wisconsin limited liability company

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By: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of_____, 2024, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____
Notary Public, State of Wisconsin
My Commission:_____

Exhibit A – Description of the Property

This instrument drafted by:
Matthew P. Dregne
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701
608/256-0226

Exhibit A – Description of the Property

Attachment M

Form of Performance Bond

PERFORMANCE BOND

DEVELOPER ***(Name and Address);***

SURETY
(Name and Address of Principal Place of Business)

OWNER ***(Name and Address):***

AGREEMENT TO UNDERTAKE DEVELOPMENT (STI HOLDINGS) ('Development Agreement')

Effective Date of Agreement:
Amount:
Description ***(Name and Location):***

BOND

Bond Number:
Date ***(not earlier than Effective Date of the Agreement):***
Amount:

Surety and Developer intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duty executed by an authorized officer, agent or representative.

DEVELOPER AS PRINCIPAL	**SURETY**
_____ **(Seal)**	_____**(Seal)**
Developer's Name and Corporate Seal	**Surety's Name and Corporate Seal**
By: _____	**By:** _____
Signature	**Signature** ***(attach power of attorney)***
_____	_____
Print Name	**Print Name**
_____	_____
Title	**Title**
Attest: _____	**Attest:** _____
Signature	**Signature**
_____	_____
Title	**Title**

OWNER APPROVAL

_____
Signature

_____
Print Name

Title

1. The Developer and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Development Agreement, which is incorporated herein by reference.

2. If the Developer performs the Development Agreement, including all warranties, guarantees, payments and reimbursements as described therein, the Surety and the Developer shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. The Surety's obligation under this Bond shall arise after:

   3.1 The Owner first provides notice to the Developer and the Surety that the Owner is considering declaring a Developer Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Developer, and Surety to discuss the Developer's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. The Owner shall determine the location of any conference required by this Bond. If the Owner, the Developer, and the Surety agree, the Developer shall be allowed a reasonable time to perform the Development Agreement, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Developer Default.

   3 2 The Owner declares a Developer Default and notifies the Surety.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release of the Surety from its obligations.

5. Upon notice from Owner, the Surety shall within 15 days of the Owner's notice and at the Surety's expense take one of the actions described in section 5.1, 5.2 or 5.3, in addition to making payments as described in Section 5.4:

   5.1 Arrange for the Developer, with the consent of the Owner, to perform and complete the obligations of the Development Agreement.

   5.2 Undertake to perform and complete the obligations of the Development Agreement itself, through its agents or independent contractors.

   5.3 With the consent of Owner, obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for an agreement for performance and completion of the obligations of the Development Agreement, arrange for an agreement to be prepared for execution by the Owner and a developer selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Development Agreement and paid to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Agreement Price incurred by the Owner as a result of the Developer Default.

   5.4 The Surety shall immediately upon request from Owner, make payment for all sums owed to Owner by Developer pursuant to the Development Agreement which Developer has failed for more than 30 days to make payment in full.

6. If the Surety does not commence to proceed as provided in Paragraph 5 within 15 days of Owner's notice, unless extended by Owner in writing, and continue to proceed as soon as practicable and without delay, the Surety shall be deemed to be in default on this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. Surety shall not require the Owner to negotiate or enter a Takeover Agreement, Release, or any written agreement of any kind prior to Surety performing its obligations of this Bond, and any such request by Surety shall be deemed to be a default.

7. If the Surety elects to act under Paragraph 5.1, 5.2 or 5.3 and 5.4, then the responsibilities of the Surety to the Owner shall not be greater than those of the Developer under the Development Agreement except as described herein and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Development Agreement. The Surety is obligated, for:

   7.1 The responsibilities of the Developer for correction of detective work and completion of the Development Agreement, including the full warranty period provided within the Development Agreement.

   7.2 Additional legal, design professional, and delay costs resulting from the Developer's Default, and resulting from the actions or failure to act of the Surety under Paragraphs 5 and 6, including actual costs of actions, including litigation, Owner may take to enforce the terms of this Bond against Surety.

   7.3 Liquidated damages. Recognizing that the Owner will incur significant damages from Surety's delay, rather than require proof of the amount of such damages, and not as a penalty, Surety shall pay to Owner $500 per day, for each day that Surety fails to fully comply with the terms of this Bond within the time required by this Bond.

8. The Surety shall not be liable to the Owner or others for obligations of the Developer that are unrelated to the Development Agreement. No right of action shall accrue on this Bond to any person or entity other than the Owner, or its heirs, executors, administrators, successors, and assigns.

9. The Surety hereby waives notice of any change, including changes of time, work, or other terms, to the Development Agreement or to related subcontracts, purchase orders, and other obligations.

10. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within six years after a declaration of Developer Default or within six years after the Developer ceased working or within six years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs last. If the provisions of this paragraph are void or prohibited by law, the maximum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

11. Notice to the Surety, the Owner, or the Developer shall be mailed or delivered to the address shown on the page on which their signature appears.

12. Statutory Bond Reduction. As and to the extent required by Wisconsin Statutes Section 236.13(2)(a)1., and not otherwise, the full amount of this Bond shall be automatically reduced upon substantial completion of the public improvements to the amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements, subject to the following: Any such reduction shall not apply to defaults, notices, conditions, claims or occurrences arising prior to substantial completion.