



OFFICIAL NOTICE AND AGENDA- **AMENDED**

Notice is hereby given that Common Council of the City of Stoughton, Wisconsin, will hold a regular or special meeting as indicated on the date and at the time and location given below.

Meeting of: **COMMON COUNCIL OF THE CITY OF STOUGHTON**
Date/Time: Tuesday, April 21, 2015 @ 7:00 P.M.
Location: Council Chambers at the Public Safety Building (2nd floor)
321 South Fourth Street, Stoughton, Wisconsin
Members: Michael Engelberger, Sid Boersma, Ron Christianson, Eric Hohol, Greg Jenson, Paul Lawrence, Tom Majewski, Tom Selsor, Tricia Suess, Tim Swadley, Sonny Swangstu, Pat O'Connor, Regina Hirsch

ATTENTION COUNCIL MEMBERS: EIGHT (8) MEMBERS NEEDED FOR A QUORUM. The Council may only conduct business when a quorum is present. If you are unable to attend the meeting, please notify the City Clerk's office via telephone (608)873-6677 or via email lkropf@ci.stoughton.wi.us

CALL TO ORDER

Posting of Colors

Pledge of Allegiance led by Alderperson Sonny Swangstu

Oath of Office and Seating of Incoming Alderpersons

Roll Call, Communications, and Presentations

Public Comment Period: *(*Please note: Comments must be regarding an item on tonight's agenda)*

ORGANIZATIONAL BUSINESS

1. **Council Elections:** Council President and Vice President
2. **R-61-2015-** Confirmation of Mayor's Aldermanic Appointments to Standing Committees.
3. **R-62-2015-** Confirmation of Mayor's Appointments to Non-Standing Boards, Committees and Commissions.
4. **R-63-2015-** Confirmation of Mayor's Citizen Appointments to Boards, Committees and Commissions.
5. **R-64-2015-** Designation of Public Depositories and Authorized Signatures.

6. **R-65-2015-** Designation of Official Newspaper.

NEW BUSINESS

7. **R-66-2015-** Authorizing and directing the proper City official(s) to enter into an agreement with Joe Daniels Construction for the 2015 Library Remodeling Project.
(Finance recommends approval 5-0)
8. **R-67-2015-** Authorizing and directing the proper City official(s) to enter into a listing contract with Lee and Associates to market the Business Park North Expansion land.
(Finance recommends approval 5-0)
9. **R-68-2015-** Authorizing and directing the proper City official(s) to enter into an agreement with Iverson Construction for the 2015 Washington Street & Fifth Street Reconstruction Project.
10. **R-69-2015-** Authorizing and directing the proper City official(s) to enter into an agreement with Iverson Construction for the 2015 South Alley Reconstruction Project.
11. **Discussion regarding proposed changes to the Kettle Park West Developer's Agreement

***** The Council may meet in closed session Per State Statute 19.85(1)(e), for deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session, RE: Discussion on proposed changes to the KPW Development Agreement.***

12. **ADJOURNMENT**

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE TO ATTEND THIS MEETING, PLEASE CALL 873-6677 PRIOR TO THIS MEETING.

By: Mayor Donna Olson



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Swangstu, Pat O'Connor, Regina Hirsch

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By: Mayor Donna Olson

RESOLUTION OF THE COMMON COUNCIL

Confirming the Mayor's Appointments to Standing Boards, Committees, and Commissions for the 2015-2016 Term, Pursuant to 2-67 of the Municipal Code.

Committee Action: N/A

Fiscal Impact: \$-0-

File Number: R-61-2015

Date Introduced: April 21, 2015

WHEREAS, the Mayor has submitted appointments for standing boards, committees, and commissions for the 2015-2016 term; and

WHEREAS, the appointments are as follows:

Public Works

Sid Boersma (District 1)
Paul Lawrence (District 2)
Tom Majewski (District 3)
Tom Selsor (District 4)
Mayor Donna Olson (*ex officio*)

Personnel

Sid Boersma (District 1)
Paul Lawrence (District 2)
Tom Majewski (District 3)
Pat O'Connor (District 4)
Mayor Donna Olson (*ex officio*)

Community Affairs/Council Policy

Sonny Swangstu (District 1)
Michael Engelberger (District 2)
Greg Jenson (District 3)
Eric Hohol (District 4)
Mayor Donna Olson (*ex officio*)

Finance

Tim Swadley (District 1)
Ron Christianson (District 2)
Greg Jenson (District 3)
Pat O'Connor (District 4)
Mayor Donna Olson (*ex officio*)

Public Safety

Tim Swadley (District 1)
Michael Engelberger (District 2)
Regina Hirsch (District 3)
Eric Hohol (District 4)
Mayor Donna Olson (*ex officio*)

Parks & Recreation

Sonny Swangstu (District 1)

Paul Lawrence (District 2)

Regina Hirsch (District 3)

Tom Selsor (District 4)

Mayor Donna Olson (*ex officio*)

Each committee shall elect its own Chair and Vice Chair at the first meeting following the reorganization; however, no alderperson shall serve as Chair of more than one standing committee. (N.b., under Robert's Rules, an *ex officio* member is a full-fledged member of the body with all accompanying rights, but is not obligated to attend meetings and is not counted in determining if a quorum is present.) The Ad-Hoc CIP Committee shall consist of the Chairpersons of all standing committees. Therefore,

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) confirm the Mayor's appointments to standing boards, committees, and commissions.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

RESOLUTION OF THE COMMON COUNCIL

Confirming the Mayor's Aldermanic Appointments to Non-Standing Boards, Committees, and Commissions for the 2015-2016 Term, Pursuant to 2-127 of the Municipal Code.

Committee Action: N/A

Fiscal Impact: \$-0-

File Number: R-62-2015

Date Introduced: April 21, 2015

WHEREAS, the Mayor has submitted aldermanic appointments for non-standing boards, committees, and commissions for the 2015-2016 term; and

WHEREAS, the appointments are as follows:

Planning

Ron Christianson (District 2)

Pat O'Connor (District 4)

Eric Hohol (District 4)

Utilities

Sonny Swangstu (District 1)

Greg Jenson (District 3)

Michael Engelberger (District 2)

Board of Review

Sonny Swangstu (District 1)

Pat O'Connor (District 4)

Michael Engelberger (District 2)

Greg Jenson (District 3)

Tom Selsor (District 4)

Business Park North

Tom Selsor (District 4)

Greg Jenson (District 3)

Commission on Aging

Sid Boersma (District 1)

Electrical Examining Board

Tom Majewski (District 3)

Ethics Board

Pat O'Connor (District 4)

Landmarks Commission

Michael Engelberger (District 2)

Library Board

Tom Majewski (District 3)

Opera House Board

Paul Lawrence (District 2)

RDA

Ron Christianson (District 2)

Tom Selsor (District 4)

River & Trails Task Force

Regina Hirsch (District 3)

MCCI

Tim Swadley (District 1)

Chamber Visitors Services Committee

Sonny Swangstu (District 1)

Housing Authority

Greg Jenson (District 3)

Therefore,

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) confirm the Mayor's aldermanic appointments to non-standing boards, committees, and commissions.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____

RESOLUTION OF THE COMMON COUNCIL

Confirming the Mayor's Citizen Appointments to Boards, Committees, and Commissions, Pursuant to 2-127 of the Municipal Code.

Committee Action: N/A

Fiscal Impact: \$-0-

File Number: R-63-2014

Date Introduced: April 21, 2015

WHEREAS, the Mayor has submitted citizen appointments for non-standing boards, committees, and commissions for the 2015-2016 term; and

WHEREAS, the appointments are as follows:

Arts Council

John Buetel
Kathryn Jones
Mary Caryl Verden
Bill Amundson
Tricia Suess

Board of Appeals

Russ Horton
Dave Erdman
Bob Barnett
Aaron Thomson
Bob McGeever
Jeff Cunningham Alt #1

Business Park North

David Wendt

Commission on Aging

Charlotte Snow

Electrical Examining Board

Aaron Ramberg
Jim Sholts
Mark Cook

Ethics Board

Steve Grady

Food Pantry

Sandy Fleming
Mike Heger

Hall of Fame Committee

Barb Furseth
Oscar Forton
Paul Selbo
Dave Kalland
Ann Nelson
Cathy Rigdon
Mary Bennett

Holiday Fund Committee

Chris Nygaard
Tina Strandlie
Heather Patrinos
Bonnie Kiss

Housing Authority

Dan Matson

Landmarks Committee

Connie Kraus

Library Board

Petra Horst
Denise Duranczyk
Sandra Black

Opera House Board

Jon Lewis
Amy McFarland

Planning Commission

Matt Hanna

Police & Fire Commission

Jon Lewis

Redevelopment Authority

John Kramper
Brain Kahl Alt#1

Rivers & Trails Task Force

Jon Lewis
Nancy Hagen
Jim Wilcox
Sandra Black
Ralph Erickson
Joni Dean
Bob Diebel
David Sharpe
Larry Liebmann
Phil Caravello

Seniors in Need

Pamm Griggs

Evelyn Kahl

Ted Ormond

Cathy Rigdon

Bill Hasz

Mary Lou Fendrick

Polly Schnese

Tree Commission

Jay Schotzko

Utilities Committee

Alan Staats

Therefore,

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) confirm the Mayor's citizen appointments to non-standing boards, committees, and commissions.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____

RESOLUTION OF THE COMMON COUNCIL

Designating Local Depositories and Authorized Signatures for the City of Stoughton and Stoughton Electric, Water, and Wastewater Utilities.

Committee Action: N/A

Fiscal Impact: \$-0-

File Number: R-64-2015

Date Introduced: April 21, 2015

BE IT RESOLVED, by the Common Council of the City of Stoughton, Dane County, Wisconsin, that the U. S. Bank, the Wells Fargo Bank of Stoughton, the McFarland State Bank of Stoughton, the Associated Bank of Stoughton, the Home Savings Bank of Stoughton, Wisconsin, Wisconsin Investment Series Cooperative, and the Local Government Investment Pool of the State of Wisconsin be, and that they are designated as, depositories for funds of the City of Stoughton.

BE IT FURTHER RESOLVED that Donna L. Olson, Mayor; Lana C. Kropf, City Clerk; Laura J. Sullivan, Finance Director/Treasurer; Julie A. Roberts, Deputy Treasurer; be, and are hereby, authorized to sign on behalf of the City of Stoughton, all necessary checks and other withdrawal orders for the withdrawal of City Funds from such depositories.

BE IT FURTHER RESOLVED that Robert P. Kardasz, Utilities Director; Sean O. Grady, Utilities Operations Superintendent, and Kim M. Jennings, Utilities Finance/Administrative Manager be, and are hereby, authorized to sign on behalf of the City of Stoughton Electric, Water, and Wastewater Utilities, all necessary checks and other withdrawal orders for the withdrawal of Electric, Water, and Wastewater Utility Funds from such depositories. Local Government Investment Pool deposits and withdrawals must be coordinated by the City Finance Director/Treasurer and the Utilities Finance/Administrative Manager.

BE IT FURTHER RESOLVED that the facsimile signatures of the Mayor, Donna L. Olson, and the Finance Director Laura Sullivan, as adopted by them be approved.

The above and foregoing resolution was duly adopted by the Common Council of the City of Stoughton at a Reorganizational meeting held on the twenty-first day of April, 2015.

Council Action: ☐ Adopted ☐ Failed **Vote** _____

Mayoral Action: ☐ Accept ☐ Veto

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____

RESOLUTION OF THE COMMON COUNCIL

Designating the official newspaper.

Committee Action: N/A

Fiscal Impact: \$-0-

File Number: R-65-2015

Date Introduced: April 21, 2015

BE IT RESOLVED that all Ordinances passed by the Common Council of the City of Stoughton be published in the newspaper published by Unified Newspaper, Inc., Stoughton, Wisconsin, and which Corporation is hereby selected for that purpose, and the same is designated as the official paper for the City of Stoughton, Wisconsin.

BE IT FURTHER RESOLVED that the *Wisconsin State Journal* be designated as the official newspaper for election publications when the City of Stoughton has nothing on the ballot.

The above and foregoing resolution was duly adopted by the Common Council of the City of Stoughton at a Reorganizational meeting held on the twenty-first day of April, 2015.

Council Action: ☐ Adopted ☐ Failed **Vote** _____

Mayoral Action: ☐ Accept ☐ Veto

Donna Olson, Mayor

Date

Council Action: _____ ☐ Override **Vote** _____

City of Stoughton, 381 E Main Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to enter into an agreement with Joe Daniels Construction for the 2015 Library Remodeling Project.

Committee Action: Finance Committee

Fiscal Impact: \$501,773

File Number: R-66-2015

Date Introduced: April 21, 2015

WHEREAS, The City of Stoughton's 2015 Budget includes \$921,000 for remodeling at the Library; and

WHEREAS, The City received 8 competitive bids for the 2015 Library remodeling project; and

WHEREAS, The architect's estimate for construction of this part of the project was \$625,000; and

WHEREAS, The architect has reviewed the bids and recommends awarding the contract to the low bidder, Joe Daniels Construction for the base bid amount of \$461,863, Alternate #1 (boiler replacement) for \$32,500 and Alternate #2 (ceiling grid replacement on second floor) for \$7,410 for a total contract price of \$501,773; and

WHEREAS, it is recommended that the construction project carry a 5% contingency (\$25,000) for unexpected items that may be revealed during construction; and

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into an agreement with Joe Daniels Construction for \$501,773 and allow said officials to evaluate and authorize project change orders not to exceed the project contingency of \$25,000.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____

April 1, 2015

Mr. Rodney J. Scheel, Director of Planning & Development
City of Stoughton
381 E. Main St.
Stoughton, WI 53589

Re: Stoughton Public Library Renovations

Dear Rodney,

Please find attached the Bid Tabulation Sheet for the March 31, 2015 public bidding of the Stoughton Public Library Renovations. We had eight (8) area General Contractors, as single-primes, competitively bid the project. The apparent Low Bidder is Joe Daniels Construction Co., Inc., Madison, Wisconsin. We are very familiar with Joe Daniels Construction Co., Inc. having worked with them in the past and knowing them to be a reputable commercial General Contractor.

We have discussed the preparation of the bid with Joe Daniels Construction and we (and they) are comfortable with their bid. There were no bidding irregularities and there appears to be no reason other than to recommend awarding the contract to the lowest responsible bidder as required by Statutes.

We recommend awarding the construction contract to Joe Daniels Construction Co., Inc., on the following basis:

1. If funds are available, we would recommend including the Base Bid, Alternate #1 (new boilers) and Alternate #2 (balance of ceiling grid) in the amount of \$501,773.00.
2. If funds are available, we would recommend including the Base Bid and Alternate #1 (new boilers) in the amount of \$494,363.00.
3. If funds are available, we would recommend including the Base Bid and Alternate #2 (balance of ceiling grid) in the amount of \$469,273.00.
4. If funds are available, we would recommend including the Base Bid in the amount of \$461,863.00.

Please let us know your decision and we would be happy to prepare the construction contract accordingly. As always, feel free to ask any questions. Thank you.

Sincerely,
Dimension IV Madison Design Group



A. James Gersich, AIA
Architect/Principal

cc: Richard MacDonald, Ray White, Tina Gordon

6515 Grand Teton Plaza, Suite 120
Madison, Wisconsin 53719

p 608.829.4444

f 608.829.4445

Bid Date: 03-31-2015

[illegible]

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to enter into a listing contract with Lee and Associates to market the Business Park North Expansion land.

Committee Action: Finance approves 5-0

Fiscal Impact: 6% broker fee paid by TIF funds

File Number: R-67-2015

Date Introduced: April 21, 2015

WHEREAS, the Common Council hereby finds and determines that it is necessary, desirable and in the best interest of the City of Stoughton, Dane County, Wisconsin (the "City") to enter into a listing contract with Lee and Associates; and

WHEREAS, your Finance Committee has met and recommends to Council to direct Staff to proceed with the entering of a listing contract between the City and Lee and Associates for the purpose of marketing of the Business Park North Expansion land; now therefore

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed to enter into a listing contract between the City of Stoughton and Lee and Associates.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____

LISTING PROPOSAL

City of Stoughton

Business Park North Expansion

1680 Williams Drive

Stoughton, WI



For more information on this
property please contact:

Ryon Savasta
Direct: (608) 327-4007
Cell: (608) 443-9057
rsavasta@lee-associates.com



The information contained herein is based on estimates and assumptions and is presented for illustration purposes only. No representations, warranties or guarantees of any kind are made.

Table of Contents

- I. Property Overview
- II. Aerials/ Maps
- III. Survey
- IV. Services/ Marketing
- V. Market Evaluation
- VI. Pricing Recommendation
- VII. Attachments

I.

Property Overview

The property is a development ready site consisting of approximately 36 acres of farmland. Located along the northern edge of the North Stoughton Business park the property has 487 feet of frontage along Williams Drive and approximately 1648 feet of frontage along the Business Park. There is a separate parcel of approximately half an acre that is not controlled by the city in the North West corner of the site.

As of today there is no final plat layout, however there will be egress at both Williams Drive and Progress Lane. Final layout and lot sizes will be somewhat determined by future users and their space needs. Ideally parcels will be no smaller than 8 acres.

Currently zoned for Agricultural use the slated uses will be Heavy Industrial and/or Manufacturing.

II.

Aerials/ Maps

Parcel Number: 281/0611-324-9175-2

Stoughton, WI

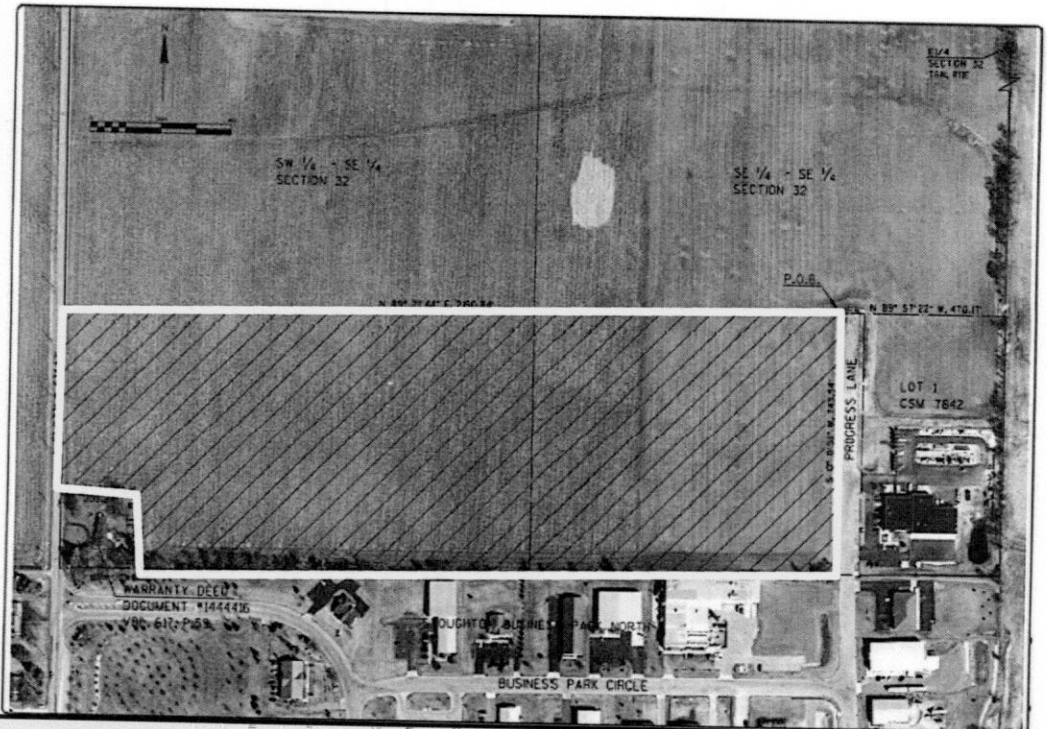
35.823 acres

Current Zoning:

Agricultural

Proposed Zoning:

Heavy Industrial



LEE & ASSOCIATES
COMMERCIAL REAL ESTATE SERVICES

For more information on this
property please contact:

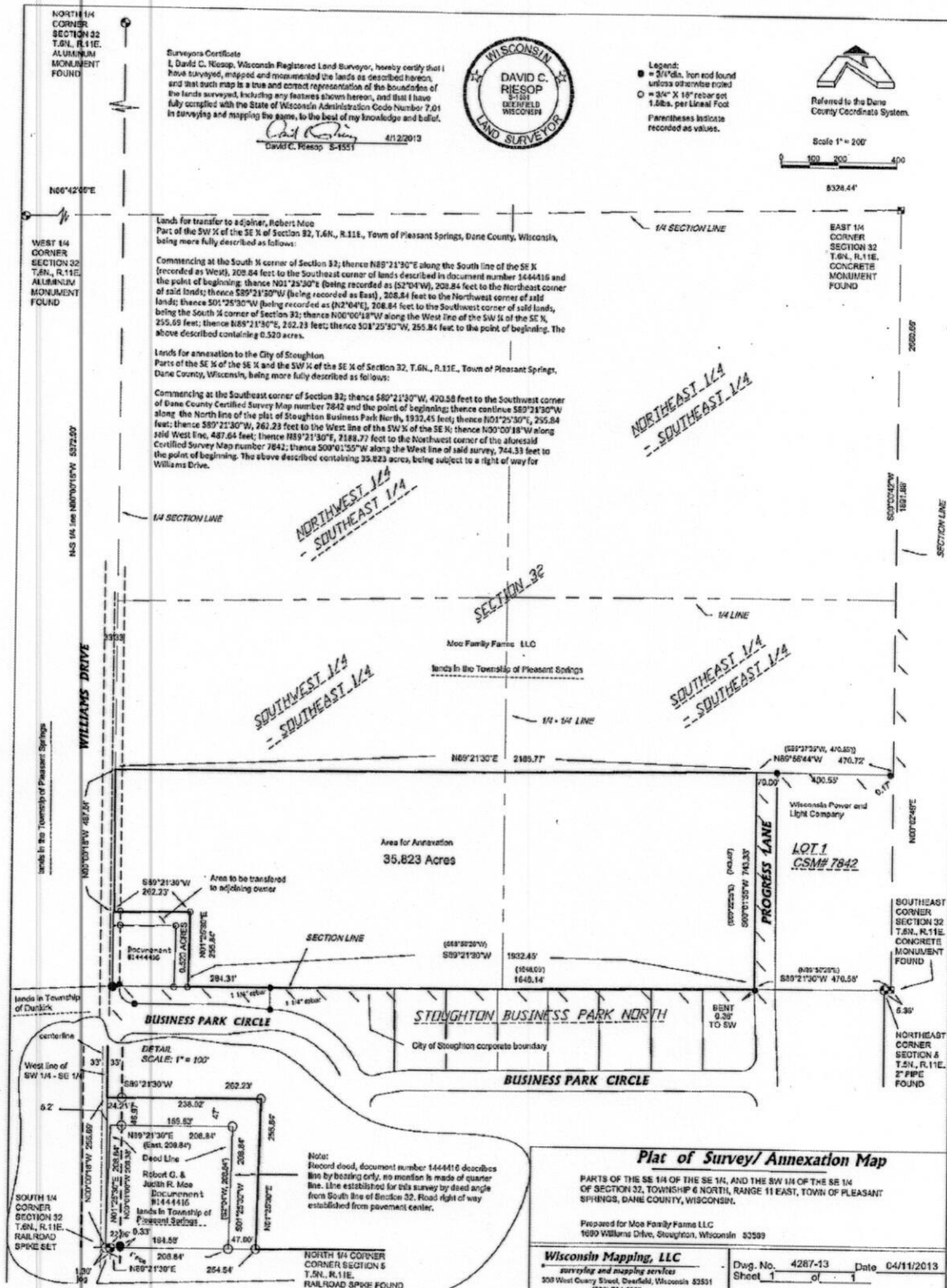
Ryon Savasta
Direct: (608) 327-4007
Cell: (608) 443-9057
rsavasta@lee-associates.com

f t in
lee-associates.com

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Survey



IV.

Services/ Marketing

A Comprehensive Marketing Package

On site signage

Marketing Flyers

Direct mail

Cold Calls

Network with brokers and retailers, broker meetings, broker open house, etc...

Listing on various websites including: Costar, Loop-net, Property Drive, Xceligent and Lee & Associates corporate website

Direct Contact Calls

Lee & Associates is a national platform that has relationships with clients across multiple markets. Our approach will be a comprehensive marketing effort that targets the businesses and industries that would benefit most from having a business located in Stoughton. We feel a concentrated effort targeting larger industrial users in Southern Wisconsin and Northern Illinois will be the most effective way to attract new business to the business park.

Fee/ Listing Term

A twelve month listing contract is recommended. Commissions to be paid to Lee & Associates shall be 6% of the sale price. Lee & Associates freely and openly offers 50/50 commission split with cooperating brokers.

V.

Market Evaluation

Even as the real estate market has picked up over the last 18 months, land sales and development has remained one of the most challenging sub sections of the market. Currently in Dane County there are over two dozen listings of 10 acre plus commercial land sites on the market. Expanding into Rock County that number approaches 40 sites all with multiple parcels.

Pricing of these sites is just as diverse as the sites themselves. Depending on the location and site readiness pricing runs from \$19,900/ acre (\$.45/sqft) to \$522,700/ acre (\$12.00/sqft). When comparing sites that are not quite shovel ready and/or owned by the municipality, those prices drop down to as low as \$26,100/ acre or \$.60/sqft.

Additionally, municipalities that are aggressive in their efforts to attract new business are offering some or all of the following incentives in addition to any state incentives: TIF, low interest loan programs, low cost/ free land. * see attachments for detailed information from Verona Economic Development and City of Janesville Development Opportunity Zone.



For more information on this
property please contact:

Ryon Savasta
Direct: (608) 327- 4007
Cell: (608) 443-9057
rsavasta@lee-associates.com



VI.

Pricing Recommendation

Sale Price

Based on an evaluation of the comparable properties in the area and taking into account the abundance of sites available to industrial prospects; a sale price of **\$37,500.00** is recommended. This puts the price on par with sites currently available in Janesville, DeForest and Fort Atkinson.

In addition as additional incentives like TIF, grants or low interest/ forgivable loans would be advised.

VII. Attachments

1. Comparable properties
2. Verona Economic Development Commission Guidelines
3. Janesville Development Opportunity Zone

City of Stoughton, 381 E Main Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to enter into an agreement with Iverson Construction for the 2015 Washington Street & Fifth Street Reconstruction Project.

Committee Action: Finance Met April 21, 2015

Fiscal Impact: \$1,002,780.85

File Number: R-68-2015

Date Introduced: April 21, 2015

WHEREAS, The City of Stoughton's 2015 Budget includes \$810,000 for street reconstruction and stormwater improvements for Washington Street & Fifth Street; and

WHEREAS, The City received 5 competitive bids for the 2015 Washington Street & Fifth Street reconstruction project; and

WHEREAS, The bid amount is within the City of Stoughton and Stoughton Municipal Utilities Budget; and

WHEREAS, The engineer has reviewed the bids and recommends awarding the contract to the low bidder, Iverson Construction for the base bid amount of \$1,002,780.85

WHEREAS, The contractor will deduct \$10,500 for the combined bids of Washington Street & Fifth Street Project and South Alley Project; and

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into an agreement with Iverson Construction for \$1,002,780.85

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____



CITY OF STOUGHTON
STREET DEPARTMENT

515 South Fourth Street, Stoughton, WI 53589
(608) 877-6303 Ext. 622
(608) 877-8387 Fax
www.cityofstoughton.com

KARL D. MANTHE
Street Superintendent
kmanthe@ci.stoughton.wi.us

Date: April 15, 2015
To: Finance Committee
From: Karl D. Manthe – Street Superintendent
Subject: Award 2015 Reconstruction Bids

On Thursday April 9, 2015 the City of Stoughton received 5 bids for 2 separate reconstruction projects; Washington Street & Fifth Street Reconstruction Project and the South Alley Reconstruction Project.

The lower responsible bidder for the Washington Street & Fifth Street Project was Iverson Construction in the amount of \$1,002,780.85; with \$531,501.95 being the City of Stoughton portion of the bid (Stoughton Utilities is responsible for remaining balance of the bid)

The low responsible bidder for the South Alley Project was also Iverson Construction in the amount of \$211,815.00; with \$147,425.01 being the City of Stoughton portion of the bid (Stoughton Utilities is responsible for remaining balance of bid)

The project engineer from Strand has reviewed the bids and City staff recommends awarding both bids to Iverson Construction. The bid document had a line item for offering a deduction if both projects were awarded to one contractor, if Iverson Construction is awarded both bids, they will deduct \$10,500 from the total project.

Iverson Construction is from Stoughton Wisconsin and has worked for the city before, most recently on the Williams Drive project as a sub-contractor.

Please let me know if you have any questions

Karl Manthe

From: Fisher, Mark [Mark.Fisher@strand.com]
Sent: Friday, April 10, 2015 11:12 AM
To: Karl Manthe; Rodney J. Scheel; bkardasz@stoughtonutilities.com
Cc: SOGrady@stoughtonutilities.com; berickson@stoughtonutilities.com
Subject: RE: Washington Street, Fifth Street, and South Alley

Gentlemen,

The preliminary breakdown of construction cost by department for Washington Street and Fifth Street is as follows:

Sanitary sewer: \$194,380.50
Water Main: \$276,898.50
Storm Sewer: \$102,170.95
Street/Sidewalk: \$429,331

The above costs include a prorated share of general costs for items such as erosion control and traffic control.

The sanitary sewer and water main costs include a share of the street pavement cost and sidewalk (for lateral crossings) where appropriate. The storm sewer cost does not include any pavement cost.

The preliminary breakdown of construction cost by department for the South Alley is as follows:

Sanitary sewer: \$64,390
Storm sewer: \$48,483.34
Roof drain laterals: \$22,600
Street paving: \$20,378.33
Alley paving (including sidewalk and driveway): \$55,963.34

Please compare the above costs to budgeted amounts and let me know if there are any concerns.

I will formalize this in a spreadsheet and update it with each pay request.

Please contact me with any questions.

Thanks,

Mark Fisher

From: Fisher, Mark
Sent: Friday, April 10, 2015 7:26 AM
To: 'kmanthe@ci.stoughton.wi.us'; rjscheel@ci.stoughton.wi.us; bkardasz@stoughtonutilities.com
Cc: SOGrady@stoughtonutilities.com; berickson@stoughtonutilities.com
Subject: RE: Washington Street, Fifth Street, and South Alley

Karl,

My pre-bid estimate was \$1,054,200 for Washington and Fifth Streets and \$263,200 for the alley. I will need to work on the breakdowns so we can see how the bids compared to the budgets, but I think everything looks pretty good at this point.

Bids Received: 11:00 AM
April 9, 2015

STRAND ASSOCIATES, INC. □
910 West Wingra Drive
Madison, Wisconsin 53715

WASHINGTON STREET AND FIFTH STREET RECONSTRUCTION
CONTRACT 2-2015
AND
SOUTH ALLEY RECONSTRUCTION
CONTRACT 3-2015
CITY OF STOUGHTON, WISCONSIN

BID TABULATION SUMMARY

Bidder and Address	Bid Bond or Guarantee	Addenda Acknowledged	Computed Total Bid Contract 2-2015	Computed Total Bid Contract 3-2015	Deduct for Combined Award of 2-2015 and 3-2015
Iverson Construction 2601 Iverson Stoughton, WI 53589	Yes		\$1,002,780.85	\$211,815.00	\$10,500
Forest Landscaping W8583 Finch Brothers Rd Lake Mills, WI 53551	Yes		\$1,266,142.00	\$268,650.00	None
RT Fox Contractors PO Box 331 Edgerton, WI 53534	Yes			\$233,600.00	
A1 Excavating PO Box 90 Bloomer, WI 54724	Yes		\$1,138,972.00		
E and N Hughes PO Box 408 Monroe, WI 53566	Yes		\$1,290,515.00	\$219,465.50	None

Reviewed by: _____

City of Stoughton, 381 E Main Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official(s) to enter into an agreement with Iverson Construction for the 2015 South Alley Reconstruction Project.

Committee Action: Finance Committee – Motion carried

Fiscal Impact: \$211,815

File Number: R-69-2015

Date Introduced: April 21, 2015

WHEREAS, The City of Stoughton’s 2015 Budget includes \$184,500 for street reconstruction and stormwater improvements for the South Alley (between Division Street & Forrest Street); and

WHEREAS, The City received 5 competitive bids for the South Alley reconstruction project; and

WHEREAS, The bid amount is within the City of Stoughton and Stoughton Municipal Utilities Budget; and

WHEREAS, The engineer has reviewed the bids and recommends awarding the contract to Iverson Construction for the base bid amount of \$211,815; and

WHEREAS, The contractor will deduct \$10,500 for the combined bids of the South Alley and Washington Street & Fifth Street Reconstruction Projects

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper city official(s) be hereby directed and authorized to enter into an agreement with Iverson Construction for \$211,815

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

Donna Olson, Mayor

Date

Council Action: _____ ☐ **Override** **Vote** _____



CITY OF STOUGHTON
STREET DEPARTMENT

515 South Fourth Street, Stoughton, WI 53589
(608) 877-6303 Ext. 622
(608) 877-8387 Fax
www.cityofstoughton.com

KARL D. MANTHE
Street Superintendent
kmanthe@ci.stoughton.wi.us

Date: April 15, 2015
To: Finance Committee
From: Karl D. Manthe – Street Superintendent
Subject: Award 2015 Reconstruction Bids

On Thursday April 9, 2015 the City of Stoughton received 5 bids for 2 separate reconstruction projects; Washington Street & Fifth Street Reconstruction Project and the South Alley Reconstruction Project.

The lower responsible bidder for the Washington Street & Fifth Street Project was Iverson Construction in the amount of \$1,002,780.85; with \$531,501.95 being the City of Stoughton portion of the bid (Stoughton Utilities is responsible for remaining balance of the bid)

The low responsible bidder for the South Alley Project was also Iverson Construction in the amount of \$211,815.00; with \$147,425.01 being the City of Stoughton portion of the bid (Stoughton Utilities is responsible for remaining balance of bid)

The project engineer from Strand has reviewed the bids and City staff recommends awarding both bids to Iverson Construction. The bid document had a line item for offering a deduction if both projects were awarded to one contractor, if Iverson Construction is awarded both bids, they will deduct \$10,500 from the total project.

Iverson Construction is from Stoughton Wisconsin and has worked for the city before, most recently on the Williams Drive project as a sub-contractor.

Please let me know if you have any questions

Karl Manthe

From: Fisher, Mark [Mark.Fisher@strand.com]
Sent: Friday, April 10, 2015 11:12 AM
To: Karl Manthe; Rodney J. Scheel; bkardasz@stoughtonutilities.com
Cc: SOGrady@stoughtonutilities.com; berickson@stoughtonutilities.com
Subject: RE: Washington Street, Fifth Street, and South Alley

Gentlemen,

The preliminary breakdown of construction cost by department for Washington Street and Fifth Street is as follows:

Sanitary sewer: \$194,380.50
Water Main: \$276,898.50
Storm Sewer: \$102,170.95
Street/Sidewalk: \$429,331

The above costs include a prorated share of general costs for items such as erosion control and traffic control.

The sanitary sewer and water main costs include a share of the street pavement cost and sidewalk (for lateral crossings) where appropriate. The storm sewer cost does not include any pavement cost.

The preliminary breakdown of construction cost by department for the South Alley is as follows:

Sanitary sewer: \$64,390
Storm sewer: \$48,483.34
Roof drain laterals: \$22,600
Street paving: \$20,378.33
Alley paving (including sidewalk and driveway): \$55,963.34

Please compare the above costs to budgeted amounts and let me know if there are any concerns.

I will formalize this in a spreadsheet and update it with each pay request.

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Reviewed by: _____

**SECOND AMENDED AND RESTATED
AGREEMENT TO UNDERTAKE DEVELOPMENT**

(Kettle Park West Development)

THIS SECOND AMENDED AND RESTATED AGREEMENT TO UNDERTAKE DEVELOPMENT (this “Agreement”) is entered into as of the day of , ~~2014~~2015, by and between the City of Stoughton, a Wisconsin municipal corporation (the “City”), and Kettle Park West, LLC, a Wisconsin limited liability company (the “Developer”).

RECITALS

1. The City and Developer entered into an Agreement to Undertake Development dated as of January 29, 2014 (the “~~January~~Original Agreement”), ~~which was amended and restated pursuant to that certain Amended and Restated Agreement to Undertake Development dated as of November 13, 2014 (the “Amended and Restated Agreement”).~~ The City and Developer wish to replace the ~~January Agreement with this~~ Amended and Restated Agreement ~~to Undertake Development (the “with this Agreement”).~~

2. Developer proposes to purchase the real property described on Attachment A attached hereto (the “Property”), and intends to undertake commercial development on the Property in accordance with the Planned Development District zoning of the Kettle Park West Commercial Property approved by the City in Ordinance No. 0-~~23-2013~~. ~~Developer has also requested City approval of a land division plat known as~~29-2014. ~~To facilitate development of the Kettle Park West - Commercial Center, the City has also approved several certified survey maps pursuant to Resolution No. R-124-2014.~~

3. ~~Chapter~~Section 66-903 of the City of Stoughton Municipal Code ~~requires that an agreement be made~~allows the City, at its discretion, to require the developer to enter into a contract with the City for the installation of improvements needed to serve the ~~Plat~~Kettle Park West - Commercial Center.

4. Developer is unable to develop the Property without financial assistance in constructing certain public improvements, including improvements to U.S. Highway 51 and State Highway 138. Developer also requires financial assistance to offset the cost of substantial site grading and stormwater management costs within the Property.

5. The City wants to facilitate the development of the Property, 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.

6. In order to make the development 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.

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

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 November 11, 2014, adopted Resolution No. R-136-2014, designating proposed boundaries and approving a Project Plan For Tax Incremental District No. 7.

10. The City Council on February 24, 2015, adopted Resolution No. R-29-2015 approving the issuance of General Obligation Promissory Notes providing for the sale of note anticipation notes in an amount not to exceed \$4,860,000, to provide the necessary funds to satisfy the City's obligations under this Agreement.

11. The City and the Developer now wish to revise the Amended and Restated Agreement to require the Developer to arrange private construction financing for 100% of the initial construction cost of the Public Improvements and to make the City's funding obligations contingent upon the Developer's successful completion of the Public Improvements, as more fully set forth herein.

12. The City Council on _____, 2015, adopted Resolution No. R-____-2015 approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement and all other ancillary agreements and documentation necessary to fully consummate the transactions contemplated herein.

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 actual cash flow received by the City from the tax increment generated by the District pursuant to Wis. Stat. sec. 66.1105.

2. Actual Tax Increment, Projected. The Value Increment, multiplied by the most recently established mil rates for all taxing jurisdictions in which the District is located, multiplied by the maximum number of remaining years that the Tax Increment may be allocated to the City pursuant to Wis. Stat. § 66.1105. Projected Actual Tax Increment shall be calculated by the Finance Director each May using the certified tax roll for the current year.

3. ~~2.~~ Annual Debt Service. The ~~Principal~~annual principal and ~~Interest~~interest payments due on the City Borrowing. An estimated schedule of Annual Debt Service ~~Payments~~payments is attached as Attachment B.

4. Annual Debt Service, Remaining. The sum of all principal and interest payments on City Borrowing not yet paid at any given point in time.

5. Base Value. The aggregate value, as equalized by the Wisconsin Department of Revenue, of all taxable property located within the District on the creation date.

6. ~~3.~~ City Improvements. The construction of water, sewer and storm sewer mains within the planned Jackson Street crossing of U.S. Highway 51, from approximately the East right-of-way line of U.S. Highway 51 to approximately the West right-of-way line of U.S. Highway 51.

7. ~~4.~~ District. A Tax Increment District to be created pursuant to Wis. Stat. § 66.1105, which must include the Property within its boundaries, and which must include within its approved Project Plan, as allowable Project Costs, payment of the cost of the Off-Site Public Improvements, the Stormwater Management Improvements, and the Municipal Revenue Obligations provided for in Section C of this Agreement.

8. ~~5.~~ Excess Tax Increment. Excess Tax Increment has the meaning given in Section D.3.(b)(4).

9. ~~6.~~ Plat. The land division plat filed by Developer with the City on December 19, 2013, entitled "Kettle Park West - Commercial Center."

10. ~~7.~~ Project. The construction of a mixed use development in accordance with the Planned Development District zoning for the Kettle Park West Commercial Property approved by City Ordinance No. 0-23-2013, and as such zoning may be amended from time to time.

11. ~~8.~~ Property. The property described in Attachment A.

12. ~~9.~~ City Administrative Costs. All costs, including city staff, engineering, legal, planning, and financial consultant costs, incurred by the City relating to: the creation and administration of the District; construction of the Public Improvements, including construction observation and inspection costs; the drafting and negotiation of this Agreement and other agreements relating to the District or the Project; and other costs incurred by the City in connection with the District, the Public Improvements or the Project, and not paid by the Developer pursuant to Section 4. B of the Pre-Annexation Agreement between the City and the Developer.

13. ~~10.~~ City Borrowing. The amount borrowed by the City through the issuance of bonds or other forms of debt or borrowing, to fund the reimbursement of Developer for the cost of constructing the Off-Site Public Improvements as provided for in Section C. 1 of this Agreement, to fund the reimbursement of Developer for the cost of the Stormwater Management

Improvements as provided for in Section C.2 of this Agreement, and to fund the City's construction of the City Improvements.

14. ~~11.~~ Off-Site Public Improvements. The following public improvements to be constructed for the benefit of the District in accordance with detailed plans and specifications to be prepared by Developer and approved by the City Planning Director:

(a) *Utility Relocation.* Relocation of overhead electric and underground gas equipment along U.S. Highway 51 and 138.

(b) *Highway 51 Improvements.* Reconstruction of the intersection of Jackson Street and U.S. Highway 51, including sidewalks at the intersection; construction of a turning lane into the Property between Jackson Street and State Highway 138; new traffic signals at Jackson Street and U.S. Highway 51; temporary traffic signals at the intersection of U.S. Highway 51 and State Highway 138. The City may require an off-road shared-use path.

(c) *State Highway 138 Improvements.* Reconstruction of State Highway 138 with asphalt from the West line of the Plat to approximately existing Veek Road; water main from the West lot line of Lot 2 of the Plat to the existing water main in McComb Road; sanitary sewer main from the West line of Lot 2 of the Plat to the East line of Lot 2; roundabout at the primary drive into Lot 2 of the Plat. The City may also require this work to include curb and gutter, sidewalk, and on-road bike accommodations, and may also require an off-road shared-use path.

(d) *Jackson Street (West).* Construction of Jackson Street, from approximately the West right-of-way line of U.S. Highway 51 to approximately the West line of Lot 3 of the Plat, including sanitary sewer, water main, storm sewer, curb and gutter, street, sidewalk, and street lighting. The City may also require this work to include an asphalt shared-use path.

(e) *Jackson Street (East).* Construction of Jackson Street between the West right-of-way line of U.S. Highway 51 to the East right-of-way line of U.S. Highway 51.

15. ~~12.~~ Site Grading. All site grading work the Developer is required to complete in connection with the development of the Property, pursuant to grading plans to be prepared by Developer and approved by the City Planning Director in accordance with applicable site grading, erosion control and stormwater management regulations.

16. ~~13.~~ Stormwater Management Improvements. Regional stormwater management improvements including a regional infiltration basin, a regional water quality basin, a pump station, and a pressure pipe, to be designed by the Developer as part of the stormwater management plan for the Property, and approved by the City Planning Director.

17. ~~14.~~ On-Site Public Improvements. Public improvements needed to serve the lots within the Plat, but not including the Off-Site Public Improvements. The improvements contemplated herein include the following: Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; and gas and

electric utilities, all in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director.

18. ~~15.~~ Public Improvements. Public Improvements means, collectively, the Off-Site Public Improvements, the On-Site Public Improvements, and the Stormwater Management Improvements.

19. ~~16.~~ Value Increment. Value Increment has the meaning in Section 66.1105 (2) (m) of the ~~2011~~2013-~~2012~~14 Wisconsin Statutes.

B. **DEVELOPER OBLIGATIONS.**

1. Construction of Public Improvements.

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

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

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

(d) *Prevailing Wage Rates.* Pursuant to Wis. Stat. § 66.0903, the Developer will apply to the Wisconsin Department of Workforce Development to determine the prevailing wage rate for each trade or occupation required to construct the Public Improvements. Once the Department issues its determination of the prevailing wage rates (“Determination”), it shall be considered to be incorporated into and made a part of this Agreement, and attached as Attachment E. The Developer agrees to comply fully with Wis. Stat. § 66.0903, as well as the following: (1) The Determination shall be physically incorporated into and made a part of any contract or subcontract that the Developer or its contractor enters into to perform work necessary to construct the Public Improvements. (2) All Covered Employees (as defined in Wis. Stat. § 66.0903(4)) who perform the work necessary to construct the Public Improvements shall be paid prevailing wage rates according to the Determination, and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay. (3) The Developer and each contractor, subcontractor, or contractor’s or subcontractor’s agent performing work necessary to construct the Public Improvements shall keep full and accurate records clearly indicating the name and trade or occupation of every Covered Employee performing the work, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. (4) The Developer is hereby notified, and shall notify all contractors and subcontractors, that if DWD finds a contractor violating the prevailing wage law, DWD shall order the payment of the wages and overtime, if any, and shall assess an additional amount equal to 100 percent of the amount owed as liquidated damages. (5) The City may demand and examine, and the Developer and every contractor, subcontractor or contractor’s or subcontractor’s agent shall keep, and make available for inspection upon request by the City, copies of payrolls and other records and information relating to the wages paid to Covered Employees performing the work necessary to construct the Public Improvements. (6) The Developer shall require that, upon completion of any project involved in construction of the Public Improvements and before receiving final payment for his or her work on the project, each agent, contractor, or subcontractor shall furnish the Developer the City with an affidavit stating that the agent, contractor or subcontractor has complied fully with the requirements of Wis. Stat. § 66.0903. The Developer shall not authorize final payment until the affidavit is filed in proper form and order. (7) Upon completion of the construction of Public Improvements, and prior to the City’s acceptance of the Public Improvements, Developer shall file with the City an affidavit stating that the Developer has complied fully with the requirements of Wis. Stat. § 66.0903 and that the Developer has received an affidavit under the above subsection (6) from each of the Developer’s agents, contractors and subcontractors. The City shall not accept the Public Improvements until the affidavit from the Developer is filed in proper form and order.

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

(f) *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Public Improvements are accepted by the City, traffic controls as specified in a traffic control plan to be prepared by Developer and

approved by the City Planning Director 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.

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

(h) *Change to Work Order.* All change orders for the Public Improvements shall be reviewed and approved by Developer and the City Planning Director. The City shall not be required to reimburse Developer for costs of any change orders relating to the Off-Site Improvements or the Stormwater Management Improvements except those specifically enumerated and agreed upon in written, signed agreements between Developer and the City.

(i) *Indemnification and Insurance.* Developer shall indemnify and hold the City and its officers and employees harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity to the extent such claims, costs and liabilities arise from or relate to the negligence of Developer or its contractors, agents or representatives in the performance of work at the development site and elsewhere pursuant to this Agreement, except where such injury or damage results from the negligence of the City or its contractors or employees. Developer further agrees to aid and defend the City and its officials and employees in the event that the City is named as a defendant in an action concerning the City's performance of work pursuant to this Agreement except where such suit is brought by the Developer, or on the basis of the City's negligence or the negligence of its officials, employees or representatives. Developer is not an agent or employee of the City. Developer and all contractors and subcontractors engaged in the construction of the Public Improvements shall comply with the City contract requirements pertaining to damage claims, indemnification of the City, and providing insurance coverage that is approved by the City. The policies of insurance required hereunder shall name the City as additional insureds, and Developer and contractors shall maintain current certificates of insurance on file with the City.

(j) *Time of Completion.* The Public Improvements shall be substantially complete within 24 months after all conditions precedent in Section E have been satisfied, or before the time the Project is completed, whichever is sooner. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

(k) *Acceptance.* After the Public Improvements required by this Agreement have been substantially completed, and within 10 days after receiving written notice that the Developer desires the City to inspect the On-Site Public Improvements, the City Planning Director or his designee shall inspect the improvements and, if ~~acceptable to~~ such improvements conform to the plans and specifications approved by the City Planning Director prior to construction, the City Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City within 20 days following inspection. Before obtaining certification of any such improvements, Developer shall: (1) present to the City valid lien waivers from all contractors and subcontractors providing materials or performing work on the improvements for which certification is sought; (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; and (3) provide to the City the affidavit required to demonstrate compliance with prevailing wage rate requirements. Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and furthermore until 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, and prevailing wage rate requirements have been satisfied where applicable. Water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, Developer shall clean the storm sewers in accordance with the directives of the City Planning Director.

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

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

Notwithstanding anything to the contrary set forth in this Agreement, Developer may request that the City accept dedication of the Public Improvements in one or more phases, as components of the Public Improvements are substantially completed by Developer.

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

~~(m) *Surety*. In addition to the statutory performance and payment bonds required in section B.1 (c), Developer shall provide a letter of credit as follows:~~

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

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

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

~~(4) *Notice of Expiration*. Developer agrees to provide written notice of the expiration of any Letter of Credit or replacement Letter of Credit provided for herein not less than 60 days before its expiration by sending written notice to the City. The Letter of Credit shall be renewed at least 30 days before its expiration date, or any renewal date, until the completion of the guarantee period specified in Section B.2 (m) of this Agreement.~~

~~(m) (5) *Remedies Not Exclusive*. The remedies provided in this Section are not exclusive. The City may *Surety*. As surety for the performance of Developer's obligation to complete the Public Infrastructure in accordance with the terms of this Agreement, Developer shall cause its contractor to provide a performance bond and a payment bond, including~~

supplemental conditions, in the form attached hereto as Attachment G, provided, however, that such performance and payment bonds shall in no way be deemed a limitation of the City's remedies in the event of a Developer default under this Agreement. The parties expressly agree that the City reserves the right to use any other remedies available to it under this Agreement; ~~any performance or payment bonds~~, or any remedies available in law or equity in addition to, or in lieu of, ~~the remedies provided in this Section~~ such performance and payment bonds.

2. ~~C. CITY OBLIGATIONS~~ Construction of Private Streets.

(a) *Design of Improvements.* Developer shall prepare detailed plans and specifications of the private streets serving the Project ("Private Streets") for review by and subject to approval by the City Planning Director. Where standards and/or specifications for private streets 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.

(b) *Construction of Private Streets.* Developer shall be responsible for the construction and installation of the Private Streets according to the detailed plans and specifications approved by the City Planning Director. The Private Streets will be designed, constructed and installed at Developer's sole expense.

C. CITY OBLIGATIONS. Notwithstanding anything to the contrary set forth in this Agreement, the City's obligation to make the payments contemplated in this Section C is contingent upon substantial completion by Developer of the last of the Public Improvements and Private Streets required under Sections B.1. and B.2. respectively.

1. Reimbursement to Developer for Off-Site Public Improvements.

(a) *Construction Costs.* The City shall reimburse Developer for the cost of constructing the Off-Site Improvements, up to a maximum reimbursement in the amount of \$2,289,327.00, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$2,289,327.00 for the cost of constructing Off-Site Improvements, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection ~~(d)~~ 3. below.

(b) *Engineering Costs.* The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Off-Site Public Improvements, up to a maximum reimbursement in the amount of \$243,933, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$243,933 for the cost of engineering services, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made Developer to City as provided in subsection ~~(d)~~ 3. below.

(c) *Contingency.* If the construction costs or engineering costs described in Sections C. 1 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then

the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$311,707. Developer shall apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 1 (a) and (b).

~~(d) *Request for Payment:* As the Off-Site Public Improvements progress, Developer may make requests to the City for progress payments (and a final payment when the Off-Site Public Improvements are formally accepted by the City) not more than once per month. Developer's application for reimbursement shall be submitted to a mutually agreed upon title company serving as escrow agent, the cost of which shall be a City Administrative Cost, and to the City Planning Director. Developer's application shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work or providing material for which payment is requested, an itemization of the work performed and materials provided, the percentage of work performed or materials provided in that category and copies of all supporting invoices from all contractors, subcontractors and material suppliers requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract and such other documentation and certification requested by the title company; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested have been deposited in escrow with the title company. Within forty five days after submittal of a complete application to the title company demonstrating entitlement to reimbursement under this Section, and subject to approval by the City Planning Director that the payment request is in conformity with the provisions of this Agreement, the City shall make its reimbursement payment to the title company, which shall then issue payment to the contractors, subcontractors and material suppliers for whom payment is requested, up to a maximum total reimbursement as provided in subsections (a), (b) and (c) above. Notwithstanding the foregoing, prior to acceptance of the Off-Site Public Improvements by the City, the City shall reimburse Developer for only 90 percent of the reimbursement to which Developer is entitled under this Section. Following acceptance of the Off-Site Public Improvements by the City, the City shall reimburse Developer for 100 percent of the reimbursement to which Developer is entitled under this Section.~~

2. Reimbursement to Developer for Stormwater Management Improvements.

(a) *Construction Costs.* The City shall reimburse Developer for the cost of constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$1,247,220, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$1,247,220 for the cost of constructing Stormwater Management Improvements, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection ~~(d)~~3. below.

(b) *Engineering Costs.* The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$124,722, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the

City shall not be required to pay more than \$124,722 for the cost of engineering services, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made Developer to City as provided in subsection ~~(d)~~3. below.

(c) *Contingency.* If the construction costs or engineering costs described in Sections C. 2 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$210,355. Developer shall apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 2 (a) and (b).

3. Request for Reimbursement.

(a) ~~(d)~~ *Request for Payment: As the Application.* Following substantial completion by Developer of all of the Private Streets and Public Improvements to be constructed by Developer, and following the City's acceptance of the Public Improvements, the Developer may request reimbursement from the City, in one or more installments, of the cost of Off-Site Public Improvements and Stormwater Management Improvements ~~progress, Developer may make requests to the City for progress payments (and a final payment when the Stormwater Management Improvements are formally accepted by the City) not more than once per month as~~ enumerated in Sections C. 1. and C. 2. Developer's application for reimbursement shall be submitted to ~~a mutually agreed upon title company serving as escrow agent, the cost of which shall be a City Administrative Cost, and to the City Planning Director. Developer's application and~~ shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work or providing material for which payment is requested, an itemization of the work performed and materials provided, the percentage of work performed or materials provided in that category and copies of all supporting invoices from all contractors, subcontractors and material ~~mensuppliers~~ requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract and such other documentation and certification requested by the ~~title company~~ Planning Director; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested ~~have been deposited in escrow with the title company (to the extent any such lien waivers were not already provided to the City in accordance with Section B.1.(k) above upon the City's acceptance of dedication).~~ Within forty-five days after submittal of a complete application to the ~~title company~~ City Planning Director demonstrating entitlement to reimbursement under this Section; ~~and subject to approval by the City Planning Director that the payment request is in conformity with the provisions of this Agreement,~~ the City shall make its reimbursement payment to the ~~title company,~~ which shall then issue payment to the contractors, subcontractors and material suppliers for whom payment is requested, up to a maximum total reimbursement as provided in subsections (a), (b) and (c) above. ~~Notwithstanding the foregoing, prior to acceptance of the Stormwater Management Improvements by the City, the City shall reimburse Developer for only 90 percent of the reimbursement to which Developer is entitled under this Section. Following acceptance of the Stormwater Management Improvements by the City, the City shall reimburse~~

~~Developer for 100 percent of the reimbursement to which Developer is entitled under this Section.~~Developer.

(b) Amount of Reimbursement Available to Developer. The amount of the reimbursement available to Developer in any given year under this Section C. shall be limited to the Projected Actual Tax Increment, as calculated by the Finance Director in the same year the Developer's application for reimbursement is received, less any reimbursements previously made by the City, subject to the maximum amounts set forth in Sections C. 1 and C. 2. Above.

(c) Hold Back. Notwithstanding anything to the contrary in Section C. 3. (b) above, until such time as the Projected Actual Tax Increment exceeds 125% of the Remaining Annual Debt Service, the City shall be entitled to hold back an amount equal to the sum of three (3) years of Annual Debt Service payments (such amount, the "Holdback") from Developer's final reimbursement payment.

4. 3. Municipal Revenue Obligation. Following the completion of the Site Grading, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation, which request shall include Developer's certification of the cost of the Site Grading and documentation of Developer's payments to contractors for the Site Grading work. Within forty-five days after submittal of a complete written request for issuance of the Municipal Revenue Obligation with the required certification and documentation, the City shall issue a Municipal Revenue Obligation to Developer, in the principal amount of the lesser of (1) the cost of the Site Grading work or (2) Five Hundred Fifty Thousand Dollars (\$550,000), in the form attached hereto as Attachment E, under the following terms and conditions:

(a) No Excess Tax Increment will be allocated to make payments on the Municipal Revenue Obligation until the Projected Actual Tax Increment is equal to or greater than 125 percent of the Remaining Annual Debt Service.

(b) (a) The Municipal Revenue Obligation shall not bear interest.

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

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

appropriated for that purpose by the Common Council in accordance with the requirements for revenue obligations.

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

D. TAX INCREMENT GUARANTEES.

1. Anticipated City Borrowing.

(a) The City intends to enter into the City Borrowing for the purposes of financing the Reimbursement for Off-Site Public Improvements and the Reimbursement for Stormwater Management Improvements only after substantial completion by Developer of the last of the Public Improvements and Private Streets required under Sections B. 1. and B. 2.

(b) The City intends to pay off the City Borrowing generally in accordance with the schedule shown on Attachment B. Attachment B shows an anticipated schedule of City Borrowing, Annual Debt Service Payments, and Tax Increment. The parties agree that Attachment B is based on estimates and forecasts that may or may not accurately reflect the actual City Borrowing or 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 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 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 Actual Tax Increment to Pay Annual Debt Service.* Developer guarantees that, beginning in the calendar year 2018, the Actual Tax Increment will be sufficient to fully pay the Annual Debt Service on City Borrowing. If, in any calendar year beginning with calendar year 2018, the Actual Tax Increment received by the City and allocated as described in Section D. 3 is insufficient to pay the Annual Debt Service due that year, then Developer shall be required to pay to the City, and the City shall be entitled to draw on the ~~Letter of Credit~~ Holdback, the amount by which the Actual Tax Increment is insufficient to pay the

Annual Debt Service due that year. Withdrawals on the ~~Letter of Credit~~ Holdback may be made at any time within 30 days before or after the due date of an Annual Debt Service Payment, and Developer's due date for making any required payment on Developer's guarantee, to avoid withdrawals on the ~~Letter of Credit~~ Holdback or interest charges, 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.

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

(a) In 2016 and 2017, all Actual Tax Increment shall be allocated to the City to pay City Administrative Costs and other project costs related to the District.

(b) In 2018 through 2034, or until the District is terminated, whichever is sooner, Actual Tax Increment shall be allocated as follows:

(1) First, to pay City Administrative Costs.

(2) Second, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Stormwater Management Improvements.

(3) Third, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Off-Site Public Improvements.

(4) Fourth, "Excess Tax Increment" shall be available for payment of the Municipal Revenue Obligation referred to in Section C.3 of this Agreement. For purposes of this Agreement, "Excess Tax Increment" shall mean Actual Tax Increment remaining each year after paying Annual Debt Service on City Borrowing each year. Excess Tax Increment remaining after the City has paid the Municipal Revenue Obligation payment due on the Payment Date in a given year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date) may be used by the City to pay any District project costs it may chose, in its discretion.

~~4. Letter of Credit.~~

~~(a) Developer shall provide an irrevocable letter of credit issued pursuant to Chapter 405 of the Wisconsin Statutes to the City to secure Developer's tax increment guarantee obligations under Section D.2(b) of this Agreement. 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. It shall be payable at sight to the City, and shall bear an expiration date not earlier than three years after its initial issuance. The letter of credit shall be payable to the City at any time upon presentation of the following: (1) a sight draft drawn on the issuing bank in an amount to which the City is entitled under this Agreement; (2) an affidavit executed by a person authorized by the City stating that monies are due from Developer pursuant to the guarantee obligations in Section D.2(b); and (3) the letter of credit. After the initial term, Developer shall~~

~~timely renew the letter of credit for additional terms of not less than one year, so that the amount of the letter of credit is at all times not less than the amount required by this Agreement. 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 guarantee obligations.~~

~~(b) The amount of the initial and each renewed or replacement letter of credit shall be equal to the total principal and interest payments that remain unpaid on all remaining Annual Debt Service Payments on City Borrowing. For example, based upon the Schedule of Annual Debt Service Payments attached as Attachment B, the amount of the initial letter of credit would be \$6,765,224.60. However, the amount of the required letter of credit may be reduced by the amount of the Annual Debt Service that will be paid by Actual Tax Increment that has been created within the District, and allocated to pay Annual Debt Service as provided in Section D.3. The Annual Debt Service payments that will be paid by Actual Tax Increment that has been created within the District shall be calculated by the City, using the actual Value Increment that has been created within the District at the time the required amount of the Letter of Credit is calculated, using the mil rate effective at that time.~~

4. ~~5.~~ 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 D. In the event Developer conveys title to any lot within the Plat on the same date that Developer acquires fee simple title to the Property, Developer may, at Developer's election, cause the Tax Agreement (with respect to any lot so acquired) to be executed directly by such lot purchaser.

~~6. Payments Made Under Sections D.2(b). Amounts paid to the City under Section D.2(b) or D.4 of this Agreement shall, during the life of the District, be used and allocated in the same way Actual Tax Increment is used and allocated pursuant to this Agreement.~~

E. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before ~~either party's~~ Developer's obligations under Sections B and D and the City's obligations under Section C of this Agreement shall become effective.:

1. The City and Developer must approve and execute this Agreement.
2. Developer must acquire fee simple title to the Property.
3. A Tax Increment District must be fully and finally approved by the City; and the Joint Review Board and submitted to the Wisconsin Department of Revenue pursuant to Wis. Stat. § 66.1105. The Tax Increment District must include the Property within its boundaries. The project plan for the District must include, as eligible project costs, the Off-Site Public

Improvements, the Stormwater Management Improvements, and payment of the Municipal Revenue Obligation as provided for by this Agreement.

4. A plat, certified survey map or series of certified survey maps that conform substantially to the Plat must be approved by the City and all other approving and objecting authorities pursuant to and in accordance with Chapter 236 of the Wisconsin Statutes.

~~5. Developer must deliver to the City the letter of credit required by Section B.1(m) of this Agreement.~~

~~6. Developer must deliver to the City the letter of credit required by Section D.4 of this Agreement.~~

~~5.~~ 7. The lands needed for construction of the Jackson Street improvements must be dedicated to the City.

~~6.~~ 8. The existing access rights to U.S. Highway 51 and State Highway 138 have been acquired to the extent needed to construct the Off-Site Public Improvements.

~~7.~~ 9. Developer has received all approvals and permits needed from the Wisconsin Department of Transportation, the Wisconsin Department of Natural Resources, and any and all other governmental entities needed to construct the Public Improvements.

~~8.~~ 10. Developer delivers documentation to the City demonstrating that Lot 2 of the Plat has been purchased by a general merchandise retailer that is ranked by the National Retail Federation to be among the top 25 retailers in the United States based on gross sales revenue.

~~9.~~ 11. Developer delivers documentation to the City demonstrating that three lots in the Plat (in addition to Lot 2) have been purchased by commercial enterprises.

~~10.~~ 12. Developer and all others having an interest in the Property must execute and deliver to the City for recording with the Dane County Register of Deeds, a Tax Agreement in the form attached as Attachment D.

~~11. Developer delivers documentation to the City demonstrating that Developer has entered into one or more construction contracts (including the performance and payment bonds) for the construction of the Public Improvements and Private Streets contemplated in Section B. 1 and B 2 above and a loan agreement with Developer's lender in an amount sufficient to fund the cost of these construction contracts.~~

If the events described in this Section E are not satisfied by June 30, 2015, then this Agreement shall be null and void; provided, however, that if any condition precedent cannot be timely satisfied due to an event that is beyond Developer's reasonable ability to control, then the deadline for satisfaction shall be extended for an additional period of time, not to exceed ninety (90) days, so long as Developer is proceeding in good faith and in an expeditious manner to satisfy such condition precedent.

F. 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.

G. GENERAL CONDITIONS.

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

2. Binding Effect / Assignment. The obligations of Developer and the City under this Agreement shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, ~~and any provided, however, Developer shall be permitted to make a collateral assignment of this Agreement to a lender or other secured party in accordance with the form attached hereto as Exhibit H. Any unapproved assignment is void. Under no circumstances shall a permitted assignment of this Agreement constitute a release of Developer from the obligations and liabilities 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 2 percent over the rate then payable by the City under the City Borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Pre-Annexation Agreement executed April 18 and 19, 2013, shall constitute the entire Agreement between Developer and the City as of the date hereof.

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

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

9. Indemnification. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and its officers, agents and employees from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Project 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 gross negligence or willful misconduct 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. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment F.

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

To Developer:

Dennis Steinkraus
Kettle Park West, LLC
161 Horizon Drive, Suite 101A
Verona, WI 53593

Developer's Attorney

~~Ronald Trachtenberg~~ Daniel A. O'Callaghan
Michael Best & Friedrich LLP
1 S. Pinckney St., Ste. 700
~~33 E. Main Street, Suite 500~~
~~P.O. Box 2038~~
Madison, WI ~~53701-2038~~ 53703

To the City:

Laurie Sullivan, Finance Director

City of Stoughton
381 East Main Street
Stoughton, WI 53589

City Attorney

Matthew P. Dregne
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784

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

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

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

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

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

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

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

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

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

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

21. Status of ~~January~~ Amended and Restated Agreement. The Amended and Restated Agreement to Undertake Development dated as of January 29 November 13, 2014 is superseded and replaced by this 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. Further Assurances. The parties each agree to use good faith efforts to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action as shall be necessary or desirable to fully carry out the terms of this Agreement and to fully consummate the transactions contemplated hereby.

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: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

~~DEVELOPER~~COUNTERSIGNED:
KETTLE PARK WEST LLC

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

By _____
David Jenkins, Managing Partner
Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne
City Attorney

DEVELOPER:
KETTLE PARK WEST, LLC

By: _____
David Jenkins, Managing Partner

Attachments:

- A – Description of the Property
- B Schedule of Annual Debt Service Payments
- C Form of Municipal Revenue Obligation
- D Form of Tax Agreement
- E Prevailing Wage Rate Determination
- F City Contract Insurance Requirements
- G Form of Performance Bond and Payment Bond
- H Form of Collateral Assignment of Development Agreement



~~**Forward Development Group**
161 Horizon Drive, Suite 101A
Verona, WI 53593~~

ATTACHMENT A

DESCRIPTION OF AMENDED GENERAL DEVELOPMENT PLAN BOUNDARY

Part of Lot 2, Certified Survey Map No. 3430, Lots 1, 2, and 3, Certified Survey Map No. 3435, Lot 1, Certified Survey Map No. 9632, and Part of the Northwest Quarter, Northeast Quarter, Southeast Quarter and Southwest Quarter of the Southeast Quarter of Section 01, Township 05 North, Range 10 East, City of Stoughton, Dane County, Wisconsin, more particularly described as follows:

Commencing at the Southeast Corner of said Section 01; thence North 00 degrees 17 minutes 13 seconds West along the East line of the Southeast Quarter of Section 01, aforesaid, 185.11 feet; thence North 87 degrees 07 minutes 28 seconds West, 33.05 feet to the Westerly right-of-way line of Veek Road; thence continuing North 87 degrees 07 minutes 28 seconds West, 260.52 feet; thence South 00 degrees 16 minutes 13 seconds East, 5.01 feet to the Northerly right-of-way line of State Trunk Highway '138'; thence North 87 degrees 07 minutes 28 seconds West, 21.50 feet; thence South 00 degrees 12 minutes 45 seconds East, 8.67 feet; thence North 89 degrees 53 minutes 46 seconds West, 343.76 feet; thence North 87 degrees 53 minutes 44 seconds West, 1054.08 feet; thence North 02 degrees 12 minutes 57 seconds East, 63.44 feet; thence North 49 degrees 55 minutes 54 seconds East, 297.24 feet; thence South 87 degrees 53 minutes 44 seconds East, 156.18 feet; thence North 00 degrees 10 minutes 51 seconds West, 468.76 feet; thence South 90 degrees 00 minutes 00 seconds West, 32.23 feet to a point on a curve; thence Northwesterly 337.17 feet along an arc of a curve to the left, having a radius of 1669.65 feet, the chord bearing North 55 degrees 34 minutes 42 seconds West, 336.60 feet; thence South 90 degrees 00 minutes 00 seconds West, 37.73 feet; thence North 00 degrees 00 minutes 00 seconds East, 130.76 feet; thence North 49 degrees 24 minutes 07 seconds East, 363.28 feet; thence South 44 degrees 06 minutes 47 seconds East, 30.27 feet to a point of curve; thence Southeasterly 773.77 feet along an arc of a curve to the left, having a radius of 960.00 feet, the chord bearing South 67 degrees 12 minutes 12 seconds East, 752.99 feet; thence North 00 degrees 06 minutes 55 seconds West, 886.79 feet; thence South 89 degrees 53 minutes 05 seconds West, 230.62 feet; thence North 45 degrees 33 minutes 02 seconds West, 245.18 feet; thence North 44 degrees 26 minutes 58 seconds East, 217.29 feet; thence North 30 degrees 35 minutes 56 seconds East, 51.27 feet; thence South 86 degrees 41 minutes 54 seconds East, 257.20 feet to the West line of Lot 2, Certified Survey Map No. 8144; thence South 00 degrees 05 minutes 12 seconds East along said West line, 195.44 feet to the Southwest corner of said Lot 2 also being the Northwest corner of Lot 4, Certified Survey Map No. 9632; thence South 00 degrees 06 minutes 55 seconds East along said West line of Certified Survey Map No. 9632, a distance of 888.03 feet; thence South 87 degrees 57 minutes 29 seconds East, 1.15 feet; thence South 00 degrees 19 minutes 58 seconds West, 198.79 feet to the Southwest corner of Lot 2, Certified Survey Map No. 9632; thence North 89 degrees 42 minutes 22 seconds East along the South line of said Lot 2 a distance of 519.75 feet to the Westerly right-of-way line of U.S.

Highway '51'; thence South 01 degrees 40 minutes 47 seconds West along said right-of-way line, 170.46 feet to a point of curve; thence Southeasterly 487.72 feet along an arc of a curve to



~~**Forward Development Group**
161 Horizon Drive, Suite 101A
Verona, WI 53593~~

the left, having a radius of 981.47 feet, the chord bearing South 12 degrees 31 minutes 39 seconds East, 482.72 feet to the Westerly right-of-way line of Veek Road; thence South 00 degrees 17 minutes 13 seconds East along said right-of-way line, 322.71 feet to the point of beginning.

Said parcel contains 1,609,687 square feet or 36.953 acres.

ATTACHMENT B

SCHEDULE OF ANNUAL DEBT SERVICE PAYMENTS

[Attached]

~~ATTACHMENT B~~

~~SCHEDULE OF ANNUAL DEBT SERVICE PAYMENTS~~

(Modified graphics)

~~\$4,760,000~~

~~City of Stoughton, Wisconsin~~

City of Stoughton, Wisconsin
Estimated Cash Flow: Phase 1 First 4 Users
Bond Anticipation Notes, Series 2015

Kettle Park West Project

Sources & Uses

TID Year	Assessment Year	Incremental Assessed Value (Land and Improvements)	Projected Total Incremental AV	Annual Incremental Revenue	Estimated City TID Debt Cost	Tax Increment Available for Debt Service	Cumulative Tax Increment	City GO Bond Debt Service	Developer Cash Grant	Annual Tax Increment Available After DS	Cumulative Tax Increment Available After Debt Service
0	2014										
1	2015										
2	2016	\$10,533,020	\$ 10,533,020	\$ -	\$ (15,000)	\$ (15,000)	\$ (15,000)			\$ (15,000)	\$ (15,000)
3	2017	\$ 496,380	\$ 17,029,400	\$ 342,891	\$ (5,000)	\$ 237,891	\$ 222,891	(\$193,202.13)		\$ 44,589	\$ 20,599
4	2018	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 610,589	(\$380,584.26)		\$ 1,114	\$ 30,713
5	2019	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 998,287	(\$380,584.26)	\$4,760,000.00	\$ 1,114	\$ 31,827
6	2020	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 1,385,985	(\$380,584.26)		\$ 1,114	\$ 32,940
7	2021	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 1,773,883	(\$380,584.26)	\$4,760,000.00	\$ 1,114	\$ 34,054
8	2022	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 2,161,381	(\$380,584.26)		\$ 1,114	\$ 35,168
9	2023	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 2,549,079	(\$380,584.26)		\$ 1,114	\$ 36,282
10	2024	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 2,936,777	(\$380,584.26)	264.00	\$ 1,114	\$ 37,395
11	2025	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 3,324,475	(\$380,584.26)	1,066.66	\$ 1,114	\$ 38,509
12	2026	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 3,712,173	(\$380,584.26)	5,000.00	\$ 1,114	\$ 39,623
13	2027	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 4,099,871	(\$380,584.26)	4,800.00	\$ 1,114	\$ 40,736
14	2028	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 4,487,569	(\$380,584.26)	4,800.00	\$ 1,114	\$ 41,850
15	2029	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 4,875,267	(\$380,584.26)	4,800.34	\$ 1,114	\$ 42,964
16	2030	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 5,262,965	(\$380,584.26)		\$ 1,114	\$ 44,077
17	2031	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 5,650,663	(\$380,584.26)	5,000.00	\$ 1,114	\$ 45,191
18	2032	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 6,038,361	(\$380,584.26)		\$ 1,114	\$ 46,305
19	2033	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 6,426,059	(\$380,584.26)		\$ 1,114	\$ 47,419
20	2034	-	\$ 17,029,400	\$ 342,898	\$ (5,000)	\$ 387,898	\$ 6,813,757	(\$380,584.26)		\$ 1,114	\$ 48,532
Total		\$ 17,029,400		\$ 6,813,757	\$ (105,000)	\$ 6,813,757		\$ (8,765,224.60)	\$ -	\$ 48,532.23	

Tables I and III show the anticipated project costs and projected tax increment revenues for financing of the proposed public improvement project costs of the District, and the projected cash flow. There are two alternate scenarios: Phase 1 First 4 Users only and Phase 1 Full Build out. The City anticipates financing the proposed project costs outlined in Table 1 through bond issuance but reserves the right to finance project costs through pay-as-you-go reimbursement and developer cash grants. The City anticipates entering into an agreement with the developer that should the development be successful and generate the revenues as projected upon full build out of Phase 1 that a Developer Cash Grant would be provided.

Tables I and III indicate that projected tax increments are expected to be sufficient to support the project costs through the maximum term of the district, with both alternate scenarios as described.

The retirement of the District, taking into consideration the assumptions identified in Table I (Proposed Project Costs, Public Works & Improvements) and Table II (Projected Development Assumptions), is based on the property tax collection that was in place at the time of the Public Hearing held on October 27, 2014.

(Added graphics)

\$4,760,000

City of Stoughton, Wisconsin
Bond Anticipation Notes, Series 2015
Kettle Park West Project

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S
11/01/2015	-	-	-	-	-	-
05/01/2016	-	-	43,633.33	43,633.33	(43,633.33)	-
11/01/2016	-	-	23,800.00	23,800.00	(23,800.00)	-
05/01/2017	-	-	23,800.00	23,800.00	(23,800.00)	-
11/01/2017	-	-	23,800.00	23,800.00	(19,833.33)	3,966.67
05/01/2018	4,760,000.00	1.000%	23,800.00	4,783,800.00	-	4,783,800.00
Total	\$4,760,000.00	-	\$138,833.33	\$4,898,833.33	(111,066.66)	\$4,787,766.67

SIGNIFICANT DATES

Dated Date..... 6/01/2015
Delivery Date..... 6/01/2015
First Coupon Date..... 5/01/2016

Yield Statistics

Bond Year Dollars..... \$13,883.33
Average Life..... 2.917 Years
Average Coupon..... 1.0000000%

Net Interest Cost (NIC)..... 1.1714285%
True Interest Cost (TIC)..... 1.1741076%
Bond Yield for Arbitrage Purposes..... 0.9993407%
All Inclusive Cost (AIC)..... 1.5073984%

IRS Form 8038

Net Interest Cost..... 1.0000000%
Weighted Average Maturity..... 2.917 Years

2015 BAN 1/30/15 | SINGLE PURPOSE | 1/30/2015 | 12:06 PM



(Added graphics)

\$4,260,000	
City of Stoughton, Wisconsin	
General Obligation Refunding Bonds, Series 2018	
Kettle Park West Project - Takeout of the 2015 BANS	
Sources & Uses	
Dated 04/01/2018 Delivered 04/01/2018	
Sources Of Funds	
Par Amount of Bonds.....	\$4,260,000.00
2017 and 2018 Tax Increment Revenue.....	619,879.00
Total Sources.....	\$4,879,879.00
Uses Of Funds	
Deposit to Current Refunding Fund.....	4,783,800.00
Costs of Issuance.....	50,000.00
Total Underwriter's Discount (1.000%).....	42,600.00
Rounding Amount.....	3,479.00
Total Uses.....	\$4,879,879.00

2018 GO Bonds (Take out 2 | SINGLE PURPOSE | 1/30/2018 | 12:07 PM



Springsted

(Added graphics)

\$4,260,000

City of Stoughton, Wisconsin

General Obligation Refunding Bonds, Series 2018

Kettle Park West Project - Takeout of the 2015 BANS

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	Revenue	Surplus(Deficit)	Fiscal Total
04/01/2018	-	-	-	-	-	-	-
04/01/2019	160,000.00	1.600%	122,440.00	282,440.00	382,991.00	100,551.00	-
10/01/2019	-	-	59,940.00	59,940.00	-	(59,940.00)	40,611.00
04/01/2020	225,000.00	1.800%	59,940.00	284,940.00	382,991.00	98,051.00	-
10/01/2020	-	-	57,915.00	57,915.00	-	(57,915.00)	40,136.00
04/01/2021	230,000.00	2.000%	57,915.00	287,915.00	382,991.00	95,076.00	-
10/01/2021	-	-	55,615.00	55,615.00	-	(55,615.00)	39,461.00
04/01/2022	235,000.00	2.200%	55,615.00	290,615.00	382,991.00	92,376.00	-
10/01/2022	-	-	53,030.00	53,030.00	-	(53,030.00)	39,346.00
04/01/2023	240,000.00	2.400%	53,030.00	293,030.00	382,991.00	89,961.00	-
10/01/2023	-	-	50,150.00	50,150.00	-	(50,150.00)	39,811.00
04/01/2024	245,000.00	2.650%	50,150.00	295,150.00	382,991.00	87,841.00	-
10/01/2024	-	-	46,903.75	46,903.75	-	(46,903.75)	40,937.25
04/01/2025	255,000.00	2.750%	46,903.75	301,903.75	382,991.00	81,087.25	-
10/01/2025	-	-	43,397.50	43,397.50	-	(43,397.50)	37,689.75
04/01/2026	260,000.00	2.850%	43,397.50	303,397.50	382,991.00	79,593.50	-
10/01/2026	-	-	39,692.50	39,692.50	-	(39,692.50)	39,901.00
04/01/2027	270,000.00	2.950%	39,692.50	309,692.50	382,991.00	73,298.50	-
10/01/2027	-	-	35,710.00	35,710.00	-	(35,710.00)	37,588.50
04/01/2028	275,000.00	3.100%	35,710.00	310,710.00	382,991.00	72,281.00	-
10/01/2028	-	-	31,447.50	31,447.50	-	(31,447.50)	40,833.50
04/01/2029	285,000.00	3.200%	31,447.50	316,447.50	382,991.00	66,543.50	-
10/01/2029	-	-	26,887.50	26,887.50	-	(26,887.50)	39,656.00
04/01/2030	295,000.00	3.300%	26,887.50	321,887.50	382,991.00	61,103.50	-
10/01/2030	-	-	22,020.00	22,020.00	-	(22,020.00)	39,083.50
04/01/2031	305,000.00	3.350%	22,020.00	327,020.00	382,991.00	55,971.00	-
10/01/2031	-	-	16,911.25	16,911.25	-	(16,911.25)	39,059.75
04/01/2032	315,000.00	3.400%	16,911.25	331,911.25	382,991.00	51,079.75	-
10/01/2032	-	-	11,556.25	11,556.25	-	(11,556.25)	39,523.50
04/01/2033	325,000.00	3.450%	11,556.25	336,556.25	382,991.00	46,434.75	-
10/01/2033	-	-	5,950.00	5,950.00	-	(5,950.00)	40,484.75
04/01/2034	340,000.00	3.500%	5,950.00	345,950.00	382,991.00	37,041.00	-
10/01/2034	-	-	-	-	-	-	37,041.00
Total	\$4,260,000.00	-	\$1,236,692.50	\$5,496,692.50	\$6,127,856.00	\$631,163.50	-

SIGNIFICANT DATES

Dated.....

4/01/2018

Delivery Date.....

4/01/2018

First Coupon Date.....

4/01/2019

Yield Statistics

Bond Year Dollars.....

\$39,320.00

Average Life.....

9.230 Years

Average Coupon.....

3.1451996%

Net Interest Cost (NIC).....

3.2535415%

True Interest Cost (TIC).....

3.2500778%

Bond Yield for Arbitrage Purposes.....

3.1207320%

All Inclusive Cost (AIC).....

3.4042418%

Net Interest Cost in Dollars.....

1,236,692.50

Weighted Average Maturity.....

9.230 Years

2018 GO Bonds (Take out 2 | SINGLE PURPOSE | 1/30/2018 | 12:07 PM)



-

ATTACHMENT C

FORM OF MUNICIPAL REVENUE OBLIGATION
TO SECOND AMENDED AND RESTATED
~~TO~~ AGREEMENT TO UNDERTAKE DEVELOPMENT

(Kettle Park West Development)

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 Kettle Park West LLC, its successors and assigns ("Developer").

WITNESSETH:

A. The City and Developer have entered into ~~an~~ a Second Amended and Restated Agreement to Undertake Development dated _____, 2014 (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.

1. *Promise to Pay.* The City shall pay to Developer the principal amount of \$ _____, together with interest thereon at a rate of zero percent (0 %) per annum, solely from Excess Tax Increment, in Scheduled Payments in accordance with Schedule 1 attached hereto and made a part hereof. To the extent that on any Payment Date the City is unable to make a payment from Excess Tax Increment at least equal to the Scheduled Payment due on such date as a result of having received, as of such date, insufficient Excess Tax Increment, or as the result of the City Council not having appropriated sufficient Excess Tax Increment, such failure shall not constitute a default under this Obligation and, except as hereinafter provided, the City shall have no obligation under this Obligation, or otherwise, to subsequently pay any such deficiency unless the deficiency is the direct result of the failure of Dane County to timely remit the proper amount of Tax Increment, in which case, such deficiency shall be paid promptly upon remittance by Dane County. Any payments on the Municipal Revenue Obligation, which are due on any Payment Date, shall be payable solely from and only to the extent that, as of such Payment Date, the City has received Excess Tax Increment. If, on

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any Payment Date there is insufficient Excess Tax Increment to make the scheduled payment due on such date, or if the City Council shall not otherwise appropriate sufficient Excess Tax Increment to make the scheduled payment due on such date in full, the amount of such deficiency in the scheduled payment shall be deferred and shall be paid with interest at a rate equal to zero percent (0%) per annum, on the next Payment Date on which the City has Excess Tax Increment in excess of the amount necessary to make the scheduled payment due on such Payment Date, and if such deficiency has not been paid in full by the final Payment Date as set forth on Schedule 1, then the term of this Obligation shall be extended to include additional successive payment dates on which any Excess Tax Increment will be applied to the payment of such accrued and unpaid deficiencies in the scheduled payments to be made hereunder. In no case, however, shall the term of this Obligation and the City's obligation to make payments hereunder, extend beyond the termination date of the District, (as defined in the Tax Increment Law). 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 any 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 termination date of the District. The District shall not be terminated until this Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever occurs first.

2. *Limited Obligation of City.* This Obligation shall be payable solely from Excess 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 Excess Tax Increment, and then only to the extent and in the manner herein specified.

3. *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.

4. *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.

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

[\[Signature page follows.\]](#)

-

Dated this _____ day of _____, _____.

CITY:
CITY OF STOUGHTON
Dane County, Wisconsin

By: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

COUNTERSIGNED:

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

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney

Attachment – Schedule 1

-

**Schedule 1 to Municipal Revenue Obligation
to Second Amended and Restated Agreement to Undertake Development**

(Kettle Park West Development)

[Attached]

ATTACHMENT D
FORM OF TAX AGREEMENT.

~~ATTACHMENT D~~

~~FORM OF TAX AGREEMENT~~

~~TAX AGREEMENT~~

THIS AGREEMENT is entered into as of the _____ day of _____, 2014 (the “Agreement”), by and between the City of Stoughton, a Wisconsin municipal corporation (the “City”), and ~~Kettle Park West, LLC~~ (the “Owner”), a Wisconsin limited liability company.

RECITALS

A. Owner is the ~~sole~~ owner of property (the “Property”) in the City of Stoughton, more particularly described in Exhibit A, which is a part of the commercial development known as the “Kettle Park West - Commercial Center.”

~~”B. Owner and the City have entered into or are~~

~~simultaneously entering~~B. Kettle Park West, LLC, the developer of the Kettle Park West - Commercial Center (hereafter, “Developer”), and the City have entered into an agreement relating to the development of the Property entitled Second Amended and Restated Agreement to Undertake Development (~~Kettle Park West Development~~) (hereafter the “TID Agreement”). The TID Agreement provides that the City ~~may incur principal~~will undertake certain debt service obligations ~~in~~(the estimated amount of \$5,127,264 (“City Debt Service”)) in an initial amount not to exceed \$4,860,000, which initial amount will be refunded on a longer-term basis through the issuance of general obligation refunding bonds, to assist Owner in funding ~~offsite and on-site public improvements, and to pay for certain improvements to be constructed by the City, as the~~ Off-Site Public Improvements and Stormwater Management Improvements described in the TID Agreement (collectively referred to herein as the “Public Improvements”), subject to repayment of such City Debt Service out of tax increment generated from the Property.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO

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

P.I.N.

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C. Owner and the City wish to enter into this Agreement concerning preservation of the taxable status of the Property to ensure repayment of the City Debt Service.

D. The City's obligations under the TID Agreement are conditioned on Owner signing and recording this Agreement.

E. 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 limited liability company~~ 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 City Debt Service is retired. 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 City Debt Service is retired. 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 retirement of the City Debt Service, 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

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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 Retirement of the City Debt Service. Prior to retirement of the City Debt Service, if it becomes necessary to calculate the amount of property taxes on the Property 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 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 all taxing jurisdictions to which the Property is subject for the Valuation Year. That amount shall be deemed the amount of property taxes on 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 demanding 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 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. City Obligation to Ensure Completion of the Public Improvements. In the event Developer fails to timely complete the Public Improvements in accordance with the terms of the TID Agreement, the City covenants and agrees with Owner that, so long as substantial construction of Owner's intended use and development of the Property has commenced, and provided Owner continues to diligently pursue construction of the intended use of the Property,

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the City shall be obligated to cause the Public Improvements to be promptly completed, which obligation shall include, without limitation, the obligation to enforce the performance and payment bonds associated with the construction contract(s) for such Public Improvements.

9. ~~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.

10. ~~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.

11. ~~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 City Debt Service is retired unless terminated by mutual written agreement. Notwithstanding anything herein to the contrary, in the event that Owner or any subsequent owner of the Property or any part of the Property, desires to terminate this Agreement prior to retirement of the City Debt Service, such Owner may request the City to calculate the amount of property taxes that must be generated by the Property (or the relevant part of the Property) to prepay the outstanding City Debt Service, discounted to present value by 8% per annum, and the City shall terminate this Agreement upon payment of such amount.

12. ~~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. If at any time the Property has more than one owner, any Payment for Municipal Services due under this Agreement for any Valuation Year shall be allocated among the owners in proportion to the fair market value of their property interests as of January 1 of the Valuation Year, as determined under section 6 of this Agreement.

13. ~~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.

14. ~~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.

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

16. ~~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.

17. ~~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.

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18. ~~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: Laurie Sullivan, Finance Director
City of Stoughton
381 East Main Street
Stoughton, WI 53589

City Attorney: Matthew P. Dregne
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784

To Owner: _____

~~Dennis Steinkraus~~
~~161 Horizon Drive, Suite 101A~~
~~Verona, WI 53593~~

Owner's Attorney: _____

~~Daniel O'Callaghan~~
~~Michael Best & Friedrich LLP~~
~~1 South Pinckney Street, Suite 700~~
~~Madison, WI 53701-1806~~

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

19. ~~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.)

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

CITY:
CITY OF STOUGHTON

By: _____
Donna Olson, Mayor

By: _____
Lana C. Kropf, City Clerk

Countersigned:

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, the above-named Donna Olson ~~and~~ Maria Hougan and Laurie Sullivan, 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:

~~KETTLE PARK WEST LLC~~

By: _____

~~David Jenkins, Managing Partner~~

Name/Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, the above-named ~~David Jenkins~~ _____, 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 to Tax Agreement

Description of the Property

[To be inserted]

ATTACHMENT E
PREVAILING WAGE RATE DETERMINATION

[\[To be inserted\]](#)

ATTACHMENT F
CITY CONTRACT INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. Worker's Compensation and Employers Liability Insurance - The Contractor shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

b. Commercial General Liability and Automobile Liability Insurance - The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering. Symbol 1 (any vehicle)

Limits - The Contractor shall maintain **limits** no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence (\$2,000,000 general aggregate if applicable) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the City of Stoughton or the general aggregate including product-completed operations aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering **all** vehicles to be used in relationship to the Agreement~~—~~.

3. Umbrella Liability — Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.

c. **Required Provisions** - The general liability umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CO 2010, CO 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises occupied or used by the Contractor; and vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection

1. afforded to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

~~2. For any claims related to this project, the Contractor's insurance shall be~~
For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City of

2. Stoughton, its elected and appointed officials, officers, employees, or authorized representatives or volunteers **shall** not contribute to it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after sixty (60) days (10 days for non-payment of premium) ~~prior written~~ notice by U.S. mail has been given to the City of Stoughton.

6. Such liability insurance shall indemnify the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Contractor for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability **with a minimum of a 24 month policy extension**, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

8. All of the insurance shall be provided on policy forms and through companies satisfactory to the City of Stoughton, and shall have a minimum A.M. Best's rating of A- VII.

d. **Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be

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declared to and approved by the City of Stoughton. At the option of the City of Stoughton, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

e. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of Stoughton a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. CG 20 10 11 85 covers all bases OR Form CO 20 10 10 01 for ongoing work exposure and Form CG 20 37 10 01 for products-completed operations exposure.

Such evidence **shall include** an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions 1-5.

f. Responsibility for Work - until the completion and final acceptance by the City of Stoughton of all the work under and implied by this agreement, the work shall be under the Contractor's ~~Contractor's~~ responsibility care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

g. Sub-Contractors - In the event that the Contractor employs other contractors (subcontractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

City of Stoughton

Insurance Endorsement Form

(General Liability)

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

~~1.~~ Additional Insured: With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. Additional Insured status shall be endorsed onto this policy in a form at least as broad as (CG 20 10 11 85) This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).

~~1.~~ Cross Liability Clause: The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.

~~2.~~ Occurrence Based Policy: This policy shall be an "occurrence-based policy".

~~3.~~ Primary Insurance: For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.

~~4.~~ Indemnification Clause: The underwriters acknowledge that the named insured shall indemnify and save harmless the City against any and all claims to the extent resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).

~~5.~~ _____

~~6.~~ Investigation and Defense Costs: Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.

~~6.~~

-

7. Reporting provisions: Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.

~~7.-~~

8. Cancellation: This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.

~~8.-~~

9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.

~~9.-~~

10. Comprehensive Coverage: This policy shall afford coverage at least as broad as Commercial General Liability "Occurrences" Form (CG 00 01) and shall include the following:

A. General Liability

- (1) Comprehensive Form
- (2) Premises/Operations
- (3) Independent Contractors Liability
- (4) Broad Form Property Damage
- (5) Personal Injury
- (6) Products, Completed Operations
- (7) Contractual
- (8) Explosions, collapse, or underground property damage

Note: If this is a Homeowner's Policy in lieu of Commercial General Liability, it shall afford coverage at least as broad as a Homeowners ISO Form II from Wisconsin and shall include comprehensive personal liability.

This policy shall provide the dollar limit specified in paragraph 9 with the following additional coverage where boxes below are checked:

~~10.-~~

11. NA

~~11.-~~

12. NA

~~12.-~~

13. Other _____

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

-

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (Date)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

City of Stoughton
Insurance Endorsement Form
(Business Auto Liability)

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. Additional Insured: With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be names as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
2. Cross Liability Clause: The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
3. Occurrence Based Policy: This policy shall be an "occurrence-based policy".
4. Primary Insurance: For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
5. Indemnification Clause: The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Stoughton against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).

6. Investigation and Defense Costs: Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
- ~~6.~~
7. Reporting provisions: Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.

~~7.~~

-

8. Cancellation: This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.

~~8-~~

9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by the named insured.

~~9-~~

10. Comprehensive Coverage: This policy shall afford coverage at least as broad as (Occurrence) Form CA0001692 Code 1 "any auto" and shall include the following:

A. General Liability

- (1) All licensed vehicles and equipment used in the project
- (2) Uninsured or Underinsured Motorists Liability Coverage
- (3) Elimination of Pollution Exclusion (on request)

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (*Date*)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

ATTACHMENT G

FORM OF PERFORMANCE BOND AND PAYMENT BOND

[Attached]

PERFORMANCE BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location): Kettle Park West – Commercial Center, Public Improvements, Stoughton, WI.

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

Kettle Park West – Commercial Center
09-3951

Performance Bond

00 61 00-1

EJCDC® C-610, Performance Bond

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and American Society of Civil Engineers. All rights reserved. 1 of 4

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor'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. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

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 the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for

performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor 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 Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. 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.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. 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 two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

16.1 Upon written notice to the Owner, Contractor and Surety, the City of Stoughton shall have the right to act on behalf of or as the Owner under terms of this Bond. The City's rights will become effective 30 days after notice is duly given.

16.2 Should the City of Stoughton exercise its rights, the Owner shall cease to retain its right until written notice is provided to the Owner, Contractor and Surety by the City of Stoughton that it is relinquishing its rights.

PAYMENT BOND

CONTRACTOR (name and address):

SURETY (name and address of principal place of business):

OWNER (name and address):

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description (name and location): Kettle Park West – Commercial Center, Public Improvements, Stoughton, WI

BOND

Bond Number:

Date (not earlier than the Effective Date of the Agreement of the Construction Contract):

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (attach power of attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

Kettle Park West – Commercial Center
09-3951

Payment Bond

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EJCDC® C-615, Payment Bond

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of

the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim: A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water,

gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

16.1 Upon written notice to the Owner, Contractor and Surety, the City of Stoughton shall have the right to act on behalf of or as the Owner under terms of this Bond. The City's rights will become effective 30 days after notice is duly given.

16.2 Should the City of Stoughton exercise its rights, the Owner shall cease to retain its right until written notice is provided to the Owner, Contractor and Surety by the City of Stoughton that it is relinquishing its rights.

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COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of _____, 2015, by Kettle Park West, LLC, a Wisconsin limited liability company ("Borrower") in favor of McFarland State Bank (the "Lender").

RECITALS:

WHEREAS, pursuant to that certain Construction and Term Loan Agreement of even date herewith, by and between Borrower and Lender (the "Loan Agreement"), Lender has this date agreed to loan to Borrower up to _____ Million _____ Hundred Thousand _____ and no/100 Dollars (\$ _____) (the "Loan"), which Loan is secured in part by a Mortgage and Security Agreement (the "Mortgage") pertaining to interests in certain land described in the Mortgage and the improvements to be constructed thereon (collectively, the "Property") owned by Borrower and located in Dane County, Wisconsin;

WHEREAS, the Borrower is a party to that certain Second Amended and Restated Agreement to Undertake Development, dated as of _____, 2015, (the "Development Agreement") relating to the Property, by and between the Borrower and the City of Stoughton, a Wisconsin municipal corporation (the "City"); and

WHEREAS, it is a condition precedent to Lender's obligation to make the Loan available to Borrower that Borrower execute and deliver this Assignment with respect to the Development Agreement;

ASSIGNMENT:

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to provide and maintain the Loan to Borrower pursuant to the Loan Agreement, Borrower agrees as follows:

1. Assignment. As security for all obligations of Borrower under the Loan Agreement (the "Obligation"), Borrower collaterally assigns, pledges and transfers to Lender and grants to Lender a security interest in all of its rights, remedies (at law or in equity), title and interest in and to (a) the Development Agreement and (b) all agreements, documents, certificates, instruments, and other materials relating thereto (collectively, the "Assigned Documents") and (c) all proceeds thereof, including, without limitation, its rights and remedies with respect to any breach by any counterparty of any of its representations, warranties, covenants and obligations under the Assigned Documents. Without limiting the generality of the foregoing, as security for the Obligation, Borrower specifically collaterally assigns, pledges and transfers to Lender, and grants to Lender, a security interest in all rights of Borrower to receive any sums of money or property in connection with the Assigned Documents.

2. Representations and Warranties. Borrower hereby acknowledges and affirms that the representations, warranties and covenants of the Borrower with respect to the Assigned Documents and the rights and remedies of Lender with respect to the pledge of security interest in and collateral assignment of the Assigned Documents made and granted hereby are more fully

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set forth in the Loan Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

3. Performance and Enforcement. So long as no Event of Default, as defined in the Loan Agreement, has occurred and is continuing, insofar as the Borrower may have any right, privilege or claim under the Assigned Documents, the Borrower will perform all of its obligations under the Assigned Documents and use prudent business judgment concerning its enforcement of any rights under such Assigned Documents, will enforce the same diligently and in good faith and will give Lender notice of each such enforcement undertaken by the Borrower.

4. Rights following Event of Default. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, power and authority to (a) declare this Assignment to be unconditional and absolute, and thereby succeed fully to all of Borrower's rights, remedies, title and interest in, to and under the Assigned Documents, (b) notify Counterparties that the Assigned Documents have been assigned to Lender, whether or not it has commenced or completed foreclosure or taken possession thereof, and (c) exercise all rights of Borrower under the Assigned Documents. In furtherance of the foregoing, upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and empowers Lender, in its sole discretion, to assert, either directly or on behalf of Borrower, any right, privilege or claim which Borrower then or thereafter may have under the Assigned Documents, as Lender may deem proper, and to receive and collect any and all damages, awards and other monies resulting therefrom and to apply the proceeds thereof against any Obligation then outstanding. Nothing herein shall be construed to require Lender to taken any action in respect of the Assigned Documents, whether for the account of Borrower or otherwise.

5. Lender as Attorney-in-Fact. Borrower hereby irrevocably make, constitute and appoint Lender (and all officers, employees or agents designated by it) as its true and lawful attorney-in-fact for the purposes of enabling Lender or its agent or designee to exercise its rights under Section 4 hereof.

6. Notice of Events. Borrower shall keep Lender informed of all circumstances which have a material and adverse effect upon the exercise of its rights and remedies under the Assigned Documents. In any event, Borrower shall not release, cancel, sell, compromise, waive, amend, alter or modify any of its rights or remedies under the Assigned Documents, without first obtaining the prior written consent of Lender.

7. Responsibilities of Borrower. Borrower expressly acknowledges and agrees that it shall remain liable under the Assigned Documents, to observe and perform all of the conditions and obligations therein contained to be observed and performed by it, and that neither this Assignment, nor any action taken by Lender pursuant hereto, shall cause Lender to be under any obligation or liability in any respect whatsoever to any party to the Assigned Documents or for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

8. Lender not Responsible. Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, covenant,

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condition or term with respect to the Assigned Documents on account of this Assignment. Lender shall have no responsibility on account of this Assignment for the control or care of the Assigned Documents, other than to handle the Assigned Documents in the same manner as it handles other collateral in the ordinary course of business.

9. Successor and Assigns. This Assignment and all obligations of Borrower hereunder shall be binding upon the successors and assigns of the Borrower (including any debtor-in-possession on behalf of the Borrower) and shall, together with the rights and remedies of Lender, inure to the benefit of Lender and all future holders of any instrument evidencing any of the Obligation and the respective successors and assigns. No sales of participations, sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Obligation or any portion thereof or interest therein shall in any manner affect the assignment made and security interest granted hereunder to Lender. Borrower may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Assignment.

10. Notices. All notices, requests and other communications to the Borrower or Lender hereunder shall be made in accordance with the provisions of the Loan Agreement.

11. No Waiver. No failure or delay on the part of Lender in exercising any right or remedy hereunder, and no course of dealing between Borrower on the one hand and Lender on the other hand shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder, under the Loan Agreement, preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder or thereunder. The rights and remedies herein, in the Loan Agreement are cumulative and not exclusive of any rights or remedies which Lender would otherwise have. No notice to or demand on Borrower not required hereunder in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances with notice or demand.

12. Amendment. No amendment or waiver of any provision of this Assignment, nor consent to any departure by Borrower from this Assignment, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall be effective only the specific instance and for the specific purpose for which given.

13. Governing Law. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal laws (without giving effect to the conflict of law principles thereof) of the State of Wisconsin.

14. Severability. In case any provision in or obligation under this Assignment shall be invalid, illegal or unenforceable, in whole or in part, in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

15. Counterparts. This Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, Borrower and Lender have caused this Assignment to be executed by their respective duly authorized officers as of the date first above written.

ASSIGNOR:

KETTLE PARK WEST, LLC

a Wisconsin limited liability company

By:

David Jenkins, Authorized Member

LENDER:

MCFARLAND STATE BANK

a Wisconsin state banking corporation

By:

Name/Title:

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ACKNOWLEDGEMENT OF ASSIGNMENT AND CONSENT

The City of Stoughton, Wisconsin hereby acknowledges the above Collateral Assignment of Development Agreement by Kettle Park West, LLC to McFarland State Bank, and consents thereto.

Dated: _____, 2015.

CITY OF STOUGHTON
Dane County, Wisconsin

By: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

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COUNTERSIGNED:

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

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney

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Summary Report: Litéra® Change-Pro TDC 7.0.0.360 Document Comparison done on 4/16/2015 4:08:21 PM	
Style Name: MBFDefault	
Original DMS: iw://IMANAGE/MBF/16740926/1	
Modified DMS: iw://IMANAGE/MBF/17013734/2	
Changes:	
<u>Add</u>	470
Delete	235
Move From	17
<u>Move To</u>	17
<u>Table Insert</u>	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	8
Embedded Excel	0
Format Changes	0
Total Changes:	747

**SECOND AMENDED AND RESTATED
AGREEMENT TO UNDERTAKE DEVELOPMENT**

(Kettle Park West Development)

THIS SECOND AMENDED AND RESTATED AGREEMENT TO UNDERTAKE DEVELOPMENT (this “Agreement”) is entered into as of the ____ day of _____, 2015, by and between the City of Stoughton, a Wisconsin municipal corporation (the “City”), and Kettle Park West, LLC, a Wisconsin limited liability company (the “Developer”).

RECITALS

1. The City and Developer entered into an Agreement to Undertake Development dated as of January 29, 2014 (the “Original Agreement”), which was amended and restated pursuant to that certain Amended and Restated Agreement to Undertake Development dated as of November 13, 2014 (the “Amended and Restated Agreement”). The City and Developer wish to replace the Amended and Restated Agreement with this Agreement.

2. Developer proposes to purchase the real property described on Attachment A attached hereto (the “Property”), and intends to undertake commercial development on the Property in accordance with the Planned Development District zoning of the Kettle Park West Commercial Property approved by the City in Ordinance No. 0-29-2014. To facilitate development of the Kettle Park West - Commercial Center, the City has also approved several certified survey maps pursuant to Resolution No. R-124-2014.

3. Section 66-903 of the City of Stoughton Municipal Code allows the City, at its discretion, to require the developer to enter into a contract with the City for the installation of improvements needed to serve the Kettle Park West - Commercial Center.

4. Developer is unable to develop the Property without financial assistance in constructing certain public improvements, including improvements to U.S. Highway 51 and State Highway 138. Developer also requires financial assistance to offset the cost of substantial site grading and stormwater management costs within the Property.

5. The City wants to facilitate the development of the Property, 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.

6. In order to make the development 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.

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

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 November 11, 2014, adopted Resolution No. R-136-2014, designating proposed boundaries and approving a Project Plan For Tax Incremental District No. 7.

10. The City Council on February 24, 2015, adopted Resolution No. R-29-2015 approving the issuance of General Obligation Promissory Notes providing for the sale of note anticipation notes in an amount not to exceed \$4,860,000, to provide the necessary funds to satisfy the City's obligations under this Agreement.

11. The City and the Developer now wish to revise the Amended and Restated Agreement to require the Developer to arrange private construction financing for 100% of the initial construction cost of the Public Improvements and to make the City's funding obligations contingent upon the Developer's successful completion of the Public Improvements, as more fully set forth herein.

12. The City Council on _____, 2015, adopted Resolution No. R-__-2015 approving this Agreement and authorizing the City, through its duly authorized officials and agents, to execute this Agreement and all other ancillary agreements and documentation necessary to fully consummate the transactions contemplated herein.

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 actual cash flow received by the City from the tax increment generated by the District pursuant to Wis. Stat. sec. 66.1105.

2. Actual Tax Increment, Projected. The Value Increment, multiplied by the most recently established mil rates for all taxing jurisdictions in which the District is located, multiplied by the maximum number of remaining years that the Tax Increment may be allocated to the City pursuant to Wis. Stat. § 66.1105. Projected Actual Tax Increment shall be calculated by the Finance Director each May using the certified tax roll for the current year.

3. Annual Debt Service. The annual principal and interest payments due on the City Borrowing. An estimated schedule of Annual Debt Service payments is attached as Attachment B.

4. Annual Debt Service, Remaining. The sum of all principal and interest payments on City Borrowing not yet paid at any given point in time.

5. Base Value. The aggregate value, as equalized by the Wisconsin Department of Revenue, of all taxable property located within the District on the creation date.

6. City Improvements. The construction of water, sewer and storm sewer mains within the planned Jackson Street crossing of U.S. Highway 51, from approximately the East right-of-way line of U.S. Highway 51 to approximately the West right-of-way line of U.S. Highway 51.

7. District. A Tax Increment District to be created pursuant to Wis. Stat. § 66.1105, which must include the Property within its boundaries, and which must include within its approved Project Plan, as allowable Project Costs, payment of the cost of the Off-Site Public Improvements, the Stormwater Management Improvements, and the Municipal Revenue Obligations provided for in Section C of this Agreement.

8. Excess Tax Increment. Excess Tax Increment has the meaning given in Section D.3.(b)(4).

9. Plat. The land division plat filed by Developer with the City on December 19, 2013, entitled "Kettle Park West - Commercial Center."

10. Project. The construction of a mixed use development in accordance with the Planned Development District zoning for the Kettle Park West Commercial Property approved by City Ordinance No. 0-23-2013, and as such zoning may be amended from time to time.

11. Property. The property described in Attachment A.

12. City Administrative Costs. All costs, including city staff, engineering, legal, planning, and financial consultant costs, incurred by the City relating to: the creation and administration of the District; construction of the Public Improvements, including construction observation and inspection costs; the drafting and negotiation of this Agreement and other agreements relating to the District or the Project; and other costs incurred by the City in connection with the District, the Public Improvements or the Project, and not paid by the Developer pursuant to Section 4. B of the Pre-Annexation Agreement between the City and the Developer.

13. City Borrowing. The amount borrowed by the City through the issuance of bonds or other forms of debt or borrowing, to fund the reimbursement of Developer for the cost of constructing the Off-Site Public Improvements as provided for in Section C. 1 of this Agreement, to fund the reimbursement of Developer for the cost of the Stormwater Management Improvements as provided for in Section C. 2 of this Agreement, and to fund the City's construction of the City Improvements.

14. Off-Site Public Improvements. The following public improvements to be constructed for the benefit of the District in accordance with detailed plans and specifications to be prepared by Developer and approved by the City Planning Director:

(a) *Utility Relocation*: Relocation of overhead electric and underground gas equipment along U.S. Highway 51 and 138.

(b) *Highway 51 Improvements*. Reconstruction of the intersection of Jackson Street and U.S. Highway 51, including sidewalks at the intersection; construction of a turning lane into the Property between Jackson Street and State Highway 138; new traffic signals at Jackson Street and U.S. Highway 51; temporary traffic signals at the intersection of U.S. Highway 51 and State Highway 138. The City may require an off-road shared-use path.

(c) *State Highway 138 Improvements*. Reconstruction of State Highway 138 with asphalt from the West line of the Plat to approximately existing Veek Road; water main from the West lot line of Lot 2 of the Plat to the existing water main in McComb Road; sanitary sewer main from the West line of Lot 2 of the Plat to the East line of Lot 2; roundabout at the primary drive into Lot 2 of the Plat. The City may also require this work to include curb and gutter, sidewalk, and on-road bike accommodations, and may also require an off-road shared-use path.

(d) *Jackson Street (West)*. Construction of Jackson Street, from approximately the West right-of-way line of U.S. Highway 51 to approximately the West line of Lot 3 of the Plat, including sanitary sewer, water main, storm sewer, curb and gutter, street, sidewalk, and street lighting. The City may also require this work to include an asphalt shared-use path.

(e) *Jackson Street (East)*. Construction of Jackson Street between the West right-of-way line of U.S. Highway 51 to the East right-of-way line of U.S. Highway 51.

15. Site Grading. All site grading work the Developer is required to complete in connection with the development of the Property, pursuant to grading plans to be prepared by Developer and approved by the City Planning Director in accordance with applicable site grading, erosion control and stormwater management regulations.

16. Stormwater Management Improvements. Regional stormwater management improvements including a regional infiltration basin, a regional water quality basin, a pump station, and a pressure pipe, to be designed by the Developer as part of the stormwater management plan for the Property, and approved by the City Planning Director.

17. On-Site Public Improvements. Public improvements needed to serve the lots within the Plat, but not including the Off-Site Public Improvements. The improvements contemplated herein include the following: Sanitary sewer service mains, manholes, laterals and all appurtenances; water mains, laterals, hydrants, valves and all appurtenances; and gas and electric utilities, all in accordance with plans and specifications to be prepared by Developer and approved by the City Planning Director.

18. Public Improvements. Public Improvements means, collectively, the Off-Site Public Improvements, the On-Site Public Improvements, and the Stormwater Management Improvements.

19. Value Increment. Value Increment has the meaning in Section 66.1105 (2) (m) of the 2013-14 Wisconsin Statutes.

B. DEVELOPER OBLIGATIONS.

1. Construction of Public Improvements.

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

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

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

(d) *Prevailing Wage Rates.* Pursuant to Wis. Stat. § 66.0903, the Developer will apply to the Wisconsin Department of Workforce Development to determine the prevailing wage rate for each trade or occupation required to construct the Public Improvements. Once the Department issues its determination of the prevailing wage rates ("Determination"), it shall be considered to be incorporated into and made a part of this Agreement, and attached as Attachment E. The Developer agrees to comply fully with Wis. Stat. § 66.0903, as well as the following: (1) The Determination shall be physically incorporated into and made a part of any

contract or subcontract that the Developer or its contractor enters into to perform work necessary to construct the Public Improvements. (2) All Covered Employees (as defined in Wis. Stat. § 66.0903(4)) who perform the work necessary to construct the Public Improvements shall be paid prevailing wage rates according to the Determination, and may not be permitted to work a greater number of hours per day or per week than the prevailing hours of labor, unless they are paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times their hourly basic rate of pay. (3) The Developer and each contractor, subcontractor, or contractor's or subcontractor's agent performing work necessary to construct the Public Improvements shall keep full and accurate records clearly indicating the name and trade or occupation of every Covered Employee performing the work, and an accurate record of the number of hours worked by each of those persons and the actual wages paid for the hours worked. (4) The Developer is hereby notified, and shall notify all contractors and subcontractors, that if DWD finds a contractor violating the prevailing wage law, DWD shall order the payment of the wages and overtime, if any, and shall assess an additional amount equal to 100 percent of the amount owed as liquidated damages. (5) The City may demand and examine, and the Developer and every contractor, subcontractor or contractor's or subcontractor's agent shall keep, and make available for inspection upon request by the City, copies of payrolls and other records and information relating to the wages paid to Covered Employees performing the work necessary to construct the Public Improvements. (6) The Developer shall require that, upon completion of any project involved in construction of the Public Improvements and before receiving final payment for his or her work on the project, each agent, contractor, or subcontractor shall furnish the Developer the City with an affidavit stating that the agent, contractor or subcontractor has complied fully with the requirements of Wis. Stat. § 66.0903. The Developer shall not authorize final payment until the affidavit is filed in proper form and order. (7) Upon completion of the construction of Public Improvements, and prior to the City's acceptance of the Public Improvements, Developer shall file with the City an affidavit stating that the Developer has complied fully with the requirements of Wis. Stat. § 66.0903 and that the Developer has received an affidavit under the above subsection (6) from each of the Developer's agents, contractors and subcontractors. The City shall not accept the Public Improvements until the affidavit from the Developer is filed in proper form and order.

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

(f) *Traffic Control, Signs and Barricades.* Developer shall install or cause the installation of, and maintain during construction and until the Public Improvements are accepted by the City, traffic controls as specified in a traffic control plan to be prepared by Developer and approved by the City Planning Director 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.

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

(h) *Change to Work Order.* All change orders for the Public Improvements shall be reviewed and approved by Developer and the City Planning Director. The City shall not be required to reimburse Developer for costs of any change orders relating to the Off-Site Improvements or the Stormwater Management Improvements except those specifically enumerated and agreed upon in written, signed agreements between Developer and the City.

(i) *Indemnification and Insurance.* Developer shall indemnify and hold the City and its officers and employees harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity to the extent such claims, costs and liabilities arise from or relate to the negligence of Developer or its contractors, agents or representatives in the performance of work at the development site and elsewhere pursuant to this Agreement, except where such injury or damage results from the negligence of the City or its contractors or employees. Developer further agrees to aid and defend the City and its officials and employees in the event that the City is named as a defendant in an action concerning the City's performance of work pursuant to this Agreement except where such suit is brought by the Developer, or on the basis of the City's negligence or the negligence of its officials, employees or representatives. Developer is not an agent or employee of the City. Developer and all contractors and subcontractors engaged in the construction of the Public Improvements shall comply with the City contract requirements pertaining to damage claims, indemnification of the City, and providing insurance coverage that is approved by the City. The policies of insurance required hereunder shall name the City as additional insureds, and Developer and contractors shall maintain current certificates of insurance on file with the City.

(j) *Time of Completion.* The Public Improvements shall be substantially complete within 24 months after all conditions precedent in Section E have been satisfied, or before the time the Project is completed, whichever is sooner. No damages may be recovered by Developer or any person against the City for delay in completion of the Public Improvements.

(k) *Acceptance.* After the Public Improvements required by this Agreement have been substantially completed, and within 10 days after receiving written notice that the Developer desires the City to inspect the On-Site Public Improvements, the City Planning Director or his designee shall inspect the improvements and, if such improvements conform to the plans and specifications approved by the City Planning Director prior to construction, the City Council shall by resolution certify such completed improvements as being in compliance with the standards and specifications of the City within 20 days following inspection. Before obtaining certification of any such improvements, Developer shall: (1) present to the City valid lien waivers from all contractors and subcontractors providing materials or performing work on the improvements for which certification is sought; (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; and (3) provide to the City the affidavit required to demonstrate compliance with prevailing wage rate requirements. Certification by the City does not constitute a waiver by the City of the right to take action on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer agrees that Public Improvements will not be accepted by the City until the Public Improvements have been inspected and approved by the City Planning Director and

furthermore until 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, and prevailing wage rate requirements have been satisfied where applicable. Water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by Developer is submitted to the City Planning Director. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained and tested by a certified agency, and the City has been provided with a report from such agency confirming such testing. Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the City's acceptance, under the direct supervision of the City's water utility personnel. In addition, Developer shall clean the storm sewers in accordance with the directives of the City Planning Director.

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

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

Notwithstanding anything to the contrary set forth in this Agreement, Developer may request that the City accept dedication of the Public Improvements in one or more phases, as components of the Public Improvements are substantially completed by Developer.

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

(m) *Surety.* As surety for the performance of Developer's obligation to complete the Public Infrastructure in accordance with the terms of this Agreement, Developer shall cause its contractor to provide a performance bond and a payment bond, including supplemental conditions, in the form attached hereto as Attachment G, provided, however, that such performance and payment bonds shall in no way be deemed a limitation of the City's remedies in the event of a Developer default under this Agreement. The parties expressly agree that the City reserves the right to 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, such performance and payment bonds.

2. Construction of Private Streets.

(a) *Design of Improvements.* Developer shall prepare detailed plans and specifications of the private streets serving the Project (“Private Streets”) for review by and subject to approval by the City Planning Director. Where standards and/or specifications for private streets 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.

(b) *Construction of Private Streets.* Developer shall be responsible for the construction and installation of the Private Streets according to the detailed plans and specifications approved by the City Planning Director. The Private Streets will be designed, constructed and installed at Developer’s sole expense.

C. **CITY OBLIGATIONS.** Notwithstanding anything to the contrary set forth in this Agreement, the City’s obligation to make the payments contemplated in this Section C is contingent upon substantial completion by Developer of the last of the Public Improvements and Private Streets required under Sections B.1. and B.2, respectively.

1. Reimbursement to Developer for Off-Site Public Improvements.

(a) *Construction Costs.* The City shall reimburse Developer for the cost of constructing the Off-Site Improvements, up to a maximum reimbursement in the amount of \$2,289,327.00, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$2,289,327.00 for the cost of constructing Off-Site Improvements, and any costs in excess of that amount shall be Developer’s responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection 3. below.

(b) *Engineering Costs.* The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Off-Site Public Improvements, up to a maximum reimbursement in the amount of \$243,933, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$243,933 for the cost of engineering services, and any costs in excess of that amount shall be Developer’s responsibility. Request for reimbursement shall be made Developer to City as provided in subsection 3. below.

(c) *Contingency.* If the construction costs or engineering costs described in Sections C. 1 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$311,707. Developer shall apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 1 (a) and (b).

2. Reimbursement to Developer for Stormwater Management Improvements.

(a) *Construction Costs.* The City shall reimburse Developer for the cost of constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$1,247,220, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$1,247,220 for the cost of constructing Stormwater Management Improvements, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made by Developer to City as provided in subsection 3. below.

(b) *Engineering Costs.* The City shall reimburse Developer for the cost of engineering services incurred by Developer in designing and constructing the Stormwater Management Improvements, up to a maximum reimbursement in the amount of \$124,722, in accordance with the procedures in this Section. Except as specified in subsection (c) below, the City shall not be required to pay more than \$124,722 for the cost of engineering services, and any costs in excess of that amount shall be Developer's responsibility. Request for reimbursement shall be made Developer to City as provided in subsection 3. below.

(c) *Contingency.* If the construction costs or engineering costs described in Sections C. 2 (a) and (b) will exceed the maximum amount specified in those subsections, and Developer has obtained prior written approval from the City to exceed those specified costs, then the City shall reimburse Developer for the additional construction or engineering costs, up to maximum additional reimbursements in the aggregate amount of \$210,355. Developer shall apply for any such additional reimbursement in accordance with the procedures specified in Sections C. 2 (a) and (b).

3. Request for Reimbursement.

(a) *Application.* Following substantial completion by Developer of all of the Private Streets and Public Improvements to be constructed by Developer, and following the City's acceptance of the Public Improvements, the Developer may request reimbursement from the City, in one or more installments, of the cost of Off-Site Public Improvements and Stormwater Management Improvements as enumerated in Sections C. 1. and C. 2. Developer's application for reimbursement shall be submitted to the City Planning Director and shall include: (1) a breakdown of all contractors, subcontractors and material suppliers performing work or providing material for which payment is requested, an itemization of the work performed and materials provided, the percentage of work performed or materials provided in that category and copies of all supporting invoices from all contractors, subcontractors and material suppliers requesting payment, together with a certification by Developer and Developer's engineer that the requested application is true and correct and that the requested payments are being made in accordance with the standards and requirements of the construction contract and such other documentation and certification requested by the Planning Director; and (2) valid lien waivers from all contractors, subcontractors and material suppliers performing work or providing material for which reimbursement is requested (to the extent any such lien waivers were not already provided to the City in accordance with Section B.1.(k) above upon the City's acceptance of dedication). Within forty-five days after submittal of a complete application to the

City Planning Director demonstrating entitlement to reimbursement under this Section, the City shall make its reimbursement payment to the Developer.

(b) *Amount of Reimbursement Available to Developer.* The amount of the reimbursement available to Developer in any given year under this Section C. shall be limited to the Projected Actual Tax Increment, as calculated by the Finance Director in the same year the Developer's application for reimbursement is received, less any reimbursements previously made by the City, subject to the maximum amounts set forth in Sections C. 1 and C. 2. Above.

(c) *Hold Back.* Notwithstanding anything to the contrary in Section C. 3. (b) above, until such time as the Projected Actual Tax Increment exceeds 125% of the Remaining Annual Debt Service, the City shall be entitled to hold back an amount equal to the sum of three (3) years of Annual Debt Service payments (such amount, the "Holdback") from Developer's final reimbursement payment.

4. Municipal Revenue Obligation. Following the completion of the Site Grading, Developer may provide to the City a written request for issuance of a Municipal Revenue Obligation, which request shall include Developer's certification of the cost of the Site Grading and documentation of Developer's payments to contractors for the Site Grading work. Within forty-five days after submittal of a complete written request for issuance of the Municipal Revenue Obligation with the required certification and documentation, the City shall issue a Municipal Revenue Obligation to Developer, in the principal amount of the lesser of (1) the cost of the Site Grading work or (2) Five Hundred Fifty Thousand Dollars (\$550,000), in the form attached hereto as Attachment E, under the following terms and conditions:

(a) No Excess Tax Increment will be allocated to make payments on the Municipal Revenue Obligation until the Projected Actual Tax Increment is equal to or greater than 125 percent of the Remaining Annual Debt Service.

(b) The Municipal Revenue Obligation shall not bear interest.

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

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

appropriated for that purpose by the Common Council in accordance with the requirements for revenue obligations.

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

D. TAX INCREMENT GUARANTEES.

1. Anticipated City Borrowing.

(a) The City intends to enter into the City Borrowing for the purposes of financing the Reimbursement for Off-Site Public Improvements and the Reimbursement for Stormwater Management Improvements only after substantial completion by Developer of the last of the Public Improvements and Private Streets required under Sections B. 1. and B. 2.

(b) The City intends to pay off the City Borrowing generally in accordance with the schedule shown on Attachment B. Attachment B shows an anticipated schedule of City Borrowing, Annual Debt Service Payments, and Tax Increment. The parties agree that Attachment B is based on estimates and forecasts that may or may not accurately reflect the actual City Borrowing or 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 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 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 Actual Tax Increment to Pay Annual Debt Service.* Developer guarantees that, beginning in the calendar year 2018, the Actual Tax Increment will be sufficient to fully pay the Annual Debt Service on City Borrowing. If, in any calendar year beginning with calendar year 2018, the Actual Tax Increment received by the City and allocated as described in Section D. 3 is insufficient to pay the Annual Debt Service due that year, then Developer shall be required to pay to the City, and the City shall be entitled to draw on the Holdback, the amount by which the Actual Tax Increment is insufficient to pay the Annual Debt Service due that year. Withdrawals on the Holdback may be made at any time within 30 days

before or after the due date of an Annual Debt Service Payment, and Developer's due date for making any required payment on Developer's guarantee, to avoid withdrawals on the Holdback or interest charges, 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.

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

(a) In 2016 and 2017, all Actual Tax Increment shall be allocated to the City to pay City Administrative Costs and other project costs related to the District.

(b) In 2018 through 2034, or until the District is terminated, whichever is sooner, Actual Tax Increment shall be allocated as follows:

(1) First, to pay City Administrative Costs.

(2) Second, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Stormwater Management Improvements.

(3) Third, to pay Annual Debt Service on City Borrowing for reimbursing Developer for the Off-Site Public Improvements.

(4) Fourth, "Excess Tax Increment" shall be available for payment of the Municipal Revenue Obligation referred to in Section C.3 of this Agreement. For purposes of this Agreement, "Excess Tax Increment" shall mean Actual Tax Increment remaining each year after paying Annual Debt Service on City Borrowing each year. Excess Tax Increment remaining after the City has paid the Municipal Revenue Obligation payment due on the Payment Date in a given year (including the Scheduled Payment Amount plus any additional amounts deferred from prior years and payable on that Payment Date) may be used by the City to pay any District project costs it may chose, in its discretion.

4. 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 D. In the event Developer conveys title to any lot within the Plat on the same date that Developer acquires fee simple title to the Property, Developer may, at Developer's election, cause the Tax Agreement (with respect to any lot so acquired) to be executed directly by such lot purchaser.

E. CONDITIONS PRECEDENT TO AGREEMENT OBLIGATIONS.

All of the following must occur before Developer's obligations under Sections B and D and the City's obligations under Section C of this Agreement shall become effective:

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

2. Developer must acquire fee simple title to the Property.

3. A Tax Increment District must be fully and finally approved by the City and the Joint Review Board and submitted to the Wisconsin Department of Revenue pursuant to Wis. Stat. § 66.1105. The Tax Increment District must include the Property within its boundaries. The project plan for the District must include, as eligible project costs, the Off-Site Public Improvements, the Stormwater Management Improvements, and payment of the Municipal Revenue Obligation as provided for by this Agreement.

4. A plat, certified survey map or series of certified survey maps that conform substantially to the Plat must be approved by the City and all other approving and objecting authorities pursuant to and in accordance with Chapter 236 of the Wisconsin Statutes.

5. The lands needed for construction of the Jackson Street improvements must be dedicated to the City.

6. The existing access rights to U.S. Highway 51 and State Highway 138 have been acquired to the extent needed to construct the Off-Site Public Improvements.

7. Developer has received all approvals and permits needed from the Wisconsin Department of Transportation, the Wisconsin Department of Natural Resources, and any and all other governmental entities needed to construct the Public Improvements.

8. Developer delivers documentation to the City demonstrating that Lot 2 of the Plat has been purchased by a general merchandise retailer that is ranked by the National Retail Federation to be among the top 25 retailers in the United States based on gross sales revenue.

9. Developer delivers documentation to the City demonstrating that three lots in the Plat (in addition to Lot 2) have been purchased by commercial enterprises.

10. Developer and all others having an interest in the Property must execute and deliver to the City for recording with the Dane County Register of Deeds, a Tax Agreement in the form attached as Attachment D.

11. Developer delivers documentation to the City demonstrating that Developer has entered into one or more construction contracts (including the performance and payment bonds) for the construction of the Public Improvements and Private Streets contemplated in Section B. 1 and B 2 above and a loan agreement with Developer's lender in an amount sufficient to fund the cost of these construction contracts.

If the events described in this Section E are not satisfied by June 30, 2015, then this Agreement shall be null and void, provided, however, that if any condition precedent cannot be timely satisfied due to an event that is beyond Developer's reasonable ability to control, then the deadline for satisfaction shall be extended for an additional period of time, not to exceed ninety (90) days, so long as Developer is proceeding in good faith and in an expeditious manner to satisfy such condition precedent.

F. 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.

G. GENERAL CONDITIONS.

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

2. Binding Effect / Assignment. The obligations of Developer and the City under this Agreement shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this Agreement without the express prior written approval of the City, provided, however, Developer shall be permitted to make a collateral assignment of this Agreement to a lender or other secured party in accordance with the form attached hereto as Exhibit H. Any unapproved assignment is void. Under no circumstances shall a permitted assignment of this Agreement constitute a release of Developer from the obligations and liabilities 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 2 percent over the rate then payable by the City under the City Borrowing, from the due date until the date the unpaid amounts are paid in full.

6. Entire Agreement/Appendices Incorporated. This written Agreement and the attachments hereto, and the Pre-Annexation Agreement executed April 18 and 19, 2013, shall constitute the entire Agreement between Developer and the City as of the date hereof.

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

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

9. Indemnification. Developer, and its successors and assigns, shall indemnify, hold harmless and defend the City and its officers, agents and employees from any and all liability suits, actions, claims, demands, losses, costs, damages and expenses or liabilities of every kind and description, including attorney costs and fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property on account of or arising out of the construction of the Project 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 gross negligence or willful misconduct 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. Developer shall provide insurance coverage in compliance with the City's Contract Insurance Requirements attached as Attachment F.

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

To Developer:

Dennis Steinkraus
Kettle Park West, LLC
161 Horizon Drive, Suite 101A
Verona, WI 53593

Developer's Attorney

Daniel A. O'Callaghan
Michael Best & Friedrich LLP
1 S. Pinckney St., Ste. 700
Madison, WI 53703

To the City:

Laurie Sullivan, Finance Director
City of Stoughton
381 East Main Street

Stoughton, WI 53589

City Attorney

Matthew P. Dregne
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784

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

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

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

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

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

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

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

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

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

20. Term. Except as provided in Section E, this Agreement shall continue in full force and effect until such time as Developer's obligations under Sections B and D of this Agreement, and the City's obligations under Section C of this Agreement, have been fully

satisfied, at which point this Agreement shall terminate and be of no further force or effect. At that time, if this Agreement has been recorded the parties shall jointly execute and record a release of the Agreement.

21. Status of Amended and Restated Agreement. The Amended and Restated Agreement dated as of November 13, 2014 is superseded and replaced by this 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. Further Assurances. The parties each agree to use good faith efforts to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action as shall be necessary or desirable to fully carry out the terms of this Agreement and to fully consummate the transactions contemplated hereby.

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: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

COUNTERSIGNED:

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

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney

DEVELOPER:
KETTLE PARK WEST, LLC

By: _____
David Jenkins, Managing Partner

Attachments:

- A – Description of the Property
- B Schedule of Annual Debt Service Payments
- C Form of Municipal Revenue Obligation
- D Form of Tax Agreement
- E Prevailing Wage Rate Determination
- F City Contract Insurance Requirements
- G Form of Performance Bond and Payment Bond
- H Form of Collateral Assignment of Development Agreement

ATTACHMENT A

DESCRIPTION OF AMENDED GENERAL DEVELOPMENT PLAN BOUNDARY

Part of Lot 2, Certified Survey Map No. 3430, Lots 1, 2, and 3, Certified Survey Map No. 3435, Lot 1, Certified Survey Map No. 9632, and Part of the Northwest Quarter, Northeast Quarter, Southeast Quarter and Southwest Quarter of the Southeast Quarter of Section 01, Township 05 North, Range 10 East, City of Stoughton, Dane County, Wisconsin, more particularly described as follows:

Commencing at the Southeast Corner of said Section 01; thence North 00 degrees 17 minutes 13 seconds West along the East line of the Southeast Quarter of Section 01, aforesaid, 185.11 feet; thence North 87 degrees 07 minutes 28 seconds West, 33.05 feet to the Westerly right-of-way line of Veek Road; thence continuing North 87 degrees 07 minutes 28 seconds West, 260.52 feet; thence South 00 degrees 16 minutes 13 seconds East, 5.01 feet to the Northerly right-of-way line of State Trunk Highway '138'; thence North 87 degrees 07 minutes 28 seconds West, 21.50 feet; thence South 00 degrees 12 minutes 45 seconds East, 8.67 feet; thence North 89 degrees 53 minutes 46 seconds West, 343.76 feet; thence North 87 degrees 53 minutes 44 seconds West, 1054.08 feet; thence North 02 degrees 12 minutes 57 seconds East, 63.44 feet; thence North 49 degrees 55 minutes 54 seconds East, 297.24 feet; thence South 87 degrees 53 minutes 44 seconds East, 156.18 feet; thence North 00 degrees 10 minutes 51 seconds West, 468.76 feet; thence South 90 degrees 00 minutes 00 seconds West, 32.23 feet to a point on a curve; thence Northwesterly 337.17 feet along an arc of a curve to the left, having a radius of 1669.65 feet, the chord bearing North 55 degrees 34 minutes 42 seconds West, 336.60 feet; thence South 90 degrees 00 minutes 00 seconds West, 37.73 feet; thence North 00 degrees 00 minutes 00 seconds East, 130.76 feet; thence North 49 degrees 24 minutes 07 seconds East, 363.28 feet; thence South 44 degrees 06 minutes 47 seconds East, 30.27 feet to a point of curve; thence Southeasterly 773.77 feet along an arc of a curve to the left, having a radius of 960.00 feet, the chord bearing South 67 degrees 12 minutes 12 seconds East, 752.99 feet; thence North 00 degrees 06 minutes 55 seconds West, 886.79 feet; thence South 89 degrees 53 minutes 05 seconds West, 230.62 feet; thence North 45 degrees 33 minutes 02 seconds West, 245.18 feet; thence North 44 degrees 26 minutes 58 seconds East, 217.29 feet; thence North 30 degrees 35 minutes 56 seconds East, 51.27 feet; thence South 86 degrees 41 minutes 54 seconds East, 257.20 feet to the West line of Lot 2, Certified Survey Map No. 8144; thence South 00 degrees 05 minutes 12 seconds East along said West line, 195.44 feet to the Southwest corner of said Lot 2 also being the Northwest corner of Lot 4, Certified Survey Map No. 9632; thence South 00 degrees 06 minutes 55 seconds East along said West line of Certified Survey Map No. 9632, a distance of 888.03 feet; thence South 87 degrees 57 minutes 29 seconds East, 1.15 feet; thence South 00 degrees 19 minutes 58 seconds West, 198.79 feet to the Southwest corner of Lot 2, Certified Survey Map No. 9632; thence North 89 degrees 42 minutes 22 seconds East along the South line of said Lot 2 a distance of 519.75 feet to the Westerly right-of-way line of U.S.

Highway '51'; thence South 01 degrees 40 minutes 47 seconds West along said right-of-way line, 170.46 feet to a point of curve; thence Southeasterly 487.72 feet along an arc of a curve to the left, having a radius of 981.47 feet, the chord bearing South 12 degrees 31 minutes 39

seconds East, 482.72 feet to the Westerly right-of-way line of Veek Road; thence South 00 degrees 17 minutes 13 seconds East along said right-of-way line, 322.71 feet to the point of beginning.

Said parcel contains 1,609,687 square feet or 36.953 acres.

ATTACHMENT B

SCHEDULE OF ANNUAL DEBT SERVICE PAYMENTS

[Attached]

\$4,760,000

City of Stoughton, Wisconsin
Bond Anticipation Notes, Series 2015
Kettle Park West Project

Sources & Uses

Dated 06/01/2015 | Delivered 06/01/2015

Sources Of Funds

Par Amount of Bonds..... \$4,760,000.00

Total Sources..... \$4,760,000.00

Uses Of Funds

Deposit to Project Construction Fund..... 4,577,264.00

Deposit to Capitalized Interest (CIF) Fund..... 111,066.66

Costs of Issuance..... 45,000.00

Total Underwriter's Discount (0.500%)..... 23,800.00

Rounding Amount..... 2,869.34

Total Uses..... \$4,760,000.00

\$4,760,000

City of Stoughton, Wisconsin
Bond Anticipation Notes, Series 2015
Kettle Park West Project

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	CIF	Net New D/S
11/01/2015	-	-	-	-	-	-
05/01/2016	-	-	43,633.33	43,633.33	(43,633.33)	-
11/01/2016	-	-	23,800.00	23,800.00	(23,800.00)	-
05/01/2017	-	-	23,800.00	23,800.00	(23,800.00)	-
11/01/2017	-	-	23,800.00	23,800.00	(19,833.33)	3,966.67
05/01/2018	4,760,000.00	1.000%	23,800.00	4,783,800.00	-	4,783,800.00
Total	\$4,760,000.00	-	\$138,833.33	\$4,898,833.33	(111,066.66)	\$4,787,766.67

SIGNIFICANT DATES

Dated Date..... 6/01/2015
Delivery Date..... 6/01/2015
First Coupon Date..... 5/01/2016

Yield Statistics

Bond Year Dollars..... \$13,883.33
Average Life..... 2.917 Years
Average Coupon..... 1.000000%

Net Interest Cost (NIC)..... 1.1714285%
True Interest Cost (TIC)..... 1.1741076%
Bond Yield for Arbitrage Purposes..... 0.9993407%
All Inclusive Cost (AIC)..... 1.5073984%

IRS Form 8038

Net Interest Cost..... 1.0000000%
Weighted Average Maturity..... 2.917 Years

\$4,260,000

City of Stoughton, Wisconsin
General Obligation Refunding Bonds, Series 2018
Kettle Park West Project - Takeout of the 2015 BANS

Sources & Uses

Dated 04/01/2018 | Delivered 04/01/2018

Sources Of Funds

Par Amount of Bonds.....	\$4,260,000.00
2017 and 2018 Tax Increment Revenue.....	619,879.00

Total Sources.....	\$4,879,879.00
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Uses Of Funds

Deposit to Current Refunding Fund.....	4,783,800.00
Costs of Issuance.....	50,000.00
Total Underwriter's Discount (1.000%).....	42,600.00
Rounding Amount.....	3,479.00

Total Uses.....	\$4,879,879.00
-----------------	-----------------------

\$4,260,000

City of Stoughton, Wisconsin
General Obligation Refunding Bonds, Series 2018
Kettle Park West Project - Takeout of the 2015 BANS

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	Revenue	Surplus(Deficit)	Fiscal Total
04/01/2018	-	-	-	-	-	-	-
04/01/2019	160,000.00	1.600%	122,440.00	282,440.00	382,991.00	100,551.00	-
10/01/2019	-	-	59,940.00	59,940.00	-	(59,940.00)	40,611.00
04/01/2020	225,000.00	1.800%	59,940.00	284,940.00	382,991.00	98,051.00	-
10/01/2020	-	-	57,915.00	57,915.00	-	(57,915.00)	40,136.00
04/01/2021	230,000.00	2.000%	57,915.00	287,915.00	382,991.00	95,076.00	-
10/01/2021	-	-	55,615.00	55,615.00	-	(55,615.00)	39,461.00
04/01/2022	235,000.00	2.200%	55,615.00	290,615.00	382,991.00	92,376.00	-
10/01/2022	-	-	53,030.00	53,030.00	-	(53,030.00)	39,346.00
04/01/2023	240,000.00	2.400%	53,030.00	293,030.00	382,991.00	89,961.00	-
10/01/2023	-	-	50,150.00	50,150.00	-	(50,150.00)	39,811.00
04/01/2024	245,000.00	2.650%	50,150.00	295,150.00	382,991.00	87,841.00	-
10/01/2024	-	-	46,903.75	46,903.75	-	(46,903.75)	40,937.25
04/01/2025	255,000.00	2.750%	46,903.75	301,903.75	382,991.00	81,087.25	-
10/01/2025	-	-	43,397.50	43,397.50	-	(43,397.50)	37,689.75
04/01/2026	260,000.00	2.850%	43,397.50	303,397.50	382,991.00	79,593.50	-
10/01/2026	-	-	39,692.50	39,692.50	-	(39,692.50)	39,901.00
04/01/2027	270,000.00	2.950%	39,692.50	309,692.50	382,991.00	73,298.50	-
10/01/2027	-	-	35,710.00	35,710.00	-	(35,710.00)	37,588.50
04/01/2028	275,000.00	3.100%	35,710.00	310,710.00	382,991.00	72,281.00	-
10/01/2028	-	-	31,447.50	31,447.50	-	(31,447.50)	40,833.50
04/01/2029	285,000.00	3.200%	31,447.50	316,447.50	382,991.00	66,543.50	-
10/01/2029	-	-	26,887.50	26,887.50	-	(26,887.50)	39,656.00
04/01/2030	295,000.00	3.300%	26,887.50	321,887.50	382,991.00	61,103.50	-
10/01/2030	-	-	22,020.00	22,020.00	-	(22,020.00)	39,083.50
04/01/2031	305,000.00	3.350%	22,020.00	327,020.00	382,991.00	55,971.00	-
10/01/2031	-	-	16,911.25	16,911.25	-	(16,911.25)	39,059.75
04/01/2032	315,000.00	3.400%	16,911.25	331,911.25	382,991.00	51,079.75	-
10/01/2032	-	-	11,556.25	11,556.25	-	(11,556.25)	39,523.50
04/01/2033	325,000.00	3.450%	11,556.25	336,556.25	382,991.00	46,434.75	-
10/01/2033	-	-	5,950.00	5,950.00	-	(5,950.00)	40,484.75
04/01/2034	340,000.00	3.500%	5,950.00	345,950.00	382,991.00	37,041.00	-
10/01/2034	-	-	-	-	-	-	37,041.00
Total	\$4,260,000.00	-	\$1,236,692.50	\$5,496,692.50	\$6,127,856.00	\$631,163.50	-

SIGNIFICANT DATES

Dated..... 4/01/2018
Delivery Date..... 4/01/2018
First Coupon Date..... 4/01/2019

Yield Statistics

Bond Year Dollars..... \$39,320.00
Average Life..... 9.230 Years
Average Coupon..... 3.1451996%

Net Interest Cost (NIC)..... 3.2535415%
True Interest Cost (TIC)..... 3.2500778%
Bond Yield for Arbitrage Purposes..... 3.1207320%
All Inclusive Cost (AIC)..... 3.4042418%

Net Interest Cost in Dollars..... 1,236,692.50
Weighted Average Maturity..... 9.230 Years

2018 GO Bonds (Take out 2) / SINGLE PURPOSE / 1/30/2018 / 12:07 PM



ATTACHMENT C

**FORM OF MUNICIPAL REVENUE OBLIGATION
TO SECOND AMENDED AND RESTATED
AGREEMENT TO UNDERTAKE DEVELOPMENT**

(Kettle Park West Development)

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 Kettle Park West LLC, its successors and assigns ("Developer").

WITNESSETH:

A. The City and Developer have entered into a Second Amended and Restated Agreement to Undertake Development dated _____, 2014 (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.

1. *Promise to Pay.* The City shall pay to Developer the principal amount of \$ _____, together with interest thereon at a rate of zero percent (0 %) per annum, solely from Excess Tax Increment, in Scheduled Payments in accordance with Schedule 1 attached hereto and made a part hereof. To the extent that on any Payment Date the City is unable to make a payment from Excess Tax Increment at least equal to the Scheduled Payment due on such date as a result of having received, as of such date, insufficient Excess Tax Increment, or as the result of the City Council not having appropriated sufficient Excess Tax Increment, such failure shall not constitute a default under this Obligation and, except as hereinafter provided, the City shall have no obligation under this Obligation, or otherwise, to subsequently pay any such deficiency unless the deficiency is the direct result of the failure of Dane County to timely remit the proper amount of Tax Increment, in which case, such deficiency shall be paid promptly upon remittance by Dane County. Any payments on the Municipal Revenue Obligation, which are due on any Payment Date, shall be payable solely from and only to the extent that, as of such Payment Date, the City has received Excess Tax Increment. If, on any Payment Date there is insufficient Excess Tax Increment to make the scheduled payment due

on such date, or if the City Council shall not otherwise appropriate sufficient Excess Tax Increment to make the scheduled payment due on such date in full, the amount of such deficiency in the scheduled payment shall be deferred and shall be paid with interest at a rate equal to zero percent (0%) per annum, on the next Payment Date on which the City has Excess Tax Increment in excess of the amount necessary to make the scheduled payment due on such Payment Date, and if such deficiency has not been paid in full by the final Payment Date as set forth on Schedule 1, then the term of this Obligation shall be extended to include additional successive payment dates on which any Excess Tax Increment will be applied to the payment of such accrued and unpaid deficiencies in the scheduled payments to be made hereunder. In no case, however, shall the term of this Obligation and the City's obligation to make payments hereunder, extend beyond the termination date of the District, (as defined in the Tax Increment Law). 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 any 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 termination date of the District. The District shall not be terminated until this Municipal Revenue Obligation has been paid, or until the District must be terminated by law, whichever occurs first.

2. *Limited Obligation of City.* This Obligation shall be payable solely from Excess 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 Excess Tax Increment, and then only to the extent and in the manner herein specified.

3. *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.

4. *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.

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

[Signature page follows.]

Dated this _____ day of _____, _____.

CITY:
CITY OF STOUGHTON
Dane County, Wisconsin

By: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

COUNTERSIGNED:

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

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney

Attachment – Schedule 1

**Schedule 1 to Municipal Revenue Obligation
to Second Amended and Restated Agreement to Undertake Development**

(Kettle Park West Development)

[Attached]

ATTACHMENT D
FORM OF TAX AGREEMENT.

TAX AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 2014 (the "Agreement"), by and between the City of Stoughton, a Wisconsin municipal corporation (the "City"), and _____ (the "Owner"), a Wisconsin limited liability company.

RECITALS

A. Owner is the owner of property (the "Property") in the City of Stoughton, more particularly described in Exhibit A, which is a part of the commercial development known as the "Kettle Park West - Commercial Center."

B. Kettle Park West, LLC, the developer of the Kettle Park West - Commercial Center (hereafter, "Developer"), and the City have entered into an agreement relating to the development of the Property entitled Second Amended and Restated Agreement to Undertake Development (hereafter the "TID Agreement"). The TID Agreement provides that the City will undertake certain debt service obligations (the "City Debt Service") in an initial amount not to exceed \$4,860,000, which initial amount will be refunded on a longer-term basis through the issuance of general obligation refunding bonds, to assist Owner in funding the Off-Site Public Improvements and Stormwater Management Improvements described in the TID Agreement (collectively referred to herein as the "Public Improvements"), subject to repayment of such City Debt Service out of tax increment generated from the Property.

C. Owner and the City wish to enter into this Agreement concerning preservation of the taxable status of the Property to ensure repayment of the City Debt Service.

D. The City's obligations under the TID Agreement are conditioned on Owner signing and recording this Agreement.

E. 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.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO

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

P.I.N.

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 _____ organized and existing under the laws of the State of _____; (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 City Debt Service is retired. 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 City Debt Service is retired. 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 retirement of the City Debt Service, 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 Retirement of the City Debt Service. Prior to retirement of the City Debt Service, if it becomes necessary to calculate the amount of property taxes on the Property 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 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 all taxing jurisdictions to which the Property is subject for the Valuation Year. That amount shall be deemed the amount of property taxes on 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 demanding 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 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. City Obligation to Ensure Completion of the Public Improvements. In the event Developer fails to timely complete the Public Improvements in accordance with the terms of the TID Agreement, the City covenants and agrees with Owner that, so long as substantial construction of Owner's intended use and development of the Property has commenced, and provided Owner continues to diligently pursue construction of the intended use of the Property, the City shall be obligated to cause the Public Improvements to be promptly completed, which obligation shall include, without limitation, the obligation to enforce the performance and payment bonds associated with the construction contract(s) for such Public Improvements.

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

10. 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.

11. 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 City Debt Service is retired unless terminated by mutual written agreement. Notwithstanding anything herein to the contrary, in the event that Owner or any subsequent owner of the Property or any part of the Property, desires to terminate this Agreement prior to retirement of the City Debt Service, such Owner may request the City to calculate the amount of property taxes that must be generated by the Property (or the relevant part of the Property) to prepay the outstanding City Debt Service, discounted to present value by 8% per annum, and the City shall terminate this Agreement upon payment of such amount.

12. 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. If at any time the Property has more than one owner, any Payment for Municipal Services due under this Agreement for any Valuation Year shall be allocated among the owners in proportion to the fair market value of their property interests as of January 1 of the Valuation Year, as determined under section 6 of this Agreement.

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

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

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

16. 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.

17. 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.

18. 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:

Laurie Sullivan, Finance Director
City of Stoughton
381 East Main Street
Stoughton, WI 53589

City Attorney:

Matthew P. Dregne
222 W. Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784

To Owner:

Owner's Attorney:

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

19. 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

By: _____
Donna Olson, Mayor

By: _____
Lana C. Kropf, City Clerk

Countersigned:

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, the above-named Donna Olson, Maria Hougan and Laurie Sullivan, 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:

By: _____

Name/Title: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this _____ day of _____, 2015, 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 to Tax Agreement

Description of the Property

[To be inserted]

ATTACHMENT E
PREVAILING WAGE RATE DETERMINATION

[To be inserted]

ATTACHMENT F
CITY CONTRACT INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

a. Worker's Compensation and Employers Liability Insurance - The Contractor shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

b. Commercial General Liability and Automobile Liability Insurance - The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering. Symbol 1 (any vehicle)

Limits - The Contractor shall maintain **limits** no less than the following:

1. General Liability - One million dollars (\$1,000,000) per occurrence (\$2,000,000 general aggregate if applicable) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the City of Stoughton or the general aggregate including product-completed operations aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering **all** vehicles to be used in relationship to the Agreement.

3. Umbrella Liability — Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.

c. Required Provisions - The general liability umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CO 2010, CO 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises occupied or used by the Contractor; and vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City of Stoughton, its elected and appointed officials, officers, employees, or authorized representatives or volunteers **shall** not contribute to it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after sixty (60) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the City of Stoughton.

6. Such liability insurance shall indemnify the City of Stoughton, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Contractor for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

7. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability **with a minimum of a 24 month policy extension**, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

8. All of the insurance shall be provided on policy forms and through companies satisfactory to the City of Stoughton, and shall have a minimum A.M. Best's rating of A- VII.

d. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City of Stoughton. At the option of the City of Stoughton, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

e. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of Stoughton a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. CG 20 10 11 85 covers all bases OR Form CO 20 10 10 01 for ongoing work exposure and Form CG 20 37 10 01 for products-completed operations exposure.

Such evidence **shall include** an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions 1-5.

f. Responsibility for Work - until the completion and final acceptance by the City of Stoughton of all the work under and implied by this agreement, the work shall be under the Contractor's responsibility care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erectations, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

g. Sub-Contractors - In the event that the Contractor employs other contractors (subcontractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

City of Stoughton

Insurance Endorsement Form

(General Liability)

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. **Additional Insured:** With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. Additional Insured status shall be endorsed onto this policy in a form at least as broad as (CG 20 10 11 85) This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
2. **Cross Liability Clause:** The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
3. **Occurrence Based Policy:** This policy shall be an "occurrence-based policy".
4. **Primary Insurance:** For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
5. **Indemnification Clause:** The underwriters acknowledge that the named insured shall indemnify and save harmless the City against any and all claims to the extent resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).
6. **Investigation and Defense Costs:** Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.
7. **Reporting provisions:** Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.
8. **Cancellation:** This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.

9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.
10. Comprehensive Coverage: This policy shall afford coverage at least as broad as Commercial General Liability "Occurrences" Form (CG 00 01) and shall include the following:
- A. General Liability
- (1) Comprehensive Form
 - (2) Premises/Operations
 - (3) Independent Contractors Liability
 - (4) Broad Form Property Damage
 - (5) Personal Injury
 - (6) Products, Completed Operations
 - (7) Contractual
 - (8) Explosions, collapse, or underground property damage

Note: If this is a Homeowner's Policy in lieu of Commercial General Liability, it shall afford coverage at least as broad as a Homeowners ISO Form II from Wisconsin and shall include comprehensive personal liability.

This policy shall provide the dollar limit specified in paragraph 9 with the following additional coverage where boxes below are checked:

11. NA

12. NA

13. Other _____

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (*Date*)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

City of Stoughton
Insurance Endorsement Form
(Business Auto Liability)

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. Additional Insured: With respect to such insurance as is afforded by this policy, the City of Stoughton and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be names as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).
2. Cross Liability Clause: The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.
3. Occurrence Based Policy: This policy shall be an "occurrence-based policy".
4. Primary Insurance: For the risks covered by this endorsement, this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.
5. Indemnification Clause: The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Stoughton against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and date(s) of event to include set-up and clean-up dates).

6. Investigation and Defense Costs: Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.

7. Reporting provisions: Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.
8. Cancellation: This policy shall not be canceled except by written notice to the Risk Manager at City of Stoughton, at least thirty (30) days prior to the date of such cancellation.
9. Limits of Liability: This policy shall provide minimum limits of liability of \$1,000,000, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by the named insured.
10. Comprehensive Coverage: This policy shall afford coverage at least as broad as (Occurrence) Form CA0001692 Code 1 "any auto" and shall include the following:

A. General Liability

- (1) All licensed vehicles and equipment used in the project
- (2) Uninsured or Underinsured Motorists Liability Coverage
- (3) Elimination of Pollution Exclusion (on request)

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective _____ at 12:01 a.m. and forms a part of Policy No. _____.

Named Insured _____

I, _____ (*print/type name*) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By _____
(*Signature of Authorized Representative*)

Approved _____
(*City Risk Manager*) (Date)

PLEASE ATTACH CERTIFICATE OF INSURANCE.

ATTACHMENT G
FORM OF PERFORMANCE BOND AND PAYMENT BOND

[Attached]

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*: Kettle Park West – Commercial Center, Public Improvements, Stoughton, WI.

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor'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. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

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 the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor 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 Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

Performance Bond

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. 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.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. 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 two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

16.1 Upon written notice to the Owner, Contractor and Surety, the City of Stoughton shall have the right to act on behalf of or as the Owner under terms of this Bond. The City's rights will become effective 30 days after notice is duly given.

16.2 Should the City of Stoughton exercise its rights, the Owner shall cease to retain its right until written notice is provided to the Owner, Contractor and Surety by the City of Stoughton that it is relinquishing its rights.

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*: Kettle Park West – Commercial Center, Public Improvements, Stoughton, WI

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

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

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of

the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water,

gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

16.1 Upon written notice to the Owner, Contractor and Surety, the City of Stoughton shall have the right to act on behalf of or as the Owner under terms of this Bond. The City's rights will become effective 30 days after notice is duly given.

16.2 Should the City of Stoughton exercise its rights, the Owner shall cease to retain its right until written notice is provided to the Owner, Contractor and Surety by the City of Stoughton that it is relinquishing its rights.

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of _____, 2015, by Kettle Park West, LLC, a Wisconsin limited liability company ("Borrower") in favor of McFarland State Bank (the "Lender").

RECITALS:

WHEREAS, pursuant to that certain Construction and Term Loan Agreement of even date herewith, by and between Borrower and Lender (the "Loan Agreement"), Lender has this date agreed to loan to Borrower up to _____ Million _____ Hundred Thousand _____ and no/100 Dollars (\$_____) (the "Loan"), which Loan is secured in part by a Mortgage and Security Agreement (the "Mortgage") pertaining to interests in certain land described in the Mortgage and the improvements to be constructed thereon (collectively, the "Property") owned by Borrower and located in Dane County, Wisconsin;

WHEREAS, the Borrower is a party to that certain Second Amended and Restated Agreement to Undertake Development, dated as of _____, 2015, (the "Development Agreement") relating to the Property, by and between the Borrower and the City of Stoughton, a Wisconsin municipal corporation (the "City"); and

WHEREAS, it is a condition precedent to Lender's obligation to make the Loan available to Borrower that Borrower execute and deliver this Assignment with respect to the Development Agreement;

ASSIGNMENT:

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Lender to provide and maintain the Loan to Borrower pursuant to the Loan Agreement, Borrower agrees as follows:

1. Assignment. As security for all obligations of Borrower under the Loan Agreement (the "Obligation"), Borrower collaterally assigns, pledges and transfers to Lender and grants to Lender a security interest in all of its rights, remedies (at law or in equity), title and interest in and to (a) the Development Agreement and (b) all agreements, documents, certificates, instruments, and other materials relating thereto (collectively, the "Assigned Documents") and (c) all proceeds thereof, including, without limitation, its rights and remedies with respect to any breach by any counterparty of any of its representations, warranties, covenants and obligations under the Assigned Documents. Without limiting the generality of the foregoing, as security for the Obligation, Borrower specifically collaterally assigns, pledges and transfers to Lender, and grants to Lender, a security interest in all rights of Borrower to receive any sums of money or property in connection with the Assigned Documents.

2. Representations and Warranties. Borrower hereby acknowledges and affirms that the representations, warranties and covenants of the Borrower with respect to the Assigned Documents and the rights and remedies of Lender with respect to the pledge of security interest in and collateral assignment of the Assigned Documents made and granted hereby are more fully

set forth in the Loan Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

3. Performance and Enforcement. So long as no Event of Default, as defined in the Loan Agreement, has occurred and is continuing, insofar as the Borrower may have any right, privilege or claim under the Assigned Documents, the Borrower will perform all of its obligations under the Assigned Documents and use prudent business judgment concerning its enforcement of any rights under such Assigned Documents, will enforce the same diligently and in good faith and will give Lender notice of each such enforcement undertaken by the Borrower.

4. Rights following Event of Default. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, power and authority to (a) declare this Assignment to be unconditional and absolute, and thereby succeed fully to all of Borrower's rights, remedies, title and interest in, to and under the Assigned Documents, (b) notify Counterparties that the Assigned Documents have been assigned to Lender, whether or not it has commenced or completed foreclosure or taken possession thereof, and (c) exercise all rights of Borrower under the Assigned Documents. In furtherance of the foregoing, upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably authorizes and empowers Lender, in its sole discretion, to assert, either directly or on behalf of Borrower, any right, privilege or claim which Borrower then or thereafter may have under the Assigned Documents, as Lender may deem proper, and to receive and collect any and all damages, awards and other monies resulting therefrom and to apply the proceeds thereof against any Obligation then outstanding. Nothing herein shall be construed to require Lender to taken any action in respect of the Assigned Documents, whether for the account of Borrower or otherwise.

5. Lender as Attorney-in-Fact. Borrower hereby irrevocably make, constitute and appoint Lender (and all officers, employees or agents designated by it) as its true and lawful attorney-in-fact for the purposes of enabling Lender or its agent or designee to exercise its rights under Section 4 hereof.

6. Notice of Events. Borrower shall keep Lender informed of all circumstances which have a material and adverse effect upon the exercise of its rights and remedies under the Assigned Documents. In any event, Borrower shall not release, cancel, sell, compromise, waive, amend, alter or modify any of its rights or remedies under the Assigned Documents, without first obtaining the prior written consent of Lender.

7. Responsibilities of Borrower. Borrower expressly acknowledges and agrees that it shall remain liable under the Assigned Documents, to observe and perform all of the conditions and obligations therein contained to be observed and performed by it, and that neither this Assignment, nor any action taken by Lender pursuant hereto, shall cause Lender to be under any obligation or liability in any respect whatsoever to any party to the Assigned Documents or for the observance or performance of any of the representations, warranties, conditions, covenants, agreements or terms therein contained.

8. Lender not Responsible. Notwithstanding Lender's rights hereunder, Lender shall not be obligated to perform, and Lender does not undertake to perform, any obligation, covenant,

condition or term with respect to the Assigned Documents on account of this Assignment. Lender shall have no responsibility on account of this Assignment for the control or care of the Assigned Documents, other than to handle the Assigned Documents in the same manner as it handles other collateral in the ordinary course of business.

9. Successor and Assigns. This Assignment and all obligations of Borrower hereunder shall be binding upon the successors and assigns of the Borrower (including any debtor-in-possession on behalf of the Borrower) and shall, together with the rights and remedies of Lender, inure to the benefit of Lender and all future holders of any instrument evidencing any of the Obligation and the respective successors and assigns. No sales of participations, sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Obligation or any portion thereof or interest therein shall in any manner affect the assignment made and security interest granted hereunder to Lender. Borrower may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Assignment.

10. Notices. All notices, requests and other communications to the Borrower or Lender hereunder shall be made in accordance with the provisions of the Loan Agreement.

11. No Waiver. No failure or delay on the part of Lender in exercising any right or remedy hereunder, and no course of dealing between Borrower on the one hand and Lender on the other hand shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy hereunder, under the Loan Agreement, preclude any other or further exercise thereof or the exercise of any other right or remedy hereunder or thereunder. The rights and remedies herein, in the Loan Agreement are cumulative and not exclusive of any rights or remedies which Lender would otherwise have. No notice to or demand on Borrower not required hereunder in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances with notice or demand.

12. Amendment. No amendment or waiver of any provision of this Assignment, nor consent to any departure by Borrower from this Assignment, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall be effective only the specific instance and for the specific purpose for which given.

13. Governing Law. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the internal laws (without giving effect to the conflict of law principles thereof) of the State of Wisconsin.

14. Severability. In case any provision in or obligation under this Assignment shall be invalid, illegal or unenforceable, in whole or in part, in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

15. Counterparts. This Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Borrower and Lender have caused this Assignment to be executed by their respective duly authorized officers as of the date first above written.

ASSIGNOR:

KETTLE PARK WEST, LLC

a Wisconsin limited liability company

By: _____
David Jenkins, Authorized Member

LENDER:

MCFARLAND STATE BANK

a Wisconsin state banking corporation

By: _____
Name/Title: _____

ACKNOWLEDGEMENT OF ASSIGNMENT AND CONSENT

The City of Stoughton, Wisconsin hereby acknowledges the above Collateral Assignment of Development Agreement by Kettle Park West, LLC to McFarland State Bank, and consents thereto.

Dated: _____, 2015.

CITY OF STOUGHTON
Dane County, Wisconsin

By: _____
Donna Olson, Mayor

ATTEST:

Lana C. Kropf, City Clerk

COUNTERSIGNED:

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

Laurie Sullivan, Finance Director

Approved as to Form:

Matthew P. Dregne, City Attorney