

**DEVELOPMENT AGREEMENT
(BRICKLE BUILDING/RUEPING BLOCK REDEVELOPMENT)**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the [_____] day of March, 2024 (the "Effective Date"), by and among the CITY OF FOND DU LAC, a Wisconsin municipal corporation (the "City"), and MEYER PROPERTY GROUP, LLC, a Wisconsin limited liability company (referred to herein as "Developer").

RECITALS

WHEREAS, Developer is the owner of certain real property in the City of Fond du Lac, County of Fond du Lac, State of Wisconsin, described on Exhibit A attached hereto (the "Property"), on which is built a commercial building, formerly known as the Brickle Building/former Beernuts; and

WHEREAS, Developer has proposed to renovate the Property and otherwise develop the Property as described on Exhibit B attached hereto (the "Proposal") and as otherwise set forth herein; and

WHEREAS, the City has authorized the submittal of a \$250,000 Community Development Investment (CDI) Grant through the Wisconsin Economic Development Corporation to support the redevelopment of the property into residential units and commercial space; and

WHEREAS, the City wants to facilitate the redevelopment of this property and further enhance the south end of the downtown by investing \$200,000 into its renovation, as hereinafter set forth, to permit development to proceed; and

WHEREAS, the Property is within the downtown, a focused area for City reinvestment; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- a. "Agreement" means this Development Agreement.
- b. "City" is defined in the introductory paragraph of this Agreement.
- c. "Default" is defined in Section 6 below.
- d. "Developer" is defined in the introductory paragraph of this Agreement.
- e. "Effective Date" is defined in the introductory paragraph of this Agreement.
- f. Experience Generator is defined as a business that contributes to the overall downtown experience, including restaurants, retail shops or experience-based businesses (such as, but not limited to: indoor archery, ceramic arts or other craft studios, golf simulators, cooking schools, etc.)

- g. "Grant" means a potential grant through the Grant Administrator's Community Development Investment grant program pursuant to the terms and conditions of the Grant Agreement. If awarded, and subject to the terms and conditions herein, the City will provide the Developer with all Grant funds to the extent received by the City.
- h. "Grant Administrator" means Wisconsin Economic Development Corporation.
- i. "Grant Agreement" means a Community Development Investment Grant Contract with respect to the Grant to be entered into between the City and Grant Administrator, as may be amended from time to time.
- j. "Loan" means a forgivable loan from City to the Developer and Grant proceeds for City-approved Project costs consistent with the Project Cost Breakdown. The Loan shall be evidenced by a promissory note (the "Note") and secured by a mortgage of the Property (the "Mortgage"). The Mortgage shall be subordinate only to a mortgage securing the Senior Debt. The Loan will be due in full if the Property is sold or if the Developer no longer has control of the Property. The Loan documents shall provide that the Loan shall be accelerated to the extent any repayment of the Loan or the claw back of the Grant is required of the Developer hereunder.
- k. "Note" means the instrument signed by Developer evidencing Developer's obligation to repay the Loan in the form attached hereto as Exhibit D.
- l. "PILOT Requirement" is defined in Section 2 below.
- m. "PILOT Requirement Expiration" means the later of January 31, 2045 and the date Developer pays in full all payments due under the PILOT Requirement.
- n. "Plans" means final detailed plans and specifications of the Project in form and substance acceptable to the City, which shall include, without limitation, the following: all improvements now located or to be located on the Property, the footprint of all improvements and the square footage of all improvements, all easements, pathways, exterior boundary lines, walkways, parking and circulation areas, adjoining public streets and alleys, utilities, exits and entrances, all signage, sidewalks, landscaping, all materials to be used in construction, all interior and exterior finishes, building sections, description of room and space sizes, plan arrangement of rooms and functional spaces, exterior elevations, the stacking of floors and all construction elements, a narrative description of all structural systems, mechanical systems, electrical systems and any specialty systems, and a landscaping plan and landscape maintenance plan
- o. "Professional Offices or Service Based Business" is defined as a new or expanding business that provides professional services, such as legal, accounting, insurance, design, financial or other related services. Service based business provides services like a hair salon, nail salon, health and wellness or other related services.

- p. "Project" means the redevelopment of the Property, as described with more particularity in the Proposal, including, but not limited to, the construction of all improvements as may be required in order to comply with applicable laws, rules, regulations, codes and ordinances in the use of the Property.
- q. "Project Commencement" means the date of actual Project construction commencement, as determined by the City in its reasonable discretion.
- r. "Project Commencement Deadline" means no later than September 30, 2024 .
- s. "Project Completion" means the substantial completion of the Project, as determined by the City in its reasonable discretion, including the occurrence of all of the following: (i) a certificate of occupancy is issued by the appropriate governmental authorities for Project, as applicable; and the (ii) the Project architect has issued a certificate stating that the Project has been substantially completed in accordance with the Plans.
- t. "Project Completion Deadline" means September 30, 2025.
- u. "Project Cost Breakdown" means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect costs of development, construction and installation of the Project in accordance with the Plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.
- v. "Property" is defined in the Recitals above. As used herein, the term "Property" shall also include all improvements and fixtures located on the real estate.
- w. "Proposal" is defined in the Recitals above, as may be amended and supplemented from time to time with the express approval of the City.
- x. "Senior Debt" means permanent financing for the Project as follows: (1) a permanent loan from Horicon Bank in a principal amount not to exceed \$884,000 and guaranteed by Meyer Property Group, LLC; and (ii) any forgiveness of the Loan under Section 3c. of this Agreement. In this definition of Senior Debt, a loan is "permanent" if the maturity date of the loan is at least 5 years following Project Completion.
2. Commitments of Developer. The City agrees and acknowledges that the Developer will construct, own and operate the Project. Developer agrees and covenants with the City as follows:
- a. *Construction and Operation of the Project*.
- i. Subject to the terms and conditions of this Agreement, Developer, at its cost and expense, agrees to construct, install, furnish, equip, maintain and continuously operate the Project as a mixed-use development – residential and commercial use(s) during the term of this Agreement. Developer will cause the

Project to be constructed in a good and workmanlike manner and substantially in accordance with the Plans.

- ii. Construction of the Project shall commence no later than the Project Commencement Deadline, and, upon commencement of the Project, Developer will continue construction of the Project diligently and shall achieve Project Completion substantially in accordance with the construction schedule approved by the City, and in no event later than the Project Completion Deadline.
 - iii. Developer will conform and comply with, and will cause the Project to be in conformance and compliance with, all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, and all environmental laws, rules, regulations and ordinances. Developer covenants that it will perform and observe the covenants contained in, and the Project will conform and comply with, the covenants, restrictions, documents or instruments governing the Property. Developer acknowledges that it has had sufficient opportunity to determine such covenants or restrictions through a title search and other due diligence.
 - iv. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with the development, construction, management and operation of the Project.
 - v. Developer will not, without the City's prior written consent, materially change the scope of the Project, the Plans, or the uses of the Project. The development and operation of the Project shall be in substantial conformity with the Proposal.
- b. *Grant Administration; Grant Claw-Back.*
- i. Developer agrees to be responsible for tracking all invoicing, draws, cancelled checks and other related documents required under the Grant Agreement or otherwise requested by the Grant Administrator for submittal and Grant reimbursement. Developer agrees to timely provide the necessary documentation to the City in order to submit the reimbursement request(s) for the Grant. Developer understands that failure to timely provide the required documentation may result in non-funding of the Grant.
 - ii. Developer agrees to allow City or Grant Administrator, or their agents or assigns, timely access to all necessary records to comply with audit or grant administration requirements.
 - iii. The provision of the Grant funds is subject to the terms and conditions of the Grant Agreement, including, without limitation, any claw-back (repayment) requirements in the event that the Project is not completed. In the event of any claw-back of the Grant, Developer shall immediately repay the City all Grant funds (or the required portion thereof).

c. *PILOT Requirement.*

- i. In the event the Property, or any part of it, becomes exempt or partially exempt from general property taxes prior to the PILOT Requirement Expiration, Developer agrees to make to the City a payment-in-lieu-of taxes equal to the difference between (A) the amount of taxes which would have been levied on the Property for said year by the City and other taxing jurisdictions if the Property was not exempt or partially exempt from general property taxes and (B) the actual amount of taxes levied on the Property for said year by the City and all other taxing jurisdictions. Said payment-in-lieu-of taxes shall be due and payable in full to the City on January 31 immediately following such tax year. The payment-in-lieu-of taxes set forth above shall be a lien on the Property. The obligations of Developer in this subsection are referred to herein as the "PILOT Requirement".
- ii. Developer understands and agrees that the PILOT Requirement shall not in any way bind the City assessor in his/her assessment and appraisal of the Property and that the City assessor will arrive at an equalized value of the Property based solely on his/her application of all applicable property tax laws, rules, rates, regulations and ordinances in effect from time to time. Nothing in this Agreement shall impair any statutory rights of the City and other taxing authorities with respect to the assessment, levy, priority, collection and/or enforcement of real estate and personal property taxes.
- d. *Second Mortgage.* Developer agrees that a second mortgage will be a lien against the Property and shall secure the repayment of the Loan and any Grant claw-back requirements and that a Default hereunder shall be a default under the Loan.

3. Commitments of the City.

a. *City Investment.*

- i. Subject to the terms and conditions herein, to induce the Developer to construct the Project, the City hereby agrees to provide Developer with the financial incentive of Two Hundred Thousand Dollars (\$200,000.00) for City-approved costs of the construction necessary to complete the Project.
- ii. *Disbursement of Funds.* The Developer acknowledges that the City will disburse the City Investment directly to the Horicon Bank. The Developer further acknowledges that they are responsible for the conditions of the forgivable loan as outlined in this Agreement. Prior to the disbursement of the City investment, the Developer will be current on all bills due to the City in connection with the Property, including but not limited to water bills, false alarm bills, license fees, and permit fees.
- iii. *Forgivable Loan.* The Developer warrants and covenants that it shall have create six (6) new market rate residential units and not less than 700 sq ft of commercial space. The residential units shall be leased and occupied within

sixty (60) days of Project Completion. For each residential unit created and occupied with a one year lease, the City will forgive Six Thousand Dollars (\$6,000.00) per unit per annum towards Two Hundred Thousand Dollars (\$200,000.00) of the City's Loan. If a residential unit is left vacant for more than three (3) months, the forgiveness will be prorated based upon the months occupied for that calendar year. For the tenant occupied commercial space, the City will forgive One Thousand Dollars (\$1,000) annually for any professional office or service based tenant and up to Two Thousand Dollars (\$2,000) annually for an experienced based commercial tenant. These tenants will coincide with those tenants as defined within this Agreement. If the residential units or commercial spaces are vacant more than 51% of the time over the five (5) year period, the forgivable loan will be considered in default and the full amount of Two Hundred Thousand Dollars (\$200,000.00) shall be levied against the property as part of the original mortgage. Exhibit E shall be the listing of each residential unit and commercial space, duration of their lease, vacancy period and type of tenant (commercial space only).

(1) No later than January 31 following the scheduled effective date of any loan forgiveness, Developer shall provide the City with all documentation and other evidence required herein for the applicable loan forgiveness installment. If Developer fails to provide such evidence or fails to satisfy all conditions precedent for such loan forgiveness, then, subject to written notice from the City and thirty (30) days for the Developer to cure, the applicable installment of loan forgiveness shall be forfeited by the Developer.

- b. *Grant.* The City has applied or will apply for the Grant to assist with the Project. If awarded, subject to the responsibilities of Developer hereunder for Grant administration, the City will administer the grant pursuant to the Grant Agreement. Upon completion of the Project and compliance with the requirements of the Grant Administrator and the Grant Agreement, the City shall request reimbursement from the Grant Administrator for the approved reimbursement amount for Project costs. The Grant amount shall be the award established by the Grant Agreement. Within thirty (30) of receipt of the Grant Funds, subject to the terms and conditions herein, the City will reimburse the Developer for the approved amount of the Grant funds actually received by the City. Prior to the disbursement of the Grant amount, the Developer will be current on all other bills due to the City in connection with the Property, including but not limited to water bills, false alarm bills, license fees and permit fees.
- c. *Governmental Approvals.* Developer acknowledges and agrees that the City cannot contract away its governmental powers and that certain approvals may require issuance by or cooperation from government bodies external to the City. The City shall, in good faith, and as expeditiously as possible, process all

necessary municipal approvals to permit the development and operation of the Project.

4. Conditions Precedent to the City's Obligations.

- a. In addition to all other conditions and requirements set forth in this Agreement, all of the obligations of the City under this Agreement are conditioned upon the satisfaction of each and every of the following conditions:
 - i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.
 - ii. Developer shall provide financial information of Developer to the City, which information shall be in form and content acceptable to the City, including evidence that Developer has available funds sufficient to complete the Project.
 - iii. Developer shall provide the City with a detailed completion schedule for the Project which must be acceptable to the City. Such schedule shall specify the timing of all material aspects of the Project. Any revisions to such completion schedule shall be subject to the City's review and approval.
 - iv. Developer, at its cost, shall provide the Project Cost Breakdown to the City. The Project Cost Breakdown shall be certified by Developer, its Project architect and general contractor as accurate and complete and shall be acceptable to the City. The Project Cost Breakdown must show a state of facts acceptable to the City. Any revisions to the Project Cost Breakdown shall be subject to the City's review and approval.
 - v. Developer shall have completed the Plans which must be acceptable in all respects to the City. Any revisions to the Plans shall be subject to the City's review and approval.
- b. In addition to subsection (a) above and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to make disbursements of the Grant is conditioned upon the satisfaction of each and every of the following conditions:
 - i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.
 - ii. Developer shall have complied with all material requirements under the Grant Agreement.
 - iii. Developer shall have entered into all applicable documents for the Loan, including the Note and the Mortgage, and provided the City with copies thereof.
 - iv. The Memorandum shall have been recorded prior to any mortgage of Developer's interest in the Property.

- v. The City shall have received the Grant funds (or portion thereof) to be disbursed.
- c. In addition to subsections (a) and (b) above and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to forgive a portion of the Loan annually effective on any December 31 as set forth herein is conditioned upon the satisfaction of each and every of the following conditions:
 - i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.
 - ii. The Property shall be open for business as a tenant occupied commercial space and the Project shall otherwise be operating in substantial conformity with the Plans and the Proposal.
 - iii. Developer shall be in compliance with the PILOT Requirement and shall have paid any applicable payment in lieu of taxes for the calendar year of the applicable Loan forgiveness installment.

All submissions given to the City to satisfy the conditions contained in this Section 4 must be satisfactory in form and content to the City, in its reasonable discretion.

- 5. Additional Representations, Warranties and Covenants of Developer. Developer represents and warrants to the City and agrees and covenants with the City as of the Effective Date, as of the City investment disbursement and again on each scheduled date of Loan forgiveness, as follows:
 - a. All copies of documents, contracts and agreements which Developer has furnished to the City are true and correct in all material respects.
 - b. Developer has paid, and will pay when due, all federal, state and local taxes, and will promptly prepare and file returns for accrued taxes prior to any taxes becoming delinquent.
 - c. Developer will pay for all work performed and materials furnished for the Project.
 - d. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading at the time when made.
 - e. Meyer Property Group, LLC is a limited liability company duly formed and validly existing and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Developer is duly licensed or qualified to do business and in good standing in

the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

- f. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Developer and constitute the valid and binding obligations of Developer enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- g. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's organizational documents or any indenture, instrument or agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer or the Project.
- h. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project that would adversely affect the Project or Developer or the enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.
- i. The Project Cost Breakdown approved by the City accurately reflects all Project costs that will be incurred in the development, completion, construction, furnishing and equipping of the Project, and the City is entitled to rely on the Project Cost Breakdown. Developer knows of no circumstances presently existing or likely to occur which would or could be expected to result in a variation or deviation from the Project Cost Breakdown.
- j. All construction of the Project to date has been made substantially in conformity with the Plans and in compliance with the terms and conditions of this Agreement.
- k. No Default, or event which with the giving of notice or lapse of time or both would be a Default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument entered into in connection with the Project.
- l. Developer agrees to pay timely all generally applicable property taxes assessed and levied in connection with the Property under applicable property tax laws, rules, rates, regulations and ordinances in effect from time to time and, as applicable, all payments due under the PILOT Requirement.
- m. Developer agrees to pay timely all other bills due to the City in connection with the Property, including but not limited to water bills, false alarm bills, license fees, and permit fees.

The representations and warranties contained herein shall be true and correct at all times as required by this Agreement. Developer shall comply with all covenants contained herein at all times during the term of this Agreement.

6. Default.

- a. *Default by Developer.* The occurrence of any one or more of the following events shall constitute a default by Developer ("Default") hereunder:
- i. Developer shall fail to pay any amounts due from it under this Agreement or the Note or the Mortgage on or before ten (10) days following the date when due; or
 - ii. Any representation or warranty made by Developer in this Agreement or the Note or the Mortgage, or any document or financial statement delivered by Developer pursuant to this Agreement, shall prove to have been false in any material respect as of the time when made or given; or
 - iii. Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations (other than payment obligations, which is addressed in subparagraph (i) above) under this Agreement or the Note or the Mortgage, and such failure shall continue for thirty (30) days following notice thereof from the City to Developer (or such longer period of time as is necessary to cure the default as long as Developer has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than 90 days following the notice thereof from the City); or
 - iv. Construction of the Project shall be abandoned for more than sixty (60) consecutive days (subject to the force majeure provisions below) or if any portion of the Project shall be damaged by fire or other casualty and not repaired, rebuilt or replaced within a reasonable time thereafter; or
 - v. The Property fails to be a tenant occupied commercial space and, if vacant, the Developer has not made every reasonable effort to lease the space, using available local resources such as the Downtown Fond du Lac Partnership and local real estate brokers to actively market the property.
 - vi. Developer shall: (A) become insolvent or generally not pay, or be unable to pay, or admit in writing its/his inability to pay, its/his debts as they mature; or (B) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or (C) become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or (D) have a petition or application filed against it/him in bankruptcy or any similar proceeding, or have such a proceeding commenced against it/him, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer or Guarantor shall file an answer to such a petition or application,

admitting the material allegations thereof; or (E) apply to a court for the appointment of a receiver or custodian for any of its/his assets or properties, or have a receiver or custodian appointed for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after its/his appointment; or (F) adopt a plan of complete liquidation of its/his assets; or

- vii. If Developer shall dissolve or shall cease to exist; or
- viii. A default shall occur under the Grant Agreement caused by an action or inaction of Developer; or
- ix. A default shall occur on any other indebtedness of or loan to Developer, or a default shall occur under any mortgage or other lien or encumbrance affecting the Property.

Upon the occurrence of any Default, the City, at its option, may pursue any or all of the rights and remedies available to it at law and/or in equity and/or under this Agreement and/or under any of the other agreements contemplated herein; provided that (a) the City shall not be permitted to recover any portion of the Loan which has been forgiven previously under the terms of this Agreement, and (b) the remedy for a default under the Grant Agreement shall be limited to the portion of the Grant which is clawed back. Upon the occurrence of any Default, any amounts due to the City shall accrue interest at the rate of one percent (1%) per month.

- b. *Default by the City.* In the event the City shall breach or fail to perform timely or observe timely any of its covenants or obligations (other than payment obligations, which is addressed in subparagraph (a) above) under this Agreement and such failure shall continue for thirty (30) days following notice thereof from Developer to the City (or such longer period of time as is necessary to cure the default as long as the City has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than 60 days following the notice thereof from Developer), then Developer may, at its option, pursue any or all of the rights and remedies available to it at law and/or in equity and/or under this Agreement.

7. Transfers; Assignment.

- a. *Transfer of the Property.* Except as provided herein, Developer shall not, directly or indirectly, sell, assign, transfer, convey, mortgage or encumber its interest in the Property during the term of this Agreement unless it first obtains the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- b. *Assignment of Development Agreement.* Developer shall not have the right to assign this Agreement to any other party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or

delayed; provided, however, that if no Default exists, Developer may assign this Agreement to an entity controlled by or under common control with Developer without such consent simultaneously with the transfer of the Property to such entity. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement. The provisions of this Agreement shall run with the land.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue, unless terminated earlier as provided herein, until the latest to occur of the following: (i) repayment or forgiveness in full of the Loan; (ii) the PILOT Requirement Expiration; and (iii) termination of the Grant Agreement and repayment of any required claw back of the Grant.
9. Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

Notices to Developer:

Sam Meyer
Meyer Property Group, LLC
42 N. Main Street
Fond du Lac, WI 54935

Notices to the City:

City of Fond du Lac
160 South Macy Street
Fond du Lac, WI 54935
Attn: City Clerk

with a copy to:

City of Fond du Lac
160 South Macy Street
Fond du Lac, WI 54935
Attn: Community Development Dept.

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.

10. Recording. Recording of this Agreement is prohibited except as allowed in this section. At the request of either party, the parties shall promptly execute and record, at the cost of the Developer, the Memorandum.
11. Indemnity. Developer shall indemnify, defend and hold harmless the City, its officers, employees and authorized representatives (each an "Indemnified Party") from and against any and all liabilities in connection with the Project, including, without limitation, environmental remediation required by any federal or state agency having jurisdiction, losses, damages, costs and expenses, including reasonable attorney fees and costs, arising out of any third-party

claims, causes of action, or demands made against or suffered by any Indemnified Party on account of this Agreement, unless such claim, causes of action, or demands: (a) relate to the Indemnified Party's failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action to which the Indemnified Party may be made a party by reason of the foregoing.

12. Force Majeure. For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, and unusually severe weather; it being the parties' purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times of performance of any of the obligations of such party shall be equitably extended for the period of the delay.
13. Joint and Several Obligations. Each entity comprising Developer shall be jointly and severally liable for the performance of all obligations of Developer under this Agreement, and the City may bring suit against each such entity, jointly or severally, or against any one or more of them.
14. Miscellaneous.
 - a. *No Personal Liability*. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City or the Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
 - b. *Immunity*. The City of Fond du Lac is a governmental entity entitled to governmental immunity under law, including Section 893.80, Wis. Stats. Nothing contained herein shall waive the rights and immunities to each party may be entitled under law, including all of the immunities, limitations and defenses under Section 893.80, Wis. Stats., or any subsequent amendments thereof, any federal law, common law or other applicable laws.
 - c. *Waiver; Amendment*. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.
 - d. *Entire Agreement*. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties,

covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

- e. *No Third-Party Beneficiaries.* This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted assigns) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.
- f. *Severability.* If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.
- g. *Governing Law.* This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Fond du Lac County, Wisconsin.
- h. *Time is of the Essence; Deadlines.* Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.
- i. *Relationship of Parties.* This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.
- j. *Captions and Interpretation.* The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.
- k. *Counterparts/Electronic Signature.* This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.
- l. *Public Records.* Developer acknowledges that this Agreement and their confidential information may be subject to disclosure in whole or in part under applicable Public Records laws and regulations. The City will provide Developer with notice of public records requests which includes a timeframe

for going into Court to seek protection for Developer's confidential information.

[SIGNATURE PAGE FOLLOWS]

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first printed above.

DEVELOPER:

MEYER PROPERTY GROUP, LLC

By: _____
Samuel D. Meyer, Managing Member

Attest: _____

CITY :

CITY OF FOND DU LAC

By: _____
Joseph P. Moore, City Manager

Attest: _____
Margaret Hefter, City Clerk

Countersigned pursuant to Section 62.09(10) Wis. Stats.

By: _____
Tricia Davi, Director of Administration

APPROVED AS TO FORM:

By: _____
Deborah S. R. Hoffmann, City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT B
PROJECT PROPOSAL

[ATTACH TO THIS COVER PAGE]

DRAFT

EXHIBIT C

PROJECT SITE DIAGRAM

[ATTACH TO THIS COVER PAGE]

DRAFT

EXHIBIT D
FORM OF NOTE

[ATTACH TO THIS COVER PAGE]

DRAFT

EXHIBIT E
JOB CREATION FOR FORGIVABLE LOAN

[ATTACH TO THIS COVER PAGE]