CITY OF STEVENS POINT
REGULAR COUNCIL MEETING

Zoom Teleconferencing
By Computer:
https://us02web.zoom.us/j/85998202194?pwd=T2NiZVRLamlVZEFOREZHVFVnNDYyUT09

October 5, 2020
5:30 PM

Meeting ID: 859 9820 2194
Passcode: 728911

By Telephone:
+1 301 715 8592
Meeting ID: 859 9820 2194
Passcode: 728911

Agenda

1. Roll Call

Consideration and Possible Action on the Following:

2. Amendment and Restatement of Development Agreement between the City of Stevens Point, the Redevelopment Authority of the City of Stevens Point, and North Side Yard, LLC for the redevelopment of 1017 Third Street (Former Lullabye Furniture Site)

3. Adjourn into closed session pursuant to Wisconsin Statutes 19.85(1)(e) (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) on the following:

a. Negotiating the terms of a development agreement relating to a possible project located at 1300 Maria Drive (PID 281240829240034)

4. Reconvene into open session for possible action on the above referenced closed session items.

5. Adjournment

RMC – Revised Municipal Code

Persons who wish to address the Common Council may make a statement as long as it pertains to a **specific** agenda item. Persons who wish to speak on an agenda item will be limited to a five (5) minute presentation. Any person who wishes to address the Common Council on a matter which is not on the agenda will be given a maximum of three (3) minutes and the time strictly enforced under the item, "Persons who wish to address the mayor and council on non-agenda items." Individuals should not expect to engage in discussion with members of the City Council and City staff.

Any person who has special needs while attending this meeting or needing agenda materials for this meeting should contact the City Clerk as soon as possible to ensure a reasonable accommodation can be made. The City Clerk can be reached by telephone at (715) 346-1569 or by mail at 1515 Strongs Avenue, Stevens Point, WI 54481.

Copies of ordinances, resolutions, reports and minutes of the committee meetings are on file at the office of the City Clerk for inspection during the regular business hours from 7:30 A.M. to 4:00 P.M.

City of Stevens Point
1515 Strongs Avenue
Stevens Point, WI 54481-3594

Department of Community Development
Ryan J. Kernosky, Director
Ph: (715) 346-1567
Fax: (715) 346-1498

MEMORANDUM

To: Mayor Mike Wiza
Common Council
Redevelopment Authority

From: Ryan Kernosky, Director of Community Development

CC: Logan Beveridge, City Attorney
Corey Ladick, Comptroller/Treasurer

Date: October 5, 2020

RE: Amended and Restated Development Agreement – North Side Yard, LLC

Background: The City has been working with North Side Yard, LLC (Merge Development) to move the Northside Yard Development forward in these extremely uncertain times. Through conversations the last several months with the Developer, many banks opted to place a moratorium on commercial lending, especially in untested markets like Stevens Point. In order to get the project to move forward and to obtain proper financing, the Developer is going to have to reduce the scope and size of the first phase and subsequent phases, plus break the property into smaller development pads by recording a condominium plat. Please note that the value of project to be created and the number of units is not changing.

The following phases are outlined below:

> Phase I will be reduced from two four-story mixed-use buildings to one four-story mixed-use building constructed on the eastside of the property adjacent to Centerpoint Drive.
>
> Phase II will be reduced from the three-story apartment building and 11 town homes and will instead be the second four-story mixed-use building constructed near the corner of Portage Street and Centerpoint Drive.
>
> Phase III would include the three-story apartment building proposed on Third Street.
>
> Phase IV would include the 11 townhomes along Portage Street.

This change in development phases causes other parts of the existing development agreement to fall into default without some type of amendment. In order to 1) get the project going yet in 2020, 2) protect the City's financial interest through the incentives offered, and 3) prevent possible future confusion by having another amendment to the development agreement, City staff and the developer have worked out an Amended and Restated Development Agreement to address the other concerns within the development agreement.

Upfront Incentive Changes: Under Section 4.3 of the development agreement, the City would still provide a total of $3 million provided that phase I reaches a $10 million valuation (at which time the City would provide half of the up front incentive, or $1.5 million). Once phase II is completed, the City would pay out the remaining $1.5 million.

Pay-Go Incentive Changes: Under Section 4.3(2), the developer would still have to meet the $25 million valuation in order to receive the 100% increment, or pay-go incentive. In order for the developer to reach the $25 million valuation, they will have to construct the three-story apartment building and the townhomes. This puts the City is a strong position to further encourage the development of the site as originally proposed.

Additional City Protections: This amended and restated development agreement also includes 'claw back' provisions on the undeveloped portions of the property in the event that the developer fails to produce a development consistent with the development plans.

Staff Recommendation: I recommend **APPROVAL** of the amended and restated development agreement as presented.

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement"), made as of the ___ day of September, 2020 (the "Effective Date"), by and between the **City of Stevens Point, Wisconsin** ("City"), the **Redevelopment Authority of the City of Stevens Point, Wisconsin** ("RA"), and **North Side Yard, LLC**, a Delaware limited liability company ("Developer"). Individually, each of the foregoing is a "Party" and collectively, they are the "Parties").

R E C I T A L S :

A. City desires to encourage development, eliminate blight and prevent blight within the City.

B. For these purposes, City has created Tax Incremental District No. 10 ("TID No. 10") pursuant to Wisconsin Statutes.

C. Merge, LLC, the predecessor-in-interest to Developer ("Merge"), the City and the RA are parties to that certain Development Agreement dated April 12, 2019, as amended by a First Amendment thereto dated March 20, 2020 (collectively, the "Original Agreement"), regarding the development of certain real property in the City which is located in TID No. 10, as the same is more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property").

D. Merge assigned its rights and obligations in and to the Original Agreement to Developer on April 29, 2019.

E. Developer acquired the Property from RA on July 12, 2019, pursuant to the terms of the Original Agreement.

F. City has determined that development of the Property will serve to encourage development and to eliminate and prevent blight within the City, and is in the best interests of the City and its residents, and that the economic vitality of TID No. 10 is essential to the economic health of the City.

G. Since the time of execution of the Original Agreement, Developer's plans for the Property have changed, which changes include subjecting the Property to the condominium form of ownership and spreading the development of the Property into four (4) separate phases from the two (2) phases contemplated in the Original Agreement, such that the Parties determine it to be in their best interest to amend and restate the Original Agreement in its entirety, as more particularly set forth herein.

H. Developer has filed, or will file, with City restated plans specifications, documents and exhibits ("Plans and Specifications") for the development of the Property and for making other improvements, it being acknowledged some may be submitted for approval after execution of this Agreement and attached at the time of approval.

1. A schedule showing the name of Developer and the mailing address and telephone number of Developer's representatives for the Project (as defined herein), incorporated by reference herein as **Exhibit B** (which, by means of clarification, replaces in its entirety Exhibit B of the Original Agreement).

2. An accurate topographical map showing topographical data of the Property, incorporated by reference herein as **Exhibit C** (which, by means of clarification, replaces in its entirety Exhibit C of the Original Agreement).

3. A scale plot plan showing the location, type and size of the proposed use for the Property to be improved by Developer as provided herein, including the location, type and size of the proposed structures, driveways, driveway access road(s), parking facilities, open space and landscape plans, including a statistical table showing the size of the site in square feet, and acreage, incorporated by reference herein as **Exhibit D** (which, by means of clarification, replaces in its entirety Exhibit D of the Original Agreement).

4. Architectural drawings of the buildings and structures and sketches showing the design characteristics and treatment of exterior elevations incorporated by reference herein as **Exhibit E** (which, by means of clarification, replaces in its entirety Exhibit E of the Original Agreement).

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the following promises and mutual obligations of the Parties hereto, each of them does hereby covenant and agree, as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" means this Amended and Restated Development Agreement, as the same may hereafter be from time to time modified, amended or supplemented in accordance with its terms.

"Bond" means bonds or notes issued by City to provide City Support.

"Condominium" means the North Side Yard Condominium, which will be created by Developer upon execution of this Agreement and to which form of ownership the Property will be subjected.

"Developer" means North Side Yard, LLC, and its successors and assigns, including at times each applicable SPE.

"Differential Payment" means the amount to be paid by Developer as the shortfall, if any, between the amount of taxes due on the Value guaranteed by Developer pursuant to section 4.1(6) and the amount of taxes billed, for any year during the Term of this Agreement.

"Effective Date" means the date set forth in the introductory paragraph of this Agreement.

"Excess TIF Revenues" means the amount of taxes paid on the project in excess of the amount of taxes that would be due on the Value guaranteed by the Developer pursuant to Section 4.1(6) for any year during the timeline indicated in Section 4.3(2) of this Agreement.

"Fund" means TIF Revenues in any year in excess of guaranteed TIF Revenues.

"City" means the City of Stevens Point, Wisconsin.

"City Support" means City's support for the Project to be provided to Developer, as set forth in Section 4.2 and 4.3 below.

"Initial City Support" means City's support for the Project to be provided as payment to Developer, as set forth in Section 4.3(1) below.

"Ongoing City Support" means City's support for the Project to be provided to Developer on an ongoing basis, as set forth in Section 4.3(2) below.

"Phase 1" means the construction and occupancy of the 4-story mixed use building, along with related improvements, assigned a preliminary address of 1060 Centerpoint Drive as identified in **Exhibit D** and **Exhibit E**.

"Phase 2" means the construction and occupancy of the 4-story mixed use building, along with related improvements, assigned a preliminary address of 1020 Centerpoint Drive as identified in **Exhibit D** and **Exhibit E**.

"Phase 3" means the construction and occupancy of the 3-story apartment building, along with related improvements, assigned a preliminary address of 1017 Third Street as identified in **Exhibit D** and **Exhibit E**.

"Phase 4" means the construction and occupancy of the 11 townhomes, along with related improvements, assigned a preliminary addresses of 1009 – 1079 Portage Street as identified in **Exhibit D** and **Exhibit E**.

"Plans and Specifications" means the restated plans and specifications for the Project to be prepared by Developer and approved by City, including **Exhibit B** through **Exhibit E** attached hereto.

"Prime Rate" means the prime rate as established from time to time by Citibank, N.A.

"Project" means the development of the Property, including any public or site related improvements specifically needed for the development (e.g. utility extensions to the Property, burying of powerlines, or other similar improvements), within TID No. 10 as shown on **Exhibit D**, in accordance with the Plans and Specifications.

"Project Costs" means costs specified in secs. 66.1105(2)(f) 1.a-n, inclusive, Wisconsin Statutes.

"Property" means the Property identified and more particularly described on **Exhibit A**, attached hereto.

"RA" means the Redevelopment Authority of the City of Stevens Point, Wisconsin.

"Subsequent Tax Year" means a tax year occurring after a year in which Developer makes a Differential Payment.

"SPE" means each special purpose entity that will own a Unit in the Condominium. Each SPE will be a wholly-owned subsidiary of Developer, and combined the SPEs will own all Units in the Condominium.

"Term" has the meaning set forth in Section 9.10 herein.

"TIF Revenues" means the incremental real and personal property tax revenues generated by the Project from tax year 2022 to tax year 2041, plus any Differential Payments paid, collectively in excess of base value tax revenue.

"Unit" means each applicable unit of the Condominium. .

"Value" means fair market value of the real property and personal property in City, and does not include the value of any government subsidy or program.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of City. City makes the following representations and warranties:

(1) City is a municipal corporation of the State of Wisconsin and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) City makes no representation or warranty, either express or implied, as to the Property, or its condition or the soil conditions thereon, or that the Property shall be suitable for Developer's purposes or needs.

(3) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any law, ordinance, charter, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which City is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(4) The execution, delivery and the consummation of the transactions contemplated hereby have been duly authorized and approved by City and no other or further acts or proceedings of City. This Agreement constitutes the legal, valid, and binding agreement and obligations of City, enforceable against it in accordance with its respective terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 2.2 Representations and Warranties of RA. RA makes the following representations and warranties:

(1) RA is a municipal corporation of the State of Wisconsin and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) RA makes no representation or warranty, either express or implied, as to the Property, or its condition or the soil conditions thereon, or that the Property shall be suitable for Developer's purposes or needs.

(3) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any law, ordinance, charter, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which RA is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(4) The execution, delivery and the consummation of the transactions contemplated hereby have been duly authorized and approved by RA and no other or further acts or proceedings of RA. This

Agreement constitutes the legal, valid, and binding agreement and obligations of RA, enforceable against it in accordance with its respective terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 2.3 Representations and Warranties of Developer. Developer, on behalf of itself and each SPE, as applicable, makes the following representations and warranties:

(1) Developer is a Delaware limited liability company and has the power to enter into this Agreement and to perform its obligations hereunder and is in good standing under the laws of the State of Wisconsin.

(2) Developer, or the applicable SPE, will cause the Project to be constructed in accordance with the terms of this Agreement, the Plans and Specifications and all local, state and federal laws, ordinances and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws, ordinances and regulations), except for staff approved minor changes to the Plans and Specifications during construction which will not have a material adverse effect on the Project.

(3) The implementation of the Project would not be undertaken by Developer, or the applicable SPE, and, in the opinion of Developer, would not be economically feasible within the reasonably foreseeable future, without the City Support and RA Obligation to Developer provided for in this Agreement.

(4) Developer, or the applicable SPE, will use its commercially reasonable and diligent efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals for the Project, and will comply, in a timely manner, with all ordinances and regulations which must be met before the Project may be lawfully implemented.

(5) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

ARTICLE III
INTENTIONALLY OMITTED

ARTICLE IV
UNDERTAKINGS BY DEVELOPER AND CITY

Section 4.1 Developer Obligations. Developer undertakes the following obligations, in consideration of City's obligations in Section 4.2 and RA's obligations in Section 4.4, below.

(1) Developer, and each applicable SPE, shall make all reasonable efforts to construct the mixed use development for the Project. The Project will be developed under the Plans and Specifications approved by City, such approval not to be unreasonably withheld, conditioned or delayed. The Parties

agree that development will occur in four separate and distinct phases (Phase 1, Phase 2, Phase 3 and Phase 4).

(2) Intentionally omitted.

(3) Subject to Developer's, or the applicable SPE's, timely receipt of all approvals, licenses and permits necessary or appropriate in connection with the development of the Project, Developer shall pursue, or cause each applicable SPE to pursue, construction activities on the Property and shall complete the Project on the Property, so as to obtain occupancy permits for Phase 1 of the Project, in accordance with state and local codes, by December 31, 2021, and for Phase 2 of the Project, in accordance with state and local codes, by December 31, 2022, and for Phase 3 and Phase 4 of the Project, in accordance with state and local codes, by December 31, 2023. In the event the foregoing schedule is not met, the Parties shall meet together and in good faith negotiate either (a) an extension of such timeline(s), or (b) RA's repurchase the undeveloped portions of the Property for $1.00. In no event shall any such repurchase affect the ongoing validity or viability of the then-completed phases of the Project (e.g., cannot interfere with access rights, utility rights, etc.).

(4) Value of the Property as certified by the City Assessor:

(a) Developer guarantees that the Value of the Property will be not less than Twenty Million Dollars ($20,000,000.00) on January 1, 2022.

(b) Developer guarantees that the Value of the Property will be not less than Twenty-Five Million Dollars ($25,000,000.00) on January 1, 2023.

(c) The aforesaid Twenty-Five Million Dollar ($25,000,000.00) minimum Value of the Property will continue during the remaining Term of this Agreement.

(d) The foregoing Value guarantees are wholly conditioned on City fulfilling its obligations to provide the City Support, as specified herein.

(5) Without limiting other provisions in this Agreement, the dates in Sections 4.1(3) and (4) are subject to Force Majeure.

(6) For the tax year 2022 and thereafter ending with the last tax year of the Term covered by this Agreement, Developer, or the applicable SPE(s), guarantees TIF Revenues equal to the amount that would be due on a Value of Thirteen Million One Hundred Eighty Four Thousand Four Hundred Fifty Dollars ($13,184,450.00). Developer agrees that, in the event the real estate taxes due on the Property for any ~~calendar~~ tax year do not generate TIF Revenues equal to the amount that would be due on a Value of Thirteen Million One Hundred Eighty Four Thousand Four Hundred Fifty Dollars ($13,184,450.00), that City may submit a bill to Developer for the differential ("Differential Payment"). Such a billing shall be submitted to Developer by the City Treasurer by March 1 of the relevant tax year and shall be paid in full by Developer, without interest thereon, by March 31 of that year. If not fully paid when due, the amount remaining unpaid on and after April 1 of that year shall accrue interest at a rate of 6% per annum until fully paid. City has the option of placing any unpaid amount on the subsequent year's property tax bill as a special charge. At no time shall the sum of the minimum tax payment and the Differential Payment for any given year be less than $290,404.00. In the event that the mill rate decreases the Differential Payment shall be increased to preserve this sum.

In the event that the City's additional financial support as identified within Article IV, Section 4.2(3) is less than the amount identified within said section, both the guaranteed TIF Revenues based on the

Valuation and the Differential Payment identified within this Section shall be properly adjusted to reflect the actual additional financial support. Under no circumstances shall the minimum TIF Revenues guaranteed by the Developer be less than that due based upon a valuation of $11,425,000.00, nor shall the minimum tax payment be less than $251,650.00.

(7) Developer agrees to develop, or cause each applicable SPE to develop, the Property within TID No. 10 as shown on **Exhibit D**, and all buildings and structures on the Property in accordance with the Plans and Specifications, as filed and approved in final form by City. However, during the progress of the Project, Developer may make changes to the Plans and Specifications as may be in furtherance of the general objectives of the Plans and Specifications and this Agreement and as site conditions or other issues of feasibility may dictate to further Developer's development objectives; provided, however, any such change shall comply with all applicable laws of City and Developer may not make any change without the written consent of City (not to be unreasonably withheld, conditioned or delayed). If a proposed change is required to be approved by the City, City agrees to consider and approve or reject any proposed change within 30 days after submittal by Developer to City or such approval is deemed given; provided, if City's approval is needed within a shorter period of time due to Developer's construction schedule or its obligations under Sections 4.1(3) or (4) above, City shall provide such approval or rejection within 10 days of request, and City will reasonably cooperate with Developer to facilitate and expedite such review process. However, if a proposed change is required to be reviewed and approved by a City committee and/or Common Council, such request will be considered and acted upon at the next available meeting of such City committee or Common Council. Such requests for approval shall be submitted to the City Director of Community Development, as representative of City.

(8) Developer further agrees to the following:

(a) Developer has previously caused to be prepared a staked ALTA survey for the Property which sufficient detail to determine boundaries and utility locations, and such other details as were required by the City Surveyor or his designee.

(b) Within thirty (30) days of the Effective Date, at Developer's expense, Developer shall cause a plat of Condominium to be prepared for approval by the City Zoning Administrator, or his designee, which conforms to the approved general site development plan and shows the Condominium's Units, common and limited common elements and areas, if any dedicated to the public. It is anticipated that such Condominium plat would describe four (4) Units with shared common elements. The four (4) Units would represent each phase of the development of the Project, and allocation of each Unit's percentage interest in the Condominium will be further described in the Condominium documents. This Agreement, and all subsequent amendments, shall be enforceable against the owners of all Condominium Units.

(c) Easements on the Property for municipally owned storm sewer and water mains shall be granted by Developer to City or its designee where necessary, by mutually agreed upon separate document, or pursuant to the Condominium plat, as applicable, in accordance with detailed utility plans approved by the City Director of Public Utilities, or his designee.

(d) No future structures (other than as contemplated in Phase 1, Phase 2, Phase 3 and Phase 4), including but not limited to utility buildings and tool sheds, shall be constructed or installed on any portion of the Property by Developer without City's approval, which approval shall not be unreasonably withheld, conditioned or delayed. The definition of structure shall be the definition contained within the City Zoning Ordinance.

Section 4.2 City Obligations. City undertakes the following obligations, in consideration of the obligations of Developer in Section 4.1, above.

(1) City shall timely complete all necessary or required zoning, development and use reviews for each phase of the Project, pursuant to applicable City Ordinances. City shall process, on a timely and expedited basis, each and every application submitted by, through or under Developer in connection with its development of the Project, including all applications with respect to necessary or appropriate licenses and permits in connection with each phase of Developer's development of the Project. Without limitation, if an application is deemed deficient, City shall cooperate with Developer to ensure proper completion thereof. Likewise, City shall use good faith efforts to diligently process all such matters, to assist in Developer's efforts to timely complete the Project as set forth in this Agreement.

(2) City shall provide support for the Project Costs to Developer or its designee, and as allowed under and pursuant to sec. 66.1105, Stats. (the "City Support") in the amount shown in Section 4.3, below. An example of such City Support is identified in the Schedule attached hereto as **Exhibit F**. Please note, in an event of a discrepancy between Section 4.3 and **Exhibit F**, Section 4.3 shall govern.

The City Support is conditioned upon Developer's compliance with Sections 4.1(1), (3) and (4) herein (subject, however, to Section 4.1(5)).

(3) City has provided, or shall provide in the future, additional financial support for the purposes of environmental investigation, and removal of soils contaminated with coal cinders. Said support shall not exceed Four Hundred Sixty Two Thousand Dollars ($462,000.00) and shall only be used for the testing, excavation, removal, and disposal of the contaminated soil, not to exceed 4,200 cubic yards of removed material. Such costs may be incurred by Developer during any phase of the Project and repaid by City. The Developer shall submit invoices relating to the testing, excavation, removal, and disposal of the contaminated soil to the City to pay directly. The City shall be responsible for maintaining a record to verify that the additional support identified within this Section shall not exceed $462,000.00.

Section 4.3 Funding the City Support for The Project Costs. City shall provide City Support for the Project Costs of Developer as follows:

(1) Provide to Developer Initial City Support in an amount up to Three Million Dollars ($3,000,000.00) to partially cover Project Costs for Phase 1 and Phase 2. The amount of such Initial City Support shall be proportionate to the ratio of the actual Value of the Project to the guaranteed Value of the Project identified in Section 4.1(4)(a). For example, if the actual Value of the Project is Twenty Million Dollars ($20,000,000.00) or more, the Developer shall receive Three Million Dollars ($3,000,000.00) or 100% of the Initial City Support. However, if the actual total Value of the Project after completion of Phase 1 and Phase 2 is Fifteen Million Dollars ($15,000,000.00), the Developer shall receive Two Million Two Hundred and Fifty Thousand Dollars ($2,250,000.00), or 75% of the Initial City Support. Notwithstanding the foregoing, Phase 1 will be subject to a ratio test based on one-half of the guaranteed Value of the Project or Ten Million Dollars ($10,000,000). For example, if the actual Value of Phase 1 is Ten Million ($10,000,000) or more at the time of occupancy, Developer shall receive the entirety of fifty percent (50%) of the total Initial City Support, or One Million Five Hundred Thousand Dollars ($1,500,000). By means of clarification and as a further example, in the event the Value of the Project after Phase 1 is only Eight Million Dollars ($8,000,000), Developer shall receive One Million Two Hundred Thousand Dollars ($1,200,000) of the Initial City Support upon occupancy of Phase 1; thereafter should the total Value of the Project at the occupancy of Phase 2 equal Twenty Million Dollars ($20,000,000) or greater, Developer shall receive the remaining One Million Eight Hundred Thousand ($1,800,000) of the Initial City Support upon the occupancy of Phase 2 (i.e., the Value will be netted upon completion of Phase 2). The applicable portion of the Initial City Support shall be paid within 30

days of the issuance of the final occupancy permit for each Phase 1 and Phase 2 of the Project and after the City Assessor certifies the Value of the Project, except that if final occupancy occurs during the months of November and December, such incentive payment will be made by January 31st of the following year.

(2) If Developer achieves and maintains the Value of the Project as identified in Section 4.1(4)(a), (b), and (c), the City shall provide to Developer Ongoing City Support of 100% of the Excess TIF Revenues. Such Ongoing City Support payments shall cease following the 2041 tax year, payable in 2042. The City's obligation to finance development costs shall be payable solely from TIF Revenues generated by the Property and shall not be a charge against the City's general credit, taxing power, or revenue generated from other properties within TID No. 10. The Ongoing City Support payments shall be made on a yearly basis on or before September 1 of each year for which such payments are payable under this Agreement.

Section 4.4 RA Obligations RA has sold the Property to Developer for $1.00.

ARTICLE V
PROPERTY BASE VALUE

City represents and agrees that the base year value of the Property in City is $0. All taxes for the Property paid based on values in excess of such amount are part of the incremental TIF Revenues.

ARTICLE VI
COVENANTS RUNNING WITH THE LAND

This Agreement restates the Original Agreement, constitutes the entire Agreement between the Parties, and all provisions of this Agreement shall be deemed to be covenants running with the land described on **Exhibit A** and shall be binding upon successors and assigns for the Term of this Agreement.

ARTICLE VII
REMEDIES

Section 7.1 Time of the Essence. Time is of the essence as to all dates under this Agreement.

Section 7.2 Event of Default. Each Party represents that, as of the Effective Date, neither party is in default under the Original Agreement. In the event any Party defaults under this Agreement, which default is not cured within thirty (30) days after written notice thereof to the defaulting Party or within such extended period required to cure the default, provided cure efforts are undertaken in good faith within the thirty (30) day period and the defaulting Party is diligently pursuing such cure, the nondefaulting Party shall have all rights and remedies available under law or equity with respect to the default, except as otherwise set forth in this Agreement. In the event of any default by any Party in making a payment required to another Party, the cure period for such monetary default shall be ten days after delivery of notice thereof. In addition, and without limitation, any of the Parties shall have the following specific rights and remedies following such notice and failure to cure:

(1) Injunctive relief,

(2) Action for specific performance; and

(3) Action for money damages.

Notwithstanding the foregoing, in no event may City exercise or seek any rights of injunction or specific performance for Developer's failure to commence any phase of the Project.

Section 7.3 Reimbursement. Any amounts expended by the nondefaulting Party in enforcing this Agreement including reasonable attorneys' fees, together with interest provided for below, shall be reimbursed or paid to the nondefaulting Party which prevails in any such enforcement.

Section 7.4 Interest. Interest shall accrue on all amounts required to be reimbursed by the defaulting Party to the nondefaulting Party at the Prime Rate as established from time to time by Citibank, N.A. plus two percent (2%) per annum, from the date of payment by the nondefaulting Party until the date reimbursed in full with accrued interest.

Section 7.5 Remedies are Cumulative. Except as specified in this Agreement, all remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.

Section 7.6 Failure to Enforce Not Waiver. Failure to enforce any provision contained herein shall not be deemed a waiver of that Party's rights to enforce such provision or any other provision in the event of a subsequent default.

Section 7.7 Mediation. Prior to litigation, and as a condition precedent to bringing litigation, any Party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The Parties shall agree upon a mediator and if they fail to do so within thirty (30) days of the request for mediation; either Party may apply to Portage County Circuit Court, for the designation of a mediator. In the event the Parties do not accept the mediator's recommendation, the aggrieved Party may then commence an action. However, the Parties shall participate in alternative dispute resolution, if ordered by the Court.

ARTICLE VIII
AMENDMENT

This Agreement may be rescinded, modified or amended, in whole or in part, only by mutual agreement of the Parties hereto, or their successors and/or assigns, in writing signed by all Parties.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.1 Execution in Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 9.2 Construction. The Parties acknowledge and represent that this Agreement has been the subject of negotiation by all Parties and that all Parties together shall be construed to be the drafter hereof and this Agreement shall not be construed against any Party individually as drafter.

Section 9.3 Legal Relationship. Nothing in this Agreement shall be construed to create an employer/employee relationship, joint employer, joint venture or partnership relationship, or a principal/agent relationship.

Section 9.4 Survival. All agreements, representations, covenants and warranties made herein shall survive the execution of this Agreement and the making of the grants hereunder. This Agreement shall be binding upon the Parties, their respective successors and assigns.

Section 9.5 No Waiver. The failure of any Party to require strict performance of any provision of this Agreement will not constitute a waiver of the provision or of any other of that Party's rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be signed by the Party waiving the right. If an obligation of a Party is being waived or released, the writing must be signed by the affected Parties. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any Party. Waivers and releases shall affect only the specific right or obligation waived or released and will not affect the rights or obligations of any other Party that did not sign the waiver or release.

Section 9.6 Severability of Provisions. If any provision of this Agreement shall be held or declared to be invalid, illegal or unenforceable by reason of its being contrary to any applicable law, such provision shall be deemed to be deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provisions.

Section 9.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Wisconsin.

Section 9.8 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any Party to any other shall be sufficiently given or delivered if it is dispatched by e-mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of Developer is addressed to or delivered personally to:

North Side Yard, LLC
c/o Brent Dahlstrom
PO Box 128
Cedar Falls, IA 50613
brentdahlstrom@gmail.com
cell: 1-319-505-3609

With a copy to:

Ruder Ware, L.L.S.C.
Attn: Paul J. Mirr
P.O. Box 187
402 Graham Avenue
Eau Claire, WI 54702-0187
pmirr@ruderware.com

(b) in the case of City is addressed to or delivered personally to:

City of Stevens Point

1515 Strongs Ave.
Stevens Point, WI 54481
Attn: City Clerk

(c) in the case of RA is addressed to or delivered personally to:

Redevelopment Authority of the City of Stevens Point
1515 Strongs Ave.
Stevens Point, WI 54481
Attn: Executive Director

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 9.9 Force Majeure. As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riot, act of terror, act of God or the elements, governmental action (except for governmental action by City with respect to obligations of City under this Agreement) alteration, strike or lockout, picketing (whether legal or illegal), inability of a Party or its agents or contractors, as applicable, to obtain fuel or supplies, unusual weather conditions, or any other cause or causes beyond the reasonable control of such Party (including, but not limited to, closures, delays or other governmental mandates arising out the COVID-19 pandemic) or its agents or contractors, as applicable. No Party to this Agreement shall be in default hereunder for so long as such Party or its agents and contractors, if applicable, are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence.

Section 9.10 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall remain in full force and effect in accordance with its terms. Upon expiration of the Term, each Party will execute such documentation as may be necessary to evidence such expiration.

Section 9.11 Restrictions of Sale, Transfer, Conveyance and Ownership. During the Term of this Agreement, neither Developer nor any future owner shall use, sell, transfer or convey ownership of any of the Property to any person or entity, in any manner which would render all or any part of the Property exempt from real property taxation, or would render the personal property located on any of the Property exempt from personal property taxation, without the prior written consent of City, and this Agreement constitutes a deed restriction effectuating this provision.

Section 9.12 Assignment. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors ~~an~~ and assigns of the parties hereto. Nothing herein shall prevent Developer from assigning its rights in this Agreement to another entity as long as said entity consists of the same owners as Developer, and such transferee agrees to be bound by the provisions of this Agreement as if such transferee were an original signatory hereto. Without limitation upon the foregoing, Developer may assign its rights and obligations under this Agreement, without the City's or RA's consent or approval to: (a) an entity owned or controlled by Developer or Merge LLC, including each SPE; (b) an entity owned or controlled by any member of QOZ Stevens Point LLC; or (c) an entity affiliated with QOZ Stevens Point LLC or Developer by commonality of ownership of at least fifty percent (50%). As used herein, "owned or controlled" shall mean holding at least fifty percent (50%) of the interests in such company or an entity or person serving as manager with it being understood that Merge LLC has been designated the sole manager of QOZ Stevens Points LLC pursuant to the Delaware Limited Liability Act, Delaware Code, Title 6, Section 18-101. Nothing herein, further, shall prevent or restrict Developer from collaterally assigning its rights under this Agreement in connection with a financing of the Project (or any portion thereof), it being understood that Developer may do so without the approval or consent of the City or RA.

Section 9.13 Cooperation with Grants. If necessary, Developer shall work with and cooperate with City and/or RA in providing data and information necessary for City and/or RA to comply with the provisions or requirements in connection with a State or Federal grant or other funding applicable to and benefiting the Development.

Section 9.14 Recording. The Parties shall execute, and City shall record in the Register of Deeds office for Portage County, a memorandum of this Agreement.

Section 9.15 No Personal Liability. Notwithstanding anything herein, no member, shareholder, director, partner, manager, officer or employee of Developer shall have any personal liability under this Agreement, whether to City or RA or otherwise, including, without limitation, as a result of a default or breach by Developer, or for any amount which becomes owing hereunder by Developer, or any obligation not performed by Developer.

Section 9.16 Estoppel Certificates; Financing. City and RA, at any time and from time to time, upon not less than ten (10) days' notice from Developer, execute, acknowledge and deliver to Developer (or any party upon Developer's request, including any lender or prospective lender of Developer), a statement in writing: (a) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect); and (b) acknowledging that there are not, to City's or RA's knowledge (as applicable), any uncured defaults on the part of Developer hereunder, or specifying such defaults if they are claimed. Any such statement may be relied upon by any existing or prospective lender, title insurer, purchaser, assignee, or other third party. City and RA, further, agree to provide such other reasonable assurances as may be necessary or required by a lender to facilitate the financing of any aspect of the Project, including the individual financing of only a portion of the Project or Property.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date indicated.

DEVELOPER:
NORTH SIDE YARD, LLC

Dated: ______________________________ By: ______________________________

Title: ____________________

CITY:
CITY OF STEVENS POINT, WISCONSIN

Dated: ______________________________ By: ______________________________

Name: Mike Wiza

Title: Mayor

Dated: ______________________________ By: ______________________________

Name: Paul Piotrowski

Title: City Clerk

RA:
REDEVELOPMENT AUTHORITY OF THE CITY OF STEVENS POINT, WISCONSIN

Dated: ______________________________ By: ______________________________

Name: John Schlice

Title: Chairperson

Dated: ______________________________ By: ______________________________

Name: Ryan Kernosky

Title: Executive Director

STATE OF _____________)
) ss.
___________ COUNTY)

Personally came before me this _____ day of ________________, 2020, the above-named Brent Dahlstrom, to me known to be the person who executed the foregoing instrument and acknowledged the same, as the act and deed of North Side Yard, LLC, by its authority.

____
Notary Public, State of ____________________

My Commission expires: ___________________

STATE OF WISCONSIN)
) ss.
PORTAGE COUNTY)

Personally came before me this _____ day of ________________, 2020, the above-named Mike Wiza, and Paul Piotrowski, the City Mayor and Clerk, respectively of the City of Stevens Point, a Wisconsin municipal corporation, to me known to be the persons who executed the foregoing instrument and acknowledged the same, as the act and deed of said municipality, by its authority.

____
Notary Public, State of Wisconsin

My Commission expires: ___________________

STATE OF WISCONSIN)
) ss.
PORTAGE COUNTY)

Personally came before me this _____ day of ________________, 2020, the above-named John Schlice, and Ryan Kernosky, the Redevelopment Authority Chairperson and Executive Director, respectively of the Redevelopment Authority of the City of Stevens Point, a Wisconsin municipal corporation, to me known to be the persons who executed the foregoing instrument and acknowledged the same, as the act and deed of said municipality, by its authority.

____
Notary Public, State of Wisconsin

My Commission expires: ___________________

EXHIBIT A

Legal Description

LOT 1 CSM#10544- 47-124 BNG ALL BLK 33 & PRT BLK 34 VALENTINE BROWNS ADD IN NENW S32 T24 R8

EXHIBIT B

Developer Representatives

Brent Dahlstrom
604 Clay Street
Cedar Falls, IA 50613
Cell: 319-505-3609
E-mail: brent@mergeurbandevelopment.com

EXHIBIT C

Topographical Map

[Attached.]

EXHIBIT D

Plot Plan

[Attached.]

EXHIBIT E

Building Plans

[Attached.]

EXHIBIT F

Schedule

	Construction Year	Valuation Year	Revenue Year	Value Added	Valuation Increment	Tax Rate	Tax Increment	Debt Serv	Pay-Go Incentive	Balance
								0		0
1	2017	2018	2019	0	0	22.20	0	0		0
2	2018	2019	2020	0	0	22.18	0	0		0
3	2019	2020	2021	0	0	22.16	0	0		0
4	2020	2021	2022	2,000,000	2,000,000	22.13	44,267	142,500	0	-98,233
5	2021	2022	2023	18,000,000	20,000,000	22.11	442,227	142,500	189,605	11,889
6	2022	2023	2024	5,000,000	25,000,000	22.09	552,231	251,650	299,861	12,608
7	2023	2024	2025	0	25,000,000	22.07	551,678	251,650	299,561	13,075
8	2024	2025	2026	0	25,000,000	22.05	551,127	251,650	299,262	13,290
9	2025	2026	2027	0	25,000,000	22.02	550,576	251,650	298,963	13,252
10	2026	2027	2028	0	25,000,000	22.00	550,025	251,650	298,664	12,964
11	2027	2028	2029	0	25,000,000	21.98	549,475	251,650	298,365	12,423
12	2028	2029	2030	0	25,000,000	21.96	548,925	251,650	298,067	11,632
13	2029	2030	2031	0	25,000,000	21.94	548,377	251,650	297,768	10,590
14	2030	2031	2032	0	25,000,000	21.91	547,828	251,650	297,471	9,297
15	2031	2032	2033	0	25,000,000	21.89	547,280	251,650	297,173	7,754
16	2032	2033	2034	0	25,000,000	21.87	546,733	251,650	296,876	5,961
17	2033	2034	2035	0	25,000,000	21.85	546,186	251,650	296,579	3,918
18	2034	2035	2036	0	25,000,000	21.83	545,640	251,650	296,283	1,625
19	2035	2036	2037	0	25,000,000	21.80	545,094	251,650	295,986	-917
20	2036	2037	2038	0	25,000,000	21.78	544,549	251,650	295,690	-3,708
21	2037	2038	2039	0	25,000,000	21.76	544,005	251,650	295,395	-6,748
22	2038	2039	2040	0	25,000,000	21.74	543,461	251,650	295,099	-10,037
23	2039	2040	2041	0	25,000,000	21.72	542,917	251,650	294,804	-13,574
24	2040	2041	2042	0	25,000,000	21.69	542,374		294,509	234,292
25	2041	2042	2043	0	25,000,000	21.67	541,832			776,124
26	2042	2043	2044	0	25,000,000	21.65	541,290			1,317,414
27	2043	2044	2045	0	25,000,000	21.63	540,749			1,858,163
			Totals	25,000,000			12,508,847	4,814,704	5,835,980	

Comparison Details	
Title	**pdfDocs compareDocs Comparison Results**
Date & Time	9/17/2020 2:20:01 PM
Comparison Time	1.62 seconds
compareDocs version	v4.2.100.13

Sources	
Original Document	[#E1126880.DOCX] [v3] 20).DOCX
Modified Document	[#E1126880.DOCX] [v4] 20).DOCX

Comparison Statistics	
Insertions	0
Deletions	0
Changes	6
Moves	0
TOTAL CHANGES	6

Word Rendering Set Markup Options	
Name	
Insertions	
~~Deletions~~	
Moves / ~~Moves~~	
Inserted cells	
Deleted cells	
Merged cells	
Formatting	None.
Changed lines	Mark outside border.
Comments color	By Author.
Balloons	True

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	False