

# **DEVELOPMENT AGREEMENT**

**by and between**

**MAYFAIR DEVELOPER II, INC.**

**and**

**FIDUCIARY REAL ESTATE DEVELOPMENT, INC.**

**and the**

**CITY OF WAUWATOSA**

## **RELATIVE TO TAX INCREMENTAL DISTRICT NO. 7 FOR THE REDEVELOPMENT OF 11220 WEST BURLEIGH STREET (PHASE III OF THE DISTRICT)**

THIS DEVELOPMENT AGREEMENT (the "Development Agreement") is made as of the date last written below by and between the City of Wauwatosa, Wisconsin, a municipal corporation (the "City"), Mayfair Developer II, INC., an Illinois corporation and its successors and assigns however designated (the "Primary Developer"), and Fiduciary Real Estate Development, Inc., a Wisconsin corporation and its successors and assigns however designated (the "Residential Developer"). All parties acknowledge that certain subsidiaries and affiliates of the Primary Developer and Residential Developer shall succeed to some or all of the rights and obligations of either Primary Developer or Residential Developer.

### **RECITALS**

WHEREAS, the Primary Developer has control over approximately 62 acres of land at the Burleigh Triangle (now known as "The District") in the City of Wauwatosa, Wisconsin, all as legally described on Exhibit A, which is attached hereto and incorporated herein by this reference (the "Primary Developer's Property"), and which is located in Tax Incremental District No. 7 ("TID No. 7" or "TIF District"); and

WHEREAS, the Primary Developer has caused to be constructed The Mayfair Collection Phase I ("Phase I") at the western most 23-acre parcel of the District now known as Lot 2 of Certified Survey Map ("CSM") No. 8481 and Lot 1 of CSM No. 8850; and

WHEREAS, the Primary Developer has caused to be constructed The Mayfair Collection Phase II ("Phase II") at Lots 2 and 4 of CSM 8850 and Lots 1 and 2 of CSM No. 8859 of Primary Developer's Property, well as constructed improvements in preparation for a future mixed-use retail and residential development; and

WHEREAS, Primary Developer's affiliates JES Burleigh, LLC, an Illinois limited liability company, Burleigh III, LLC, an Illinois limited liability company, TCB Burleigh III,

LLC, an Illinois limited liability company, RES Burleigh III, LLC, an Illinois limited liability company, DFM Burleigh III, LLC, an Illinois limited liability company, and EEO Burleigh III, LLC, an Illinois limited liability company, as successors to Primary Developer, and Residential Developer's affiliates have entered into that certain Purchase and Sale Agreement dated March 20, 2017 for Lot 2 of CSM No. 8859 at 11220 West Burleigh Street in the City (the "Property"); and

WHEREAS, the Primary Developer and the Residential Developer have agreed to the construction of a mixed-use development with approximately 268 multi-family apartment units in two (2) buildings with structured parking (the "Residential Project") which will also include approximately 50,000 square feet of ground floor retail space known as The Mayfair Collection Promenade at the District (the "Retail Space") and certain site and infrastructure work including partial demolition/restoration, environmental remediation, street and utility extensions, corrective pedestrian connections to address sloped sidewalks and install ADA handrail systems, subsurface stabilization, below-grade storm water detention and soil correction (the "Site Work") (collectively, the Residential Project, Retail Space and Site Work are hereinafter the "Project," "Development" or "Phase III Mixed-Use Buildings A&B"). The Residential Project will be owned and operated by Residential Developer or its affiliates and the Retail Space will be owned and operated by an affiliate of the Primary Developer; and

WHEREAS, an additional 250 residential units ("Option A") or 750 residential units or more ("Option B") in primarily-residential buildings may be developed by Residential Developer in the future; and

WHEREAS, the parties enter into this Development Agreement for the purpose of setting forth certain rights, duties and obligations of the parties with respect to the Property and Project.

WHEREAS, the Property is presently zoned for the development and operation of this Project; and

WHEREAS, the Primary Developer and the Residential Developer, through their affiliated entities and authorized representatives, in connection with the Project and the Property, have participated in the municipal approval process required by the City for this Project, which municipal process has been what is required of a development such as the Project; and

WHEREAS, the City, including, without limitation, the Common Council, Community Development Authority (the "CDA") and Plan Commission, conditionally approved the Project and the Plans (as defined below) and a performance incentive tax increment financing ("TIF") funding term sheet for the Project; and

WHEREAS, the City's Standing Joint Review Board, following review and recommendation by the CDA, adopted a resolution approving the project plan amendment for TID No. 7 ("TID 7 Amendment").

## **AGREEMENTS**

NOW, THEREFORE, in consideration of the recitals and mutual agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1. PROJECT OVERVIEW**

On October 18, 2005, the City's Common Council adopted Ordinance O-05-30, an amendment to the Wauwatosa municipal code rezoning the Property from AA Light Manufacturing to Business Planned Development.

On May 17, 2011, the Common Council adopted Resolution R-11-64, a resolution approving the preliminary plan for the Business Planned Development approving the Primary Developer's mixed-use development with conditions (the "Development Plan").

On February 4, 2016, the City's Standing Joint Review Board adopted a resolution approving the project plan for the TID 7 Amendment.

On August 2, 2016, the Common Council adopted Resolution R-16-152, a resolution approved a term sheet outlining the transactions contemplated herein (the "Term Sheet") and authorized the appropriate City officials to draft and execute this Development Agreement. The Common Council has approved the issuance of the MRO (as defined below) and all other agreements and/or transactions that require its approval.

On or before August 19, 2016, Primary Developer and Residential Developer executed the Term Sheet accepting the same.

On September 20, 2016, the Common Council adopted Resolution R-16-170, a resolution approving the final plans for the Planned Unit Development (the "Final PUD").

A summary of the Project is shown on the attached **Exhibit B**, the final plans approved on September 20, 2016 by the Common Council in Resolution R-16-170.

### **SECTION 2. ADDITIONAL DEFINITIONS**

a. "Available Tax Increment" means: an amount equal to the annual gross Tax Increment revenues actually received by the City at any time prior to the Payment Date with respect to assessments made in the immediately preceding calendar year against the Property, minus allowable TID administrative costs and other allowable deductions.

b. "Eligible Project Costs" means up to \$9,499,800 of construction and non-construction cost items related to:

1. site demolition, site preparation (including subsurface stabilization and soil correction) and environmental remediation and contingencies related thereto,

2. street and corrective pedestrian connections to address sloped sidewalks including installing ADA handrail systems and contingencies related thereto,
3. utility extensions and below-grade storm water detention and contingencies related thereto,
4. parking spaces within the footprint of the structure on the site,
5. previously-incurred Phase II development expenses, and
6. other direct costs of development, design, construction and installation of the Project within the definition of eligible project costs set forth in Section 66.1105 of the Wisconsin Statutes, as approved by the City, which approval shall not be unreasonably withheld,

all in accordance with the Plans for the Project.

c. “Land Closing” means: The closing of the acquisition of the Property by the Residential Developer.

d. “MRO” means: the Municipal Revenue Obligation issued by the City as described further below in Section 8.

e. “Tax Increment” means “Tax Increment” as that term is defined in Section 66.1105(2)(i) of the Wisconsin Statutes.

### **SECTION 3. PLANS**

The City, including, without limitation, the City’s engineer, has received the following Final PUD plans (collectively, the “Plans”) related to the development of the Project:

- a. Architectural Site Layout Plan (ASP-100) prepared by JLA Architects Planners dated July 1, 2016;
- b. Civil Engineering Plans including the Paving Plan C-1.0, Grading & Erosion Control Plan C-2.0, and Utility Plan C-3.0 prepared by JSD Professional Services, Inc. dated June 24, 2016 (the “Civil Engineering Plans”);
- c. Architectural Plans, including Exterior Elevations A200B, A201B, A202B, A203B, A204B, A205B and A206B prepared by JLA Architects Planners dated July 1, 2016 (the “Architectural Plans”); and
- d. Conceptual Landscape Plan dated July 23, 2016.
- e. *See also* Exhibit B.

The City represents, warrants and covenants that it and every instrumentality or officer of the City has reviewed the Plans and determined such Plans are acceptable and sufficient to fulfill all conditions of the Final PUD in accordance with Resolution R-16-170 approving the final

plans for the Planned Unit Development. The City further represents, warrants and covenants that, upon receipt of all necessary project plans for the issuance of a building permit, it and every instrumentality or officer of the City will review the plans in a timely and professional manner and will not unreasonably delay permit issuance due to plan review, provided such plans are reasonably acceptable and sufficient for approval. The City agrees that it does not need to review or approve any other types of plans, designs or specifications for this Project in order to issue a building permit for the Project.

#### **SECTION 4. COMMUNITY IMPACT**

The City has determined that the proposed development of the Project will be a benefit to the City and will not have negative effects on the environment, abutting property values, the character of the surrounding neighborhood, demand for service and infrastructure and traffic safety, provided that the items in this Development Agreement are complied with by the Primary Developer and the Residential Developer.

#### **SECTION 5. AESTHETICS AND VISUAL GUIDELINES**

The City's Design Review Board reviewed the Plans at a series of meetings and approved the Plans at its meeting on January 19, 2017. Minor changes in the approved Plans, such as a change in exterior colors, materials, design elements and/or changes in dimensions of building footprints amounting to adjustment of less than five (5) feet at any one dimension shall be subject only to additional review and approval by the City's Design Review Board, which approval shall not be unreasonably withheld. All more significant changes in the approved Plans (other than minor changes described in the previous sentence) shall be subject, not only to additional review and approval by the City's Design Review Board, but also to additional review and approval by the Common Council. Primary Developer or Residential Developer may also request review by the Common Council.

#### **SECTION 6. THE DEVELOPMENT**

a. Development Overview: Primary Developer and Residential Developer, respectively, covenant and warrant to the City that the Development will be constructed in accordance with the Plans to contain multifamily residential apartments for lease to the public, commercial regional specialty retail space for lease, and reasonable uses related thereto. Notwithstanding anything to the contrary set forth in this Development Agreement, the City agrees that this Development Agreement does not prohibit or restrict Primary Developer and Residential Developer from adding additional amenities to the Project, subject to any applicable zoning restriction, and with respect to physical improvements, any municipal approval process.

b. Costs: The total costs of the Project are anticipated to be \$62,006,629 (the "Budgeted Costs") as shown on the attached **Exhibit C-1**. The Eligible Project Costs to be reimbursed under the TID 7 Amendment shall total \$9,499,800 and as stated in the attached **Exhibit C-2**.

c. **Updated Budgeted Costs:** Primary Developer and Residential Developer shall file a revised list of Budgeted Costs for the Project and related work (the “Updated Budgeted Costs”) in a form similar to the table set forth in Exhibit C-1, including all project costs, at the later of (i) both Primary Developer and Residential Developer signing a construction contract(s) with the general contractor; (ii) the City issuing a final building permit for the Project; or (iii) six (6) months from the Term Sheet approval.

## **SECTION 7. CITY FINANCIAL ASSISTANCE AND CITY OBLIGATIONS**

The City shall provide financial assistance in the form of a Developer-Funded Performance Incentive for reimbursement to Primary Developer of certain Eligible Project Costs as follows:

- a. “Eligible Developer Expenses” shall be the costs of the Site Work totaling \$2,192,000 as defined in the Term Sheet, including demolition/restoration, environmental remediation, street and utility extensions, corrective pedestrian connections to address sloped sidewalks and install ADA handrail systems, subsurface stabilization, below-grade storm water detention and soil correction and identified as “Northern Off Site Road & Detention Improvements,” “Ground Level Pedestrian Area,” and “Demo & Reconst of Schoeneck Wall” on Exhibit C-1.
- b. The City shall fund the Eligible Developer Expenses, in an amount of not more than \$2,192,000, in completion of the work, but not later than thirty (30) days of a certificate of occupancy being issued for the Phase III base buildings unoccupied Retail Space.
- c. “Unfunded Infrastructure Costs” shall be those Phase II development expenses previously incurred by Primary Developer, totaling \$2,320,000, for which the City shall provide the incentive-based opportunity to the Primary Developer as reflected in Section 10 of this Development Agreement.

## **SECTION 8. MUNICIPAL REVENUE OBLIGATION**

The City shall fund the reimbursement to the Residential Developer of certain Eligible Project Costs, including the costs associated with construction of structured parking for the Residential Project in the amount of \$4,987,800.00 (the “Eligible Residential Expenses”) as follows:

a. Subject to the terms and conditions of this Development Agreement, the City, in order to reimburse the Residential Developer for Eligible Residential Expenses, at the City’s cost and expense, shall grant and issue the MRO and deliver the same to Residential Developer on the date of the Land Closing in the principal amount equal to Six Million, Nine Hundred Seventy Nine Thousand, Two Hundred Eighteen Dollars (\$6,979,218.00), without interest, and otherwise substantially in form and substance as shown on **Exhibit D**. The TIF

District is scheduled to expire on June 30, 2032 (such date as may be extended from time-to-time shall be referred to herein as the "TIF District Expiration Date"). So long as the City has used its best efforts and good faith to all meet any prior obligations and the value of the Residential Project results in an IRR calculation in which the Residential Developer's IRR is more than 600 basis points above the original Springsted projection (with assistance) of 10.72%, all obligations for payment of the MRO shall expire on the TIF District Expiration Date. The Tax Increments identified on Exhibit E are projected to be generated from the Project, after construction and placing the Project in service.

b. Prior to the first Payment Date (defined below), Residential Developer shall provide the City with a breakdown of the Four Million, Nine Hundred Eighty Seven Thousand, Eight Hundred Dollars (\$4,987,800.00) in Eligible Residential Expenses incurred by Residential Developer. Thereafter and as set forth in Exhibit E:

- i. The City shall, subject to annual appropriation of such payment by the Common Council, pay to the holder of the MRO seventy percent (70%) of the Available Tax Increment, in one annual payment, on the first day of June of each year, commencing on June 1, 2019 (each, a "Payment Date") until the Eligible Residential Expenses and any other costs hereunder are completely reimbursed to Residential Developer in the form of payments totaling \$6,979,218.00 constituting the present value amount of the Eligible Residential Expenses.

c. No payment shall be made by the City on the MRO if (a) the Residential Developer is in material, uncured default under this Development Agreement or (b) real property taxes on the Property are delinquent. To the extent that on any Payment Date the City is unable to make a payment from such Available Tax Increment due to an actual absence of Available Tax Increment, such failure shall not constitute a default under the MRO, provided the City, including, without limitation, the City's officers and the Common Council, acts in good faith. The amount of such deficiency shall continue to accrue and be deferred and shall be due together with the then current amount due on the next Payment Date on which the City has Available Tax Increment. If any such deficiency has not been paid in full by the TIF District Expiration Date, then the City shall have no obligation to pay such deficiency so long as the City has used its best efforts and good faith to pay such deficiency from Available Tax Increment and the value of the Residential Project results in an IRR calculation in which the Residential Developer's IRR is more than 600 basis points above the original Springsted projection (with assistance) of 10.72%. In no case, however, shall the term of the MRO and the City's obligation to make payments hereunder, extend beyond the TIF District Expiration Date. Upon expiration of the TIF District, the MRO shall expire and the City's obligation to make any payments under the MRO shall be discharged (except as specifically set forth herein), and the City shall have no obligation to make any payments hereunder after such date.

The MRO shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be deemed to have obligated itself to pay thereon from any funds except the Available Tax Increment, and then only to the extent and in the manner herein specified. The City shall not appropriate, and shall not allow to be appropriated, the Available Tax Increment

for any other purpose than this MRO until said MRO has been paid in full to Developer or has expired as provided herein, and the City shall use good faith and best efforts to cause the Common Council to annually appropriate the Available Tax Increment for the MRO, until the TIF District Expiration Date or payment in full of the MRO to Developer as provided herein.

Notwithstanding anything to the contrary in this Development Agreement or the MRO, Residential Developer shall have the right, but not the obligation, to assign the MRO and this Development Agreement to a member of Residential Developer, an entity that Residential Developer is affiliated with or is a partner or member in, or a lender financing the Project (for collateral purposes only), but with respect to a collateral assignment to a lender, only upon documents that are reasonably satisfactory to the City, as evidenced by agreement of the Mayor and the City Attorney.

Residential Developer's affiliate purchased the Property March 20, 2017 and significant work will be performed on the Project during 2017 such that there will be a partial assessment as of January 1, 2018 that exceeds the current assessed value of the Property. Accordingly, the first tax bill resulting in Available Tax Increment will be issued for the Project in December of 2018, payable by the end of January of 2019, so the first payment likely to be made to Residential Developer under the MRO will be on June 30 of 2019. Notwithstanding the foregoing, if work does not commence in 2017 or work is delayed due to a force majeure event under Section 22(j), including, without limitation, the failure to receive any necessary approval from the City or Milwaukee County, the issuance of the first tax bill will be deferred accordingly.

d. The City hereby covenants that, as long as any portion of the Six Million, Nine Hundred Seventy Nine Thousand, Two Hundred Eighteen Dollars (\$6,979,218.00) principal amount under the MRO remains outstanding, then: (i) the City shall take no action to terminate or dissolve the TIF District prior to the TIF District Expiration Date; (ii) each year, the City shall include the application of the entire Available Tax Increment toward payment of the MRO in the applicable budget request recommendation for an upcoming year's budget; (iii) if the City's proposed annual budget does not in any year provide for the appropriation of Available Tax Increment sufficient to make the payment due on the MRO in that year, the City shall notify Residential Developer of that fact at least sixty (60) days prior to the date such budget is presented to the Common Council for final approval; (iv) funds in the special fund of the TIF District attributable to the Available Tax Increments generated by the Property shall not be used for any other purposes, including, without limitation, the payment of any other project costs of the TIF District until the City has paid in full and satisfied the MRO; (v) immediately after the City becomes aware of the Available Tax Increment for a given year, the City shall provide such information to Residential Developer and the City shall provide any and all supporting documentation and information related thereto and requested by the Residential Developer within five (5) business days of such request; and (vi) the project costs under the TID 7 Amendment will not be increased such that the MRO payments as set forth in Exhibit E could be in any way reduced, without the approval of Residential Developer.



## **SECTION 9. FUTURE DEVELOPMENT INCENTIVE**

As set forth in the Phase II development agreement, the Primary Developer shall be paid an incentive for continued development of Phase III. Whereas the Residential Project in this Phase III consists of 268 residential units, this payment shall be in the amount of \$134,000 and made to Primary Developer within 45 days after the first time in which the taxes on the new development have been paid.

## **SECTION 10. ADDITIONAL FUTURE DEVELOPMENT INCENTIVE**

As an additional incentive for continued development of the Primary Developer's Property, the Primary Developer shall be paid (i) an additional amount of \$3,600.00 per residential unit constructed after the Residential Project (consisting of 268 residential units) in this Phase III which is granted occupancy within the current TID No. 7 boundary during the term of TID No. 7; and (ii) an additional amount of \$3,600.00 per 1,000 square feet of office space which is granted occupancy within the current TID No. 7 boundary during the term of TID No. 7, to a maximum amount of \$2,689,400 (the "Additional Future Development Incentive"). Any such Additional Future Development Incentive payment shall be made to the Primary Developer within 45 days after the first time in which the taxes on the new development have been paid.

## **SECTION 11. ADJUSTMENT OF REIMBURSEMENT FOR ELIGIBLE DEVELOPER EXPENSES AND PRIMARY DEVELOPER-FUNDED EXPENDITURES**

The City will engage a construction expert to compare actual expenses to the Updated Budgeted Costs for the Eligible Developer Expenses. Cost of said expert shall be an eligible TIF District administrative expense. If Primary Developer's total actual costs for the Site Work are less than the Updated Budgeted Costs, the City and Primary Developer shall share in those cost savings. Primary Developer will have the right to move funds between the line items in the project budget as set forth in the Updated Budgeted Costs, except that any Primary Developer overhead and fees shall remain fixed at an overall percentage equal to or less than the "Total Development Costs" shown on Exhibit C-1. In the event of any savings in the actual expenses of the Site Work, the Available Tax Increment payable will be reduced by approximately 50% of said savings; provided, however that Primary Developer shall be credited for expenditures pursuant to Section 16, below, as though they were expenditures for Eligible Project Costs and included in the Updated Budgeted Costs. If Primary Developer's costs exceed the final approved budget for such items, Primary Developer shall be responsible for all cost overruns.

## **SECTION 12. ADJUSTMENT OF REIMBURSEMENT FOR ELIGIBLE RESIDENTIAL EXPENSES AND RESIDENTIAL DEVELOPER-FUNDED EXPENDITURES**

The City will engage a construction expert to compare actual expenses to the Updated Budgeted Costs for the Eligible Residential Expenses in a timely manner. Cost of said expert shall be an eligible TIF District administrative expense. If Residential Developer's total actual costs for the Eligible Residential Expenses are less than the Updated Budgeted Costs, the City and Residential Developer shall share in those cost savings. Residential Developer will have the right to move funds between the line items in the project budget as set forth in the Updated

Budgeted Costs, except that any Residential Developer overhead and fees shall remain fixed at an overall percentage equal to or less than the "Total Development Costs" shown on Exhibit C-1. In the event of any savings in the actual expenses of the Eligible Residential Expenses, the Available Tax Increment payable will be reduced by approximately 50% of said savings; provided, however that Residential Developer shall be credited for expenditures pursuant to Section 16, below, as though they were expenditures for Eligible Residential Costs and included in the Updated Budgeted Costs. If Residential Developer's costs exceed the final approved budget for such items, Residential Developer shall be responsible for all cost overruns.

### **SECTION 13. PARTICIPATION IN ADDITIONAL EARNINGS OF PRIMARY DEVELOPER**

The purpose of providing tax incremental financing is to eliminate any funding gap related to construction of the Project which could not be repaid through anticipated revenues in the future. This amount is calculated by determining a projected Internal Rate of Return ("IRR") on equity invested in the Site Work and Retail Project in order to assure financial viability of the project. Primary Developer is satisfied that the projected IRR in the Springsted 2016 Feasibility Report for this development is sufficient to make the project financially viable. If (a) within four (4) years of execution of the Development Agreement the Primary Developer sells a controlling portion of its fee simple interest in the Retail Project to a third party pursuant to an arms-length transaction and the Primary Developer or an affiliate of the Primary Developer no longer manages the Retail Project, or (b) at the time the Primary Developer's and City's obligations under the Development Agreement terminate, whichever comes first, and if the value of the Retail Project as part of said transaction results in an IRR calculation in which the Primary Developer's IRR is more than 450 basis points above the original Springsted projection, the City shall have no further obligation to make payments for reimbursement of Eligible Developer Expenses as described herein. This provision shall not apply to any sale that occurs after expiration of such four (4) year period.

### **SECTION 14. PARTICIPATION IN ADDITIONAL EARNINGS OF RESIDENTIAL DEVELOPER**

The purpose of providing tax incremental financing is to eliminate any funding gap related to construction of the Project which could not be repaid through anticipated revenues in the future. This amount is calculated by determining a projected IRR on equity invested in the Residential Project in order to assure financial viability of the project. Residential Developer is satisfied that the projected IRR in the Springsted 2016 Feasibility Report for this development is sufficient to make the project financially viable. If (a) within four (4) years of execution of the Development Agreement the Residential Developer sells a controlling portion of its fee simple interest in the Residential Project to a third party pursuant to an arms-length transaction and the Residential Developer or an affiliate of the Residential Developer no longer manages the Residential Project, or (b) at the time the Residential Developer's and City's obligations under the Development Agreement terminate, whichever comes first, and if the value of the Residential Project as part of said transaction results in an IRR calculation in which the Residential Developer's IRR is more than 600 basis points above the original Springsted projection (with assistance) of 10.72%, the City shall have no further obligation to make payments for

reimbursement of Residential Developer Expenses as described herein, and the MRO shall be deemed paid in full. This provision shall not apply to any sale that occurs after expiration of such four (4) year period.

#### **SECTION 15. TAX EXEMPT COVENANT**

The Primary Developer and Residential Developer shall enter into a restrictive covenant in customary form requiring any owner of the Project (except any municipal buildings) to make payments in lieu of taxes, in an amount equal to the amount of property taxes which would otherwise be payable to all taxing jurisdictions, in the event that all or any portion of the Project site becomes tax exempt during the life of the TIF District. The covenant shall be recorded and shall run with the land.

#### **SECTION 16. BIKE SHARE STATION**

During construction of the Project, if a public bike-share system is created in the City of Wauwatosa which is designed to include one station located at Phase III Mixed-Use Buildings A&B, and any such station can be reasonably accommodated as an amendment to the approved Plans, the Residential Developer will permit the installation of said public bike-share station, which station must be consistent with the capacity, aesthetics, and other characteristics recommended or anticipated in the overall system design. The location of any such bike-share station shall be determined by the City and its agents, except that final location must be acceptable to the Residential Developer in its sole discretion. If such station is installed, the Residential Developer shall be responsible for 100% of the cost of such station, to a maximum of \$50,000, and up to a maximum of one (1) station within Phase III Mixed-Use Buildings A&B. If no other funding source is available to reimburse the Residential Developer for the cost of such installations, such expense shall then become a TIF eligible cost to be funded by TID No. 7. The City, or its agents, agree to maintain the bike-share station and related equipment in first class condition at no cost to the Residential Developer

#### **SECTION 17. INCOME AND EXPENSE INFORMATION**

During the life of the TIF, both the Primary Developer and the Residential Developer will provide annual income and expense information for the entities that own the Project as requested by the City Assessor as is customary for the purposes of property valuation, which information shall be maintained in confidence pursuant to laws and other rules generally applicable to such submissions.

#### **SECTION 18. REPRESENTATIONS, WARRANTIES**

- a. Primary Developer hereby represents and warrants to the City that:
  - i. Primary Developer is an Illinois corporation duly formed and validly existing and in good standing, and is qualified to do business 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;

- ii. The execution, delivery and performance of this Development Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary limited liability company action of Primary Developer and constitute the valid and binding obligations of Primary Developer enforceable in accordance with their respective 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; and
- iii. The execution, delivery, and performance of Primary Developer's obligations pursuant to this Development Agreement will not violate or conflict with Primary Developer's articles of organization or operating agreement or any indenture, instrument or agreement by which Primary Developer is bound, nor, to Primary Developer's knowledge, does it violate or conflict with any law applicable to Primary Developer or the Project.

b. Residential Developer hereby represents and warrants to the City that:

- i. Residential Developer is a Wisconsin corporation duly formed and validly existing and is qualified to do business in 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;
- ii. The execution, delivery and performance of this Development Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary limited liability company action of Residential Developer and constitute the valid and binding obligations of Residential Developer enforceable in accordance with their respective 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; and
- iii. The execution, delivery, and performance of Developer's obligations pursuant to this Development Agreement will not violate or conflict with Residential Developer's articles of organization or operating agreement or any indenture, instrument or agreement by which Residential Developer is bound, nor, to

Residential Developer's knowledge, does it violate or conflict with any law applicable to Residential Developer or the Project.

- c. The City hereby warrants and represents to the Developer that:
- i. The City approved the final plans for a Planned Unit Development on September 20, 2016 in Common Council Resolution R-16-170, thereby approving the Project and the Plans.
  - ii. The execution, delivery, and performance of this Development Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City, and no other or further acts or proceedings of the City or its officials are necessary to authorize and approve the execution, delivery, and performance of this Development Agreement, and the matters contemplated hereby, except the annual appropriation by the Common Council, but only with respect to the MRO and the obligations of the City thereunder;
  - iii. This Development Agreement, the exhibits, documents, and instruments associated herewith and made a part hereof, have, if applicable, been duly executed and delivered by the City and constitute the legal, valid, and binding agreement and obligation of the City, enforceable against the City in accordance with their respective terms.

#### **SECTION 19. MAINTENANCE OF PROPERTY**

The Development shall be maintained in accordance with the City's Property Maintenance Code. Trash and refuse shall be deposited in sealed containers dedicated to trash collection and shall be collected at a commercially reasonable frequency. Primary Developer and the Residential Developer shall eliminate, or cause to be eliminated, significant health hazards or property nuisances at the Development within thirty (30) days (or such other period of time as reasonably necessary or determined to be appropriate by the City's Building Inspector or Health Officer) from delivery of written notice by the City to the Primary Developer and the Residential Developer explaining such hazard or nuisances. In the event that the City determines that the Development is not in compliance with the terms of this Section, following written notice from the City to the Primary Developer and the Residential Developer and an adequate opportunity to cure as described in the notice, the City may take corrective action and assess the costs of such action as a special charge against the Project. Nothing herein shall be deemed in any way to limit enforcement action otherwise available to the City under the Wauwatosa Municipal Code or other applicable law.

#### **SECTION 20. NOTICES**

All communications or notices required or permitted under this Development Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to the person or

entity entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, airbill prepaid, (iii) upon transmission if by facsimile (with confirmation of accepted transmission), or (iv) by electronic mail or such other means of electronic communication as is agreed and acceptable to both parties, and each such communication or notice shall be addressed to the following individuals or their successors, unless and until any of such parties notifies the other in accordance with this paragraph of a change in contact name or address:

If as to the City:

City of Wauwatosa  
Wauwatosa City Hall  
7725 West North Avenue  
Wauwatosa, WI 53213  
Facsimile No.: (414) 471-8414  
ATTN: Development Director

With a copy to:

City of Wauwatosa  
Wauwatosa City Hall  
7725 West North Avenue  
Wauwatosa, WI 53213  
Facsimile No.: (414) 471-8414  
ATTN: City Attorney

If as to the Primary Developer:

Mayfair Developer II, INC.  
c/o HSA Commercial Real Estate  
100 S. Wacker Dr., Ste. 950  
Chicago, IL 60606  
Facsimile No.: 312-683-7256  
ATTN: Mr. Timothy Blum

With a copy to:

Friebert, Finerty, & St. John, S.C.  
330 East Kilbourn Avenue – Suite 1250  
Milwaukee, WI 53202  
Facsimile No.: (414) 272-8191  
ATTN: Brian C. Randall, Esq.

If as to the Residential Developer:

Fiduciary Real Estate Development, Inc.  
789 N. Water Street, Suite 200  
Milwaukee WI 53202  
Facsimile No.: (414) 274-8219  
ATTN: Mr. Craig Raddatz

With a copy to:

Davis & Kuelthau, S.C.  
111 East Kilbourn Avenue, Suite 1400  
Milwaukee, WI 53202  
Facsimile No. 414-278-3671  
ATTN: Joseph E. Tierney IV, Esq.

## **SECTION 21. WAIVER**

No waiver of any provision of this Development Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by written amendments to this Development Agreement.

## **SECTION 22. MISCELLANEOUS**

a. The provisions of this Development Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

b. No waiver, amendment, or variation in the terms of this Development Agreement shall be valid unless in writing and signed by the City and Primary Developer and the Residential Developer, and then only to the extent specifically set forth in writing.

c. All agreements, representations, warranties, covenants, liabilities and obligations made in this Development Agreement and in any document delivered pursuant to this Development Agreement shall survive the execution and delivery of this Development Agreement.

d. This Development Agreement and the documents executed pursuant to this Development 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 Development Agreement and the documents executed in connection with this Development Agreement. This Development 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. This Development Agreement is intended solely for the benefit of Primary Developer and the Residential Developer and the City and no third party (other than successors and assigns of the Primary Developer, Residential Developer, and City) shall have any rights or interest in any provisions of this Development Agreement, or as a result of any action or inaction of the City. City acknowledges that any assignee, subsidiary or affiliate of Primary Developer or Residential Developer is an appropriate beneficiary of this Development Agreement. Without limiting the foregoing, no approvals given pursuant to this Development Agreement by Primary Developer and the Residential 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 construction of the Development.

f. This Development Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Wisconsin applicable to contracts made and wholly performed within such state. Any dispute between the parties or other action regarding the Project or interpretation of this Development Agreement shall be venued in a tribunal having territorial jurisdiction over the City of Wauwatosa, Milwaukee County, Wisconsin.

g. This Development Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. Facsimile or "PDF" signatures shall be deemed original signatures for all purposes of this Development Agreement.

h. Any provision of this Development Agreement that is prohibited or unenforceable shall, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Development Agreement.

i. Time is of the essence of each and every obligation or agreement contained in this Development Agreement.

j. If any party is delayed or prevented from timely performing any act required under this Development Agreement, by reason of fire, earthquake, war, terrorist act, flood, riot, strikes, labor disputes or shortages, governmental restrictions, judicial order, public emergency, acts of God, or other causes beyond the reasonable control of the party obligated to perform, then performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

k. The headings in this Development Agreement are for reference only and are not intended to modify any of the terms and conditions of this Development Agreement.

l. Nothing contained in this Development Agreement is intended to or has the effect of releasing Primary Developer and the Residential Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Development Agreement.

m. This Development Agreement is the product of negotiation among all of the parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the other drafted this Development Agreement or any term, covenant or condition contained herein.

### **SECTION 23. TRANSFER OF PROPERTY AND ASSIGNMENT**

a. Until a certificate of occupancy is issued for space within the Project, the Primary Developer or Residential Developer or their respective affiliates shall not, without the City's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, cause the Project to be sold, convey, or otherwise transfer the Property, except that the Primary



Developer or Residential Developer may at any time, with or without the City's consent: (i) enter into leases for all or portions of the Property; (ii) mortgage the Property as security for the Project's financing; (iii) convey some or all of the Property to a member of Primary Developer or Residential Developer or to an entity that the Primary Developer or Residential Developer is a partner or member in as long as such entity assumes all of the Primary Developer or Residential Developer's obligations under this Development Agreement; and (iv) convey some or all of the Property to an entity that develops or occupies an improvement consistent with the purposes of the Project and the Development Plan as long as such entity assumes all of the Primary Developer or Residential Developer's obligations under this Development Agreement. Except as otherwise expressly set forth in this Development Agreement, until a certificate of occupancy is issued for space within the Project, the Primary Developer or Residential Developer shall not, without the City's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, assign this Development Agreement or the MRO.

b. Upon the issuance of a certificate of occupancy for space within the Project, or at such earlier time as consented to in writing by the City, and notwithstanding anything to the contrary in this Development Agreement, Primary Developer or Residential Developer may freely (i) transfer, sell, exchange, mortgage, lease and convey the Property or the MRO, and (ii) assign this Development Agreement or the MRO, and, notwithstanding anything to the contrary set forth in this Development Agreement, in either such event, the Primary Developer or Residential Developer assignor shall not have any further obligation or liability under the Development Agreement. Notwithstanding anything to the contrary set forth herein, under no circumstances shall Primary Developer's or Residential Developer's lenders be bound by the terms and conditions regarding transferability or assignment of this Development Agreement as described in this section.

c. After the issuance of a certificate of occupancy for space within the Project, the Primary Developer and Residential Developer hereby agree that in the event the Primary Developer or Residential Developer intends to close on the transfer, sale, exchange, or conveyance of the Property and assignment of this Development Agreement as provided for in Section 23.b., above, to an unrelated third party, then, and in that event, the Primary Developer or Residential Developer shall provide the City with fifteen (15) days advance written notice of the Closing.

#### **SECTION 24. FEDERAL, STATE & LOCAL LAWS**

Primary Developer and Residential Developer shall construct and operate the Project in compliance with all applicable Federal, State and local laws, rules, regulations and ordinances.

## **SECTION 25. BUILDING PERMITS AND OCCUPANCY PERMITS**

a. The Building and Safety Division of the City shall review building plans and provide the same to applicable governmental entities within five (5) days of receiving a completed building permit application and appropriate fees, and shall issue a building permit within five (5) days after plans have been approved, and appropriate approvals have been received from other agencies which are required to approve said plans.

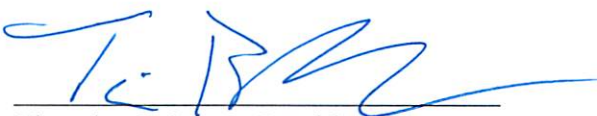
b. The City hereby agrees to issue occupancy permits for the Project on a floor-by-floor basis within building sections that are divided by code-compliant and approved fire separation walls ("Building Sections"), and for the entire Project. Upon the Primary Developer's or Residential Developer's Architect certifying that a particular floor within a particular Building Section is substantially complete, the City hereby agrees to cause its building inspector to perform the necessary occupancy permit inspection within five (5) business days of the City's receipt of a copy of such substantial completion certificate. The City shall issue an occupancy permit for each floor within each Building Section of the Project immediately after its building inspector confirms that such floor within each Building Section complies with all applicable laws and building codes. Upon the Primary Developer's or Residential Developer's Architect certifying that the entire Project is substantially complete, the City hereby agrees to cause its building inspector to perform any remaining and necessary occupancy permit inspection within five (5) business days of the City's receipt of a copy of such substantial completion certificate. The City shall issue an occupancy permit for the entire Project immediately after its building inspector confirms that the entire Project complies with all applicable laws and building codes.

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IN WITNESS WHEREOF, the parties have caused the Development Agreement to be signed and effective as of the date last written below.

**PRIMARY DEVELOPER:**

MAYFAIR DEVELOPER II, INC., an Illinois corporation

By:   
Timothy C. Blum, President

CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS       )  
                                      ) ss.  
COOK COUNTY            )

BEFORE ME, the undersigned authority, on this 28<sup>th</sup> day of August, 2017, personally appeared Timothy C. Blum, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be President of MAYFAIR DEVELOPER II, INC., and acknowledged to me that he executed said instrument for the purposes and considerations therein expressed, and as the act of said limited liability company.



  
Notary Public, State of Illinois  
My commission 8/29/2019

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**RESIDENTIAL DEVELOPER:**

FIDUCIARY REAL ESTATE DEVELOPMENT,  
INC., a Wisconsin corporation

By:



Brett K. Miller, President and CEO

CORPORATE ACKNOWLEDGMENT

STATE OF WISCONSIN     )  
  ) ss.  
MILWAUKEE COUNTY     )

BEFORE ME, the undersigned authority, on this 17 day of August, 2017, personally appeared Brett K. Miller, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be President and CEO of FIDUCIARY REAL ESTATE DEVELOPMENT, INC., and acknowledged to me that he executed said instrument for the purposes and considerations therein expressed, and as the act of said corporation.



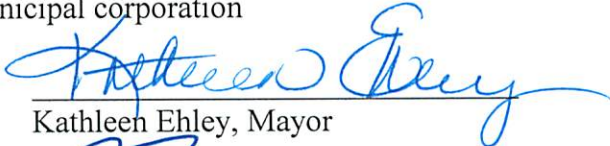
Notary Public, State of Wisconsin

My commission is permanent

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CONTINUE ON NEXT PAGE**


**CITY:**

CITY OF WAUWATOSA, WISCONSIN,  
a municipal corporation

By:   
Kathleen Ehley, Mayor

By:   
John Ruggini, Finance Director

**ATTEST:**

By:   
Carla A. Ledesma, City Clerk

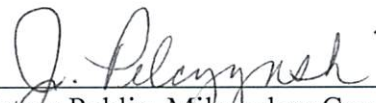
Approved as to form and execution  
this 28 day of August, 2017.

  
Alan R. Kesner, City Attorney

**MUNICIPAL ACKNOWLEDGMENT**

STATE OF WISCONSIN     )  
  ) ss.  
MILWAUKEE COUNTY     )

On the 29<sup>th</sup> day of August, 2017, before me personally came Kathleen Ehley and Carla A. Ledesma, who being duly sworn, did depose and say that they are the Mayor and City Clerk of the City of Wauwatosa respectively, a Wisconsin municipal corporation; and that the seal affixed to said instrument is the corporate seal of said Wisconsin municipal corporation; and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority, and pursuant to Resolution No. R-16-170 adopted by the Common Council on September 20, 2016, and approved by the Mayor on September 21, 2016, and Resolution R-16-152 adopted by the Common Council on August 2, 2016, and approved by the Mayor on August 2, 2016.

  
Notary Public, Milwaukee County, Wisconsin  
My commission 2-15-19

This instrument was drafted by:  
Brian C. Randall, Esq.  
Friebert, Finerty & St. John, S.C.  
330 East Kilbourn Avenue – Suite 1250  
Milwaukee, WI 53202

## **EXHIBIT A**

### **Legal Description of the Primary Developer's Property**

Part of the Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 7, Township 7 north, Range 21 East, in the City of Wauwatosa, Milwaukee County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of said Southeast quarter section; thence North 87°25'44" East along the South line of said Southeast quarter section 1314.50 feet to a point; thence North 01°01'06" West 55.02 feet to the North line of West Burleigh Street and the point of beginning of the lands to be described; thence South 87°25'44" West along said North line 793.00 feet to a point; thence North 87°11'15" West along said North line 42.40 feet to a point; thence North 86°37'17" West along said North line 58.09 feet to a point; thence South 87°25'44" West along said North line 88.00 feet to a point; thence North 88°55'08" West along said North line 47.10 feet to a point; thence North 76°37'33" West along said North line 29.12 feet to a point; thence North 73°11'12" West along said North line 57.25 feet to a point; thence North 50°31'45" West along said north line 106.97 feet to a point on the East line of U.S.H. "45" (Zoo Freeway); thence North 05°59'44" West along said East line 334.26 feet to a point; thence North 05°38'18" West along said East line 595.94 feet to a point; thence North 01°01'06" West along said East line 810.77 feet to a point; thence North 10°17'30" East along said East line 152.97 feet to a point; thence North 17°40'50" East along said East line 343.11 feet to a point; thence North 28°02'11" East along said East line 205.91 feet to a point; thence North 07°26'42" East along said East line 134.11 feet to a point on the North line of said 1/4 Section; thence North 86°36'18" East along said North line 29.29 feet to a point on the Southerly line of the Union Pacific Railroad right-of-way line ; thence South 35°35'41" East along said Southerly line 2377.98 feet to a point; thence Southeasterly 710.07 feet along the arc of a curve whose center lies to the Southwest, whose radius is 2800.03 feet, and whose chord bears South 28°19'47" East 708.17 feet to a point on the North line of West Burleigh Street; thence South 87°25'44" West along said North line 694.67 feet to the point of beginning.

Excepting therefrom lands owned by others lying within the perimeter of this CSM and described as follows: Commencing at the Southwest corner of said Southeast quarter section; thence North 87°25'44" East along the South line of said Southeast quarter section 1314.50 feet to a point; thence North 01°01'06" West 55.02 feet to the North line of West Burleigh Street; thence North 01°01'06" West 278.71 feet to a point; thence North 87°25'44" East 2.21 feet to a point; thence North 01°01'06" West 140.00 feet to appoint; thence South 80°27'53" West 1.74 feet to a point; thence North 01°00'26" East 764.69 feet to a point on the Southerly line of the Union Pacific Railroad right-of-way line; thence North 35°35'41" West along said Southerly line 812.53 feet to a point; thence South 01°24'54" East 146.60 feet to the point of beginning of said lands to be described; thence South 01°00'53" East 783.34 feet to a point; thence South 88°59'34" West 375.45 feet to a point; thence North 01°01'05" West 773.02 feet to a point; thence North 87°25'04" East 375.64 feet to the point of beginning.

Said description contains 2,639,353 square feet or 60.5912 acres.



## **EXHIBIT B**

### **Summary of the Project**

Pursuant to Common Council Resolution R-16-170 adopted September 20, 2016, the City approved the final plans for the Planned Unit Development for the Project summarized as follows:

Fiduciary is the owner and developer of “Synergy at the District” Phase 1 (Buildings A and B), a mixed-use development in the form of a pair of separate, but coordinated 5+ story buildings (“Synergy Phase 1”).

Synergy Phase 1 will contain luxury apartments that are designed to meet the broad spectrum of demand that the market is dictating by offering 268 total units and 327 underground and interior access parking stalls (1.25 stalls/unit). Visitor vehicle and bicycle parking will be allowed throughout the site’s surface parking lots, multi-story parking structure and bike racks.

The floorplans will include studio units averaging approximately 445 square feet, to 1-bedrooms and 1-bedrooms with den averaging approximately 690 square feet, to 2-bedroom units averaging approximately 1,115 square feet. The overall unit average size will be 742 square feet.

Features and finishes will be comparable or above the newest apartment developments in the Wauwatosa area including designer fixtures, modern wood laminate flooring in kitchens, walkways and living areas, stainless steel appliances, granite kitchen countertops, in-unit washers and dryers, internet/cable access, and programmable climate controls.

A host of amenities are being programmed by Fiduciary including, but not limited to, ground level community gathering areas (with colored pavement, landscaped planters, benches and a signature sculpture), two elevated outdoor courtyard common areas (one at each building) with entertainment-grade food grilling equipment, fire pits and dog run with washing station, fitness studio with cross fit system, fitness center with tanning studio, Wi-Fi café, and clubroom with lounge.

An affiliate of HSA Commercial will own and operate the retail space to be known as “The Mayfair Collection Promenade at The District” (the “Retail Project”).

The Retail Project will be located on the ground level in each building will feature approximately 50,000 total square feet of available retail space in venues with dramatic, 26 foot high (two-story) ceiling heights within a contemporary urban streetscape.

An affiliate of HSA Commercial will develop, own and manage the retail space in order to maintain consistency and compatibility with The Mayfair Collection retail program.

## **EXHIBIT C-1**

### **Budgeted Costs**

<b><u>Project Budget - Use of Funds</u></b>	<b><u>Budgets</u></b>	<b><u>TID Provisions</u></b>	
<b>Fiduciary (Synergy) Residential Development Costs</b>			
FRED Land Cost	\$2,987,000		
FRED Direct Hard Costs:			
Residential Construction and General Conditions	\$33,018,746		
Residential Structured Parking	\$8,579,000	(\$4,987,800)	via MRO
Northern offsite road and detention improvements	\$625,000	(\$625,000)	direct
Ground level pedestrian area	\$1,217,000	(\$1,217,000)	direct
Environmental remediation	\$205,000		
Infrastructure costs	\$991,600		
FRED Direct Soft Costs	\$6,376,654		
<b>Total Residential Project Budget</b>	<b>\$54,000,000</b>		
<b>HSA Retail Development Costs</b>			
Retail Shell Costs	\$5,037,129		
Retail soft costs	\$260,500		
<b>Total Retail Project Budget</b>	<b>\$5,297,629</b>		
<b>Total Residential and Retail Budget</b>	<b>\$59,297,629</b>		
<b>Other HSA budget and TIF related items</b>			
HSA Demo and Reconstruction of Schoeneck Wall	\$389,000	(\$350,000)	direct
Unfunded Infrastructure Cost incurred by HSA on TID 2	\$2,320,000	(\$2,320,000)	direct
<b>Total project cost</b>	<b>\$62,006,629</b>	<b>(\$9,499,800)</b>	



## **EXHIBIT C-2**

### **Eligible Project Costs**

Of the \$62,006,629.00 Budgeted Costs for the Project, the Eligible Project Costs shall total \$9,499,800.00.

**EXHIBIT D**

**Sample Municipal Revenue Obligation**

[REMAINDER OF PAGE BLANK – SEE ATTACHED

MUNICIPAL REVENUE OBLIGATION

REGISTERED

United States of America

No. \_\_\_\_\_

\$6,979,218

State of Wisconsin  
County of Milwaukee  
City of Wauwatosa  
Municipal Development Revenue Obligation, Series 20\_\_

Maturity  
Date

Issue Date

September 1, 201\_\_

September 1, 201\_\_

REGISTERED OWNER: \_\_\_\_\_, \_\_\_\_\_

PRINCIPAL AMOUNT: SIX MILLION, NINE HUNDRED SEVENTY NINE  
THOUSAND TWO HUNDRED EIGHTEEN DOLLARS  
(\$6,979,218)

INTEREST RATE: 0%

THE CITY OF WAUWATOSA, WISCONSIN (the "Municipality"), for value received, hereby acknowledges and agrees that it owes, and hereby promises to pay on the installment Payment Dates, to the registered owner hereinabove identified, or registered assigns as hereinafter provided, the Principal Amount, which shall equal the Eligible Residential Expenses (as defined in the Development Agreement) in an amount equal to \$6,979,218.00, in the amounts hereinafter provided, but only in the manner, at the times, from the source of revenue, and to the extent hereinafter provided.

The Principal Amount evidenced by this Municipal Revenue Obligation shall be paid to \_\_\_\_\_ or its registered assigns, at such times, upon such conditions, and as further provided in the Development Agreement dated as of August \_\_\_\_, 2017 (the "Development Agreement"), by and between the Municipality and Fiduciary Real Estate Development, Inc. (the "Developer"). This Municipal Revenue Obligation is being issued in consideration of the agreements of the Developer in the Development Agreement.

This Municipal Revenue Obligation and the Municipality's obligation to repay all or any portion of this Municipal Revenue Obligation shall mature on the Maturity Date stated above; provided, however, that notwithstanding anything to the contrary set forth in the Municipal Revenue Obligation or the Development Agreement, the Municipality's obligation to repay all or any portion of this Municipal Revenue Obligation shall not terminate or expire until the earlier of the date that Principal Amount is paid in full to Developer or the TIF District Expiration Date (as defined and qualified in the Development Agreement). Payment of each installment of Principal shall be made on Payment Dates (as defined below) to the registered owner hereof (or its

registered assigns), whose name shall appear on the registration books of the Municipality maintained by the Treasurer of the Municipality, who serves as registrar and paying agent (the "Registrar"), by check or draft of the Registrar mailed to such registered owner at his address as it appears on such registration books or at such other address as may be furnished in writing by such registered owner to the Registrar.

This Municipal Revenue Obligation has been issued to evidence the obligation of the City to reimburse the Developer for the Eligible Residential Expenses (as defined in the Development Agreement), and is payable until the Principal Amount (which is equal to the Eligible Residential Expenses) is paid in full, only from Available Tax Increment herein described that is appropriated by the Common Council for that purpose. The City shall set aside the Available Tax Increment generated by the Property into a special fund the sole purpose of which is to hold the Available Tax Increment generated by the Property and is identified as the "Special Redemption Fund." This Municipal Revenue Obligation is issued pursuant to a resolution adopted on August 2, 2016, by the Common Council of the Municipality, and does not constitute an indebtedness of the Municipality within the meaning of any constitutional or statutory limitation or provision. Reference is hereby made to said resolution and to the Development Agreement for a more complete statement of the revenues from which and conditions under which this Municipal Revenue Obligation is payable and the general covenants and provisions pursuant to which this Municipal Revenue Obligation has been issued.

The City hereby covenants that, as long as any portion of the Six Million, Nine Hundred Seventy Nine Thousand, Two Hundred Eighteen Dollars (\$6,979,218.00) principal amount under the Municipal Revenue Obligation remains outstanding, then: (i) the City shall take no action to terminate or dissolve the TIF District prior to the TIF District Expiration Date; (ii) each year, the City shall include the payment of the entire Available Tax Increment in the applicable budget request recommendation for an upcoming year's budget; (iii) if the City's proposed annual budget does not in any year provide for the appropriation of Available Tax Increment sufficient to make the payment due on the Municipal Revenue Obligation in that year, the City shall notify Developer of that fact at least sixty (60) days prior to the date such budget is presented to the Common Council for final approval; (iv) funds in the special fund of the TIF District attributable to the Available Tax Increment generated by the Property shall not be used for any other purposes, including, without limitation, the payment of any other project costs of the TIF District until the City has paid in full and satisfied the Municipal Revenue Obligation; (v) immediately after the City becomes aware of the Available Tax Increment for a given year, the City shall provide such information to Developer and the City shall provide any and all supporting documentation and information related thereto and requested by the Developer within five (5) business days of such request

Any payments on this Municipal Revenue Obligation that are due on any Payment Date shall be payable only to the extent that the Municipality shall have received Available Tax Increment as of such Payment Date. For the purpose of this Municipal Revenue Obligation, "Available Tax Increment" shall have the definition contained in the Development Agreement.

For purposes of this Municipal Revenue Obligation, a "Payment Date" shall have the definition contained in the Development Agreement. On each of the Payment Dates, the Municipality shall pay to the holder of this Municipal Revenue Obligation, the Available Tax Increment that has been appropriated for such purpose. To the extent that on any Payment Date the Municipality is unable to make a payment due to an actual absence of Available Tax Increment, such failure shall not constitute a default under this Municipal Revenue Obligation provided the Municipality has acted in good faith. The amount of such deficiency shall continue to accrue and be deferred and shall be due together with the then current amount due on the next Payment Date on which the Municipality has Available Tax Increment, and if such deficiency has not been paid in full by the TIF District Expiration Date (as defined in the Development Agreement), then the Municipality shall have no obligation to pay such deficiency. In no case, however, shall the term of this Municipal Revenue Obligation and the Municipality's obligation to make payments hereunder, extend beyond the TIF District Expiration Date. Upon expiration of the TIF District, this Municipal Revenue Obligation shall expire and the Municipality's obligation to make any payments under this Municipal Revenue Obligation shall be discharged, and the Municipality shall have no obligation to make any payments hereunder after the expiration date of the TIF District.

THIS MUNICIPAL REVENUE OBLIGATION SHALL NOT BE PAYABLE FROM OR CONSTITUTE A CHARGE UPON ANY FUNDS OF THE MUNICIPALITY, AND THE MUNICIPALITY SHALL NOT BE SUBJECT TO ANY LIABILITY HEREON OR BE DEEMED TO HAVE OBLIGATED ITSELF TO PAY HEREON FROM ANY FUNDS EXCEPT THE AVAILABLE TAX INCREMENT, AND THEN ONLY TO THE EXTENT AND IN THE MANNER HEREIN SPECIFIED.

THE MUNICIPALITY MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE HEREUNDER.

THE MUNICIPALITY'S PAYMENT OBLIGATIONS HEREUNDER ARE SUBJECT TO FUTURE ANNUAL APPROPRIATION BY THE COMMON COUNCIL OF AVAILABLE TAX INCREMENT TO MAKE PAYMENTS DUE ON THIS MUNICIPAL REVENUE OBLIGATION.

THE MUNICIPAL REVENUE OBLIGATION IS A SPECIAL LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF THE MUNICIPALITY, AND IS PAYABLE BY THE MUNICIPALITY ONLY FROM THE SOURCES, TO THE EXTENT, AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS MUNICIPAL REVENUE OBLIGATION IS NOT A GENERAL OBLIGATION OF THE MUNICIPALITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE MUNICIPALITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS MUNICIPAL REVENUE OBLIGATION, AND NO PROPERTY OR OTHER ASSET OF THIS MUNICIPALITY, EXCEPT THE ABOVE-REFERENCED

REVENUES ARE OR SHALL BE A SOURCE OF PAYMENT OF THE MUNICIPALITY'S OBLIGATIONS HEREUNDER.

This Municipal Revenue Obligation is subject to optional prepayment at the election of the Municipality, in whole or in part with written notice to the holder, at any time.

This Municipal Revenue Obligation is assignable or transferable by the registered owner hereof, but only with the consent of the Municipality as described in more detail in the Development Agreement, in person or by its attorney duly authorized in writing at the principal office of the Registrar in Wisconsin, but only in the manner, subject to the limitations and upon payment of the charges provided in the authorizing resolution, if any, and upon surrender and cancellation of this Municipal Revenue Obligation. Upon such assignment or transfer a new Municipal Revenue Obligation of the same installments and for the same aggregate Principal Amount will be issued to the assignee or transferee in exchange therefor. This Municipal Revenue Obligation is issuable in fully registered form only in an amount up to the Principal Amount stated herein.

The Municipality and the Registrar may deem and treat the registered owner as the absolute owner hereof for the purpose of receiving payment of or on account of Principal hereof, and for all other purposes and neither the Municipality nor the Registrar shall be affected by any notice to the contrary.

It is hereby certified, recited and declared that all acts, conditions and things required to be done, exist, happen and be performed prior to and in connection with the issuance of this Municipal Revenue Obligation have been done, have existed, have happened and have been performed in due time, form and manner as required by the constitution and statutes of the State of Wisconsin.

Capitalized terms not defined herein shall have the meaning given to them in the Development Agreement, if any. In the event of a conflict in any of the terms and provisions of this Municipal Revenue Obligation and the Development Agreement, the terms and conditions of the Development Agreement shall supersede and control.

IN WITNESS WHEREOF the City of Wauwatosa, Wisconsin, by its Common Council, has caused this Municipal Revenue Obligation to be executed with the duly authorized signature of its Mayor and with the duly authorized signature of its Clerk and its official seal to be impressed or reproduced hereon, as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF WAUWATOSA, WISCONSIN

[SEAL]

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

# EXHIBIT E

## Tax Increment Projections

Projected Revenues

10

**TID No. 7 Project Plan Amendment: Table III**  
**Tax Incremental District Revenues**

City of Wauwatosa, Wisconsin  
Amendment to Tax Incremental Financing District No. 7  
Updated Tax Increment Revenue Projections  
INCLUDES PHASE 2 AND ANTICIPATED PHASE 3 DEVELOPMENT ASSUMPTIONS

Payable Year	Annual Increased Value of New Buildings	Cumulative Value of New Buildings & Improvements	Cumulative Value with Inflation	Value Due to Personal Property	Total Estimated Taxable Value	Base Value *	TID Value Increment	2015 Net Total Tax Rate	Annual Tax Increment Revenue /1000
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
12/31/2011		-	-	-	-	-	-	23.800	-
12/31/2012		-	-	-	-	-	-	23.800	-
12/31/2013		-	-	-	-	-	-	23.800	-
12/31/2014	5,656,200	5,656,200	5,656,200	-	5,656,200	5,656,200	-	23.800	-
12/31/2015	11,025,200	16,681,400	16,681,400	-	16,681,400	5,656,200	11,025,200	23.800	-
12/31/2016	26,810,624	43,492,024	43,492,024	-	43,492,024	5,656,200	37,835,824	23.800	262,400
12/31/2017	12,528,646	56,020,670	56,020,670	-	56,020,670	5,656,200	50,364,470	23.800	900,493
12/31/2018	41,255,209	97,275,879	97,275,879	-	97,275,879	5,656,200	91,619,679	23.800	1,198,674
12/31/2019	1,151,042	98,426,921	98,426,921	-	98,426,921	5,656,200	92,770,721	23.800	2,180,548
12/31/2020	31,250,000	129,676,921	129,676,921	-	129,676,921	5,656,200	124,020,721	23.800	2,207,943
12/31/2021	-	129,676,921	129,676,921	-	129,676,921	5,656,200	124,020,721	23.800	2,951,693
12/31/2022	-	129,676,921	129,676,921	-	129,676,921	5,656,200	124,020,721	23.800	2,951,693
12/31/2023	31,250,000	160,926,921	160,926,921	-	160,926,921	5,656,200	155,270,721	23.800	2,951,693
12/31/2024	-	160,926,921	160,926,921	-	160,926,921	5,656,200	155,270,721	23.800	3,695,443
12/31/2025	-	160,926,921	160,926,921	-	160,926,921	5,656,200	155,270,721	23.800	3,695,443
12/31/2026	37,500,000	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	3,695,443
12/31/2027	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2028	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2029	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2030	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2031	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2032	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2033	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2034	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2035	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2036	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2037	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2038	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
12/31/2039	-	198,426,921	198,426,921	-	198,426,921	5,656,200	192,770,721	23.800	4,587,943
<b>Totals:</b>	<b>\$ 198,426,921</b>								<b>\$ 66,334,728</b>