

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into as of _____, 2021 by and between BAYSIDE DEVELOPMENT PARTNERS II, LLC, a Wisconsin limited liability company (“Developer”), and the VILLAGE OF BAYSIDE, a Wisconsin municipal corporation (“Village”).

RECITALS

Village and Developer acknowledge the following:

A. Developer and Village have identified for redevelopment certain real property located within the Village and described on Exhibit A attached hereto (the “Property”).

B. Pursuant to Section 66.1105, Wis. Stat. (the “Tax Increment Law”), the Village has created Tax Increment District No. 1 (the “District”) and approved a project plan for redevelopment within the District (the “TID Project Plan”). The boundaries of the District include all of the Property.

C. Subject to the Village’s providing the assistance set forth herein, Developer intends to acquire all of the Property and may over time acquire more real estate located within the District (the portion of the District acquired by Developer is referred to as the “Project Site”), demolish the existing improvements, install new public infrastructure, and prepare the Project Site for vertical redevelopment (“Project”). Upon completion of the Project, Developer then intends to develop the Project Site into a mixed-use project containing one or more professional services/general office, medical office/general medical, general commercial retail/fitness, parks/public recreation, full-service restaurant, multi-family and senior residential apartment, townhome and condominium, civic/public library and parking structure components. A preliminary site plan showing projected future development of and uses on the Project Site is attached hereto as Exhibit B (the “Preliminary Development Plan”), which is consistent with the current zoning of the Property. The Preliminary Development Plan is also consistent with the TID Project Plan.

D. The projected aggregate assessed valuation for the District, as depicted in the Preliminary Development Plan, is anticipated to be approximately **[\$100,503,300]**, as shown on the valuation schedule attached hereto as Exhibit C (the “Project Valuations”).

E. The Village desires to encourage economic development, expand its tax base, and create new jobs within the Village, the District and the Property, all in furtherance of and in compliance with the TID Project Plan. The Village finds that redevelopment of the Project Site and the fulfillment of the terms and conditions of this Agreement are in the vital and best interests of the Village and its residents and serve a public purpose in accordance with state and local law.

F. The Project would not occur without the assistance provided herein.

G. The Village, pursuant to Village Board action dated _____, 2021, has approved the terms of this Agreement and authorized the execution of the Agreement by the proper Village officers on the Village’s behalf and has further approved the issuance of the MRO

Bond, the First Additional MRO Bond, and the Second Additional MRO Bond (as hereinafter defined).

H. The Developer has approved this Agreement and authorized its managers to execute this Agreement on the Developer's behalf.

I. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

AGREEMENTS

In consideration of the Recitals and the promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

ARTICLE I THE PROJECT AND DEVELOPER OBLIGATIONS

A. Subject to satisfaction of the conditions set forth in this Agreement, Developer shall perform the following:

1. Enter into the Public Improvement Agreement (Site Development) ("Site Improvement Agreement") with the Village as called for under Village Ordinance No. 21-726.

2. On or before January 1, 2023, acquire not less than 20 acres of the land comprising the Project Site. To the extent that Developer is unable to acquire all of the Property, the land so acquired shall be sufficient in size and configuration to allow a comprehensive redevelopment substantially similar to the Preliminary Development Plan.

3. On or before January 1, 2024, complete the demolition of improvements on the Project Site in a manner that supports the orderly implementation of the Project.

4. Install the Project Site infrastructure improvements set forth on Exhibit D, attached hereto (the "Initial Site Infrastructure") on or before December 31, 2023. Included within the Initial Site Infrastructure are certain improvements that will be dedicated or conveyed to the Village, or subjected to access and use easements for the benefit of the public, as noted on Exhibit D (the "Initial Public Improvements"). All Initial Public Improvements shall be bid and constructed in accordance with the Site Improvement Agreement.

5. To the extent applicable, dedicate any Initial Public Improvements to the Village in accordance with the Site Improvement Agreement and the schedule set forth on Exhibit D.

6. On or before January 1, 2024, legally divide the Project Site into development parcels consistent with the Preliminary Development Plan.

7. Invest not less than \$20,000,000 in equity (which shall include at least \$10,000,000 of cash contributed to Developer by its members) toward the costs of performing its development obligations under this Section I.A and procure financing sufficient to fund the remaining costs of Developer's obligations, net of the Village's financial obligations set forth herein.

8. As additional property may be acquired by Developer, submit to the Village a request to rezone such property to be within Planned Unit Development District Number One.

B. As market conditions warrant, but in any event on or before January 1, 2028, Developer shall perform the following:

1. Acquire additional land now or hereafter located within the District for redevelopment to the extent feasible as determined by Developer in its sole discretion (including 8969 N. Port Washington Road).

2. Complete the demolition of improvements on any additional land acquired by Developer in a manner that supports further redevelopment of the Project.

3. Install the additional Project Site infrastructure improvements set forth on Exhibit D-1, attached hereto (the "Additional Site Infrastructure") in accordance with the commencement and completion schedule set forth on Exhibit D-1. Included within the Additional Site Infrastructure are certain improvements that will be dedicated or conveyed to the Village or subjected to access and use easements for the benefit of the public, as noted on Exhibit D-1 (the "Additional Public Improvements"). All Additional Public Improvements shall be bid and constructed in accordance with the Site Improvement Agreement.

4. To the extent applicable, dedicate the Additional Public Improvements to the Village in accordance with the Site Improvement Agreement and the schedule set forth on Exhibit D-1.

ARTICLE II VILLAGE OBLIGATIONS

A. To assist Developer, Village shall perform the following:

1. Enter into the Site Improvement Agreement with Developer.

2. To induce Developer to undertake development of the Project and incur various development costs and take on various development risks that may not otherwise be recouped by the Developer, when Developer has certified to the Village (in the form as that attached hereto as Exhibit F) that Developer has completed the Initial Site Infrastructure, issue to Developer a municipal revenue obligation bond (the "MRO Bond") in the principal amount of \$9,500,000 and bearing annual interest at the rate of 4.5% accruing as of the date of issuance.

a. The MRO Bond shall be issued in substantially the form attached here to as Exhibit G. The MRO Bond shall mature [~~twenty-~~ _____] years following the date of issuance of the MRO Bond and installments of principal and interest on the MRO Bond will be due and payable on September 1 of each year commencing on the September 1 following the issuance of the MRO Bond (the “Bond Payment Date”). The amount of the annual payment of principal and interest due on each Bond Payment Date shall be equal to the amount of available “MRO Surplus Tax Increment” levied for the preceding calendar year calculated as of August 1 of the year the MRO Bond payment is due. MRO Surplus Tax Increment appropriated to make payments on the MRO Bond shall first be applied to accrued interest on the MRO Bond, with any remaining amount being applied toward principal. The MRO Bond shall be subject to prepayment in whole or in part at any time at the option of the Village. The amounts and maturities of the installments of principal of the MRO Bond which are to be prepaid shall be selected by the Village. The Village shall not close the District prior to April 15, 2049 if an unpaid balance remains on the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond, if issued.

b. “MRO Surplus Tax Increment” shall mean ninety percent (90%) of all tax increments (as defined by the Tax Increment Law) collected and retained by the Village solely from the District in a calendar year.

c. THE MRO BOND SHALL BE A SPECIAL, LIMITED REVENUE OBLIGATION OF THE VILLAGE PAYABLE ONLY FROM MRO SURPLUS TAX INCREMENT THAT IS APPROPRIATED BY THE VILLAGE BOARD FOR THAT PURPOSE. No property or other asset of the Village, except MRO Surplus Tax Increment appropriated to make payments with respect to the MRO Bond, is or shall be a source of payment of the Village’s obligations thereunder. The MRO Bond shall not constitute a debt or obligation of the Village, the County in which it is located, the State of Wisconsin or any political subdivision thereof within the meaning of any State constitutional provision, statutory limitation, or charter provision or limitation thereof and shall not be a charge against their general credit or taxing powers.

d. THE VILLAGE MAKES NO REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, THAT THE MRO SURPLUS TAX INCREMENT, IF APPROPRIATED, WILL BE SUFFICIENT TO PAY, IN WHOLE OR IN PART, THE AMOUNTS WHICH ARE OR MAY BECOME DUE AND PAYABLE UNDER THE MRO BOND. THE VILLAGE’S OBLIGATION TO MAKE PAYMENTS ON THE MRO BOND IS LIMITED TO THE AVAILABILITY OF MRO SURPLUS TAX INCREMENT AND IS FURTHER SUBJECT TO ANNUAL APPROPRIATION BY THE VILLAGE BOARD.

e. In each year during the term of this Agreement the staff of the Village shall include the appropriation of MRO Surplus Tax Increment in the Village budget as submitted to the Village Board for consideration for the next succeeding fiscal year. If the Village Board determines not to appropriate any portion of such MRO Surplus Tax Increment, written notice thereof shall be

provided to the Developer within 14 days. The Village agrees that, subject to annual appropriation of said funds, on an annual basis all funds in the special fund of the District which constitute MRO Surplus Tax Increment will be used to make the payments due under the MRO Bond.

f. IF ON THE FINAL MRO BOND PAYMENT DATE, THERE REMAIN AMOUNTS OUTSTANDING AND UNPAID ON THE MRO BOND, THEN ALL INTEREST ACCRUED BUT UNPAID AND THE REMAINING BALANCE OF PRINCIPAL OF THE MRO BOND SHALL BE DEEMED PAID IN FULL, IT BEING UNDERSTOOD THAT UPON THE FINAL MRO BOND PAYMENT DATE, THE OBLIGATION OF THE VILLAGE TO MAKE ANY FURTHER PAYMENTS ON THE MRO BOND SHALL TERMINATE. THE VILLAGE SHALL HAVE NO OBLIGATION OF ANY KIND WHATSOEVER TO PAY ANY AMOUNT OF PRINCIPAL OR INTEREST ON THE MRO BOND WHICH REMAINS UNPAID AFTER THE FINAL MRO BOND PAYMENT DATE, AND THE DEVELOPER HOLDING THE MRO BOND SHALL HAVE NO RIGHT TO RECEIVE PAYMENT OF SUCH AMOUNTS.

g. The Village shall have no obligation to make payments on the MRO Bond while the Developer is in default of any of its obligations under this Agreement or if no MRO Surplus Tax Increment is available.

B. When Developer has (i) completed the Initial Site Infrastructure work described on Exhibit D and (ii) provided to the Village reasonably satisfactory confirmation that building improvements generating an increase in assessed value within the District of at least \$18,000,000 (net of any improvements demolished after January 1, 2022) are “coming on line,” the Village, within sixty (60) days of Developer’s satisfaction of the above preconditions, shall issue to Developer a municipal revenue obligation bond (the “First Additional MRO Bond”) in the principal amount of \$4,500,000, bearing annual interest at the rate of 4.5% accruing as of the date of issuance.

1. The First Additional MRO Bond shall be issued upon the same terms and conditions as provided for the MRO Bond under Sections II.A.2.a through g, above, except that the principal amount of the Additional MRO Bond shall be \$4,500,000.

2. MRO Surplus Tax Increment shall be applied first to pay interest due on the MRO Bond, next interest due on the First Additional MRO Bond, next principal outstanding on the MRO Bond and, finally, outstanding principal due on the First Additional MRO Bond.

C. When Developer has (i) satisfied the preconditions set forth in Section II.B, (ii) certified to the Village (in the form as that attached hereto as Exhibit F) that Developer has completed the Additional Site Infrastructure work described on Exhibit D-1, and (iii) provided to the Village reasonably satisfactory confirmation that building improvements generating an additional increase in assessed value within the District of at least \$20,000,000 (i.e. in addition to the \$18,000,000 of increment required under Section II.B) are “coming on line,” the Village, within sixty (60) days of Developer’s satisfaction of the above preconditions, shall issue to Developer a municipal revenue obligation bond (the “Second Additional MRO Bond”) in the

principal amount of \$5,500,000, bearing annual interest at the rate of 4.5% accruing as of the date of issuance.

1. The Second Additional MRO Bond shall be issued upon the same terms and conditions as provided for the MRO Bond under Sections II.A.2.a through g, above, except that the principal amount of the Second Additional MRO Bond shall be \$5,500,000.

2. MRO Surplus Tax Increment shall be applied first to pay interest due on the MRO Bond, next interest due on the First Additional MRO Bond, next interest due on the Second Additional MRO Bond, next principal outstanding on the MRO Bond, next principal outstanding on the First Additional MRO Bond and, finally, outstanding principal due on the Second Additional MRO Bond.

D. Future development values “coming on line” shall mean with respect to vertical projects developed by Developer or its affiliates, the value of land and vertical improvements approved by an institutional third party construction lender financing such improvements upon closing on such construction loan, and agreement (not to be unreasonably withheld, conditioned, or delayed) from the Village Assessor that such value reflects the anticipated assessed value of the land and vertical improvements.

E. The Village agrees that if: (i) the Developer is not in default of any of its obligations hereunder, (ii) there is MRO Surplus Tax Increment available on a MRO Bond Payment Date, First Additional MRO Bond Payment Date or Second Additional MRO Bond Payment Date to make a payment on the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond, as applicable, and (iii) the Village Board determines not to appropriate all or any portion of such MRO Surplus Tax Increment for such year, then:

1. If any other tax increment revenue bonds issued by the Village to other parties are then outstanding (the “Other Bonds”), the Village shall not appropriate any allocable tax increments or make payments on any of the Other Bonds in a greater proportion than the Village has done for any of the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond (for example, assume that in a given year, the Village appropriates only 25% of the available MRO Surplus Tax Increment for payment on any of the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond; then as to such year, the Village shall not appropriate more than 25% of the amount of any tax increments that, under the terms of any of the Other Bonds, are to be made available for such Other Bonds); and

2. Until such time as the Village subsequently makes an annual appropriation of all MRO Surplus Tax Increment available on a MRO Bond Payment Date, First Additional MRO Bond Payment Date, or Second Additional MRO Bond Payment Date, as applicable, toward payments due on the MRO Bond, the First Additional MRO Bond, and the Second Additional MRO Bond (including prior payments that would have been payable but for the Village Board’s prior determination not to appropriate funds), the Village shall not issue any new tax increment revenue bonds or other Village GO bonds to assist development within the Village whether or not similar to the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond.

E. If Developer acquires additional land within the District, the Village shall make reasonable good faith efforts to timely consider and act on Developer's request(s) to rezone such land to include it within Planned Unit Development District Number One.

ARTICLE III
[Intentionally Deleted]

ARTICLE IV
ADJUSTMENT TO SECOND ADDITIONAL MRO BOND

At the end of the fifth year following issuance of the Second Additional MRO Bond, Developer shall provide to the Village and its financial consultant all of Developer's financial records relating to the expenditures incurred and income received in connection with the Project. The Village's financial consultant shall determine Developer's annualized internal rate of return ("IRR") on Developer's equity investment in the Project. If the Developer's IRR exceeds 17% (with Developer's costs taking into account any Project cost overruns, and the approved Developer fee set forth in the Development Budget), then the Village shall be entitled to reduce the principal amount of the Second Additional MRO Bond by an amount equal to 35% of the amount of revenue that drove Developer's IRR above 17%. Such adjustment shall be made not later than thirty (30) days following written request from the Village. For purposes of the foregoing determination, the price of a land sale shall be the net selling price to a third party (including net of commissions) or, in the case of self-development, the land value as determined by a construction lender based on an independent appraisal for a particular parcel. In the event that a particular parcel has not been sold or self-developed at such time, then the parcel value shall be deemed to be equal to its equalized value on the Village's tax rolls.

ARTICLE V
PAYMENT OF TAXES; PAYMENT IN LIEU OF TAXES

A. Throughout the life of the District, Developer will pay (or cause to be paid) all ad valorem property taxes properly assessed against any portion of the Project Site owned by the Developer before such taxes become delinquent. The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Project Site.

B. In the event that any portion of the Project Site becomes exempt from ad valorem taxes during the statutory life of the District (other than the North Shore Library, if that library is located within the District, and other than other civic or community space of up to 10,000 square feet in the aggregate that may be located within the District, all of which the Village acknowledges may be tax exempt and shall not be subject to the provisions of this Article V), then for the remaining life of the District (the "PILOT Term"), the owner of such exempt portion of the Project Site shall make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such portion of the Project Site (as determined by the Village Assessor, subject to the owner's right to contest such determination) had it not been exempt. The notice of such assessment shall be given in the same manner and timeframe as if the exempt portion of the Project Site was not exempt. Such payment in lieu of taxes shall be due and payable at the same time and in the same manner as the ad valorem taxes would have been due and payable for such year. If the then-owner fails to make a payment in lieu of taxes when due, the Village may, in addition to all other remedies available to it, levy a special assessment against the exempt portion of the Project Site owned by

such owner in the amount of the unpaid payments provided any recoveries are limited to the amount then due. Notwithstanding the levying of such special assessment, the payment obligation under this Article V shall be the personal obligation of the then-owner of the exempt portion of the Project Site. The covenant contained in this Article V shall be deemed to be a covenant running with the land and shall be binding upon the then-owners of any portion of the Project Site for the duration of the PILOT Term. The Village is hereby expressly declared to be a beneficiary of such covenant and entitled to enforce same against all of the then-owners of an exempt portion of the Project Site. The covenants and obligations set forth in this Article may be embodied in a separate document and recorded against the Project Site as provided herein.

ARTICLE VI NO PARTNERSHIP OR VENTURE

Developer and its contractors or subcontractors shall be solely responsible for the completion of all of Developer's obligations set forth in this Agreement. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the (i) Village and (ii) Developer, or any contractor or subcontractor employed by Developer.

ARTICLE VII CONFLICT OF INTEREST

No elected official, member, officer, or employee of the Village, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE VIII WRITTEN NOTICES

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer of the Village (as to the Village) or to an officer of Developer (as to Developer), if hand delivered; (ii) two business days following deposit in the United States mail, postage prepaid, or (iii) upon delivery if delivered by a nationally recognized overnight commercial carrier that will certify as to the date and time of such delivery; and each such communication or notice shall be addressed as follows, unless and until any of such parties notifies the other in accordance with this Article of a change of address:

If to the Village:

Village of Bayside
9075 N. Regent Road
Bayside, WI 53217
Attention: Andy Pederson

With a copy to:

Davis & Kuelthau, s.c.
111 East Kilbourn Avenue
Suite 1400
Milwaukee, WI 53202
Attention: Christopher J. Jaekels

If to the Developer:

Bayside Development Partners II, LLC
c/o Cobalt Partners, LLC
400 N. Broadway Street
Suite 100
Milwaukee, WI 53202
Attn: Scott J. Yauck

With a copy to:

Godfrey & Kahn, S.C.
833 E. Michigan Street, Suite 1800
Milwaukee, WI 53202
Attn: Michael J. Dwyer

ARTICLE IX DEFAULT

A. The occurrence of any one or more of the following events shall constitute a default (“Default”) hereunder:

1. Developer shall fail to pay any amounts when due under this Agreement and further fails to pay such amounts on or before five days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement shall prove to have been false in any material respect as of the time when made or given; or

3. Developer shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty days following notice thereof from the Village (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as Developer has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from the Village or such longer period of time as is reasonably agreed to by the Village); or

4. Village shall materially breach or fail to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty days following notice thereof from Developer (or such longer period of time as is otherwise expressly set forth herein, or as required to address and cure such default under applicable law regarding legislative and administrative process, or as is reasonably necessary to cure the default as long as the Village has commenced the cure of the default within the thirty-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred eighty days following the notice thereof from Developer); or

5. Developer:

- (a) becomes insolvent or generally does not pay, or is unable to pay, or admit in writing its inability to pay, its debts as they mature; or
- (b) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or
- (c) becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or
- (d) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or
- (e) applies to a court for the appointment of a receiver or custodian for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or
- (f) adopts a plan of complete liquidation of its/his assets; or
- (g) shall cease to exist.

B. Upon the occurrence of any Default, without further notice, demand or action of any kind by the non-defaulting party, the non-defaulting party may, at its option, pursue any or all rights and remedies available at law or in equity. The Village’s rights shall include, but not be limited to, termination of this Agreement or temporary or permanent suspension of any payment of the MRO Bond, the First Additional MRO Bond, or the Second Additional MRO Bond.

No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

C. In the event of a default by either party, all reasonable fees, costs and expenses incurred by the non-defaulting party, including reasonable attorneys’ fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the non-defaulting party’s rights in any bankruptcy, reorganization or insolvency proceeding.

ARTICLE X
MISCELLANEOUS

A. Developer shall have in effect at all times all permits, approvals and licenses as may be required by any governmental authority or non-governmental entity in connection with Developer's development, construction, management and operation of the Project.

B. Developer shall maintain or cause to be maintained the following insurance policies (the "Insurance Policies") issued by insurers licensed in the State of Wisconsin, with ratings and in the financial size category as requested by the Village, covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the Village:

1. Following completion of construction of all components of the Project, "all risks" property insurance insuring against such risks as are insured against by owners of similar improvements, in amounts equal to 100% replacement cost of all such improvements with an extended replacement cost endorsement;

2. During the construction, builder's risk insurance in form and amounts reasonably satisfactory to the Village;

3. During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by owners of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

4. Such other insurance as may be reasonably requested by Village.

Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the Village of any material change or cancellation of such policy. The Village shall be named as an additional insured/loss payee on all policies of insurance except worker's compensation insurance.

C. If the Developer does not commence construction of the Initial Site Improvements by January 1, 2023 (subject to extension pursuant to Paragraph H, below), then the Village may, in its sole discretion, terminate this Agreement upon written notice to the Developer. The Village shall thereafter have no further obligations under this Agreement.

D. Developer hereby indemnifies, defends, covenants not to sue and holds the Village harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the Village by reason of the following: (a) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (b) any release by Developer or its contractors, subcontractors, agents, employees, or invitees of petroleum products or hazardous materials or hazardous substances on, upon or into the Property; (c) any and all damage to natural resources or real property or harm or injury to persons resulting or alleged to have resulted from any failure by the Developer or its contractors, subcontractors or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances

as described in clauses (a) and (b) above; (d) any violation by Developer or at the Project of any environmental law, rule, regulation or ordinance; (e) claims arising in connection with the Project under the Americans With Disabilities Act, and any other laws, rules, regulations or ordinances; (f) the failure by Developer to comply with any term or condition of this Agreement; (g) injury to or death of any person at the Project or injury to any property caused by or at the Project; and (h) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project. The foregoing indemnity shall not apply to any claims or damages arising under clauses (a) through (h) of the previous sentence to the extent such claims or damages are attributable to the negligence or willful misconduct of the Village.

The terms “hazardous substances” means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances” under any applicable federal or state or local laws or regulations.

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

F. If Developer is delayed or prevented from timely commencing or completing construction of the Project, by reason of fire, earthquake, war, flood, material shortages, riot, strikes, labor disputes, governmental restrictions, judicial order, public emergency, delays due to pandemic or other public health emergency, or other causes beyond the reasonable control of the party obligated to perform (“Force Majeure Event”), 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.

G. A memorandum of this Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of any mortgage on the Project Site, it being understood by the parties that the provisions of Article V of this Agreement will run with the land and will be binding upon the Project Site and any owner or lessee or mortgagee of all or any portions of the Project Site and their successors and assigns.

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

I. All financial reports and information required to be provided by Developer to the Village under this Agreement shall be provided to the Village’s outside financial consultant for review on behalf of the Village. The Developer warrants and represents the accuracy of its financial reports and information in all material respects. The parties acknowledge that some of the financial information to be provided to the Village may qualify as proprietary or as “trade secrets” and that disclosure of same would have an adverse impact upon Developer and certain tenants of the Project. When financial information is provided to the Village, the provider of such financial information shall identify the information that is proprietary or constitutes a trade secret and the Village shall take reasonable steps to protect such trade secrets as allowed by law. The foregoing shall not apply to Developer’s final actual costs for purposes of determining whether an adjustment to the Second Additional MRO Bond is required under Article IV.

J. This Agreement may not be assigned by the Developer without the Village's consent, which may be granted or withheld in the Village's reasonable discretion. Developer may collaterally assign this Agreement to Developer's construction lender or to other lenders for the Project. In the event that such construction lender or any other lender forecloses on its collateral and succeeds to ownership any portion of the Project Site, the Village shall fulfill its obligations hereunder provided that such construction lender or other lender assumes in writing all of the obligations of Developer hereunder.

K. Developer shall not be released from any of its obligations hereunder by any sale, foreclosure or other conveyance of all or any portion of the Project Site, either before or after completion of the Project, without the written consent of the Village.

L. Subject to applicable laws, Developer and the Village shall work together expeditiously and in good faith to obtain appropriate project entitlements, including, without limitation, approvals for site plan, architectural, landscaping, traffic, and offsite improvements.

M. Subject to applicable laws, Developer and the Village shall work together expeditiously and in good faith in support of optimizing the overall economic efficiency of the Project through appropriate structuring of such matters as Site Infrastructure financing and construction, etc.

N. This Agreement contains the entire agreement between the Village and Developer with respect to the subject matter of this Agreement and may be amended or modified only by subsequent written agreement duly signed by both parties hereto.

ARTICLE XI TERMINATION; CERTIFICATE OF COMPLETION

A. Developer shall have the right to terminate this Agreement immediately upon written notice to the Village in the event that Developer determines that it will not be able to satisfy the Village's preconditions to issuance of the First Additional MRO Bond set forth in Article II.

B. This Agreement shall automatically terminate and be of no further force or effect upon the last to occur of all of the following:

1. Timely completion of all of Developer's activities set forth on Exhibits D and D-1.

2. Payment in full of the MRO Bond, the First Additional MRO Bond, and the Second Additional MRO Bond;

3. Payment in full by Developer to the Village of any sums due in connection with a demand or claim that has been made by the Village upon Developer in connection with an alleged default in its obligations under this Agreement.

4. Payment in full by the Village to Developer of any sums due pursuant to Articles II or IV or in connection with a demand or claim that has been made by

Developer upon the Village in connection with an alleged default in other obligations of the Village under this Agreement.

Upon the occurrence of all of the foregoing, the Village agrees to execute and record in the Office of the Register of Deeds for Milwaukee County a memorandum of termination of this Agreement.

[Signatures on following page]

In Witness Whereof, this Agreement is executed as of the date first above written.

VILLAGE OF BAYSIDE, WISCONSIN

By: _____

Attest: _____

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 20 __, the above-named _____ and _____, the _____, and _____, respectively, of the Village of Bayside, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the Village and by its authority.

BAYSIDE DEVELOPMENT PARTNERS II, LLC

By: Cobalt Investment Holdings LLC, Manager

By: Cobalt Partners, LLC, Manager

By: _____
Scott J. Yauck, Sole Member and Manager

By: La Macchia Real Estate V LLC, Manager

By: _____
William E. La Macchia, Manager

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 2021, the above-named Scott J. Yauck, the Sole Member and Manager of Cobalt Partners, LLC, a manager of Cobalt Investment Holdings LLC, manager of Bayside Development Partners II, LLC, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority.

Name: _____
Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
) ss.
_____ COUNTY)

Personally appeared before me this ____ day of _____, 20 ____, the above-named William E. La Macchia, the Manager of La Macchia Real Estate V LLC, a manager of Bayside Development Partners II, LLC, to me known to be the person who executed the foregoing agreement on behalf of said limited liability company and by its authority.

Name: _____
Notary Public, State of Wisconsin
My Commission expires: _____

This instrument was drafted by
and upon recording return to:

SCHEDULE OF EXHIBITS

EXHIBIT A	The Property
EXHIBIT B	Preliminary Development Plan
EXHIBIT C	Project Valuations
EXHIBIT D	Initial Site Infrastructure
EXHIBIT D-1	Additional Site Infrastructure
EXHIBIT E	[Intentionally Omitted]
EXHIBIT F	Form of Certificate of Completion
EXHIBIT G	Form of Bond

EXHIBIT A

The Project

EXHIBIT B

Preliminary Development Plan

EXHIBIT C

Project Valuations

EXHIBIT D

Initial Site Infrastructure

EXHIBIT D-1

Additional Site Infrastructure

EXHIBIT E

[Intentionally Omitted]

EXHIBIT F

Form Of Certificate of Completion

_____, 20__

Village of Bayside
Attn: Village Clerk

Re: Certificate of Completion

Ladies & Gentleman,

This Certificate is being delivered pursuant to the Development Agreement dated as of _____, 202_ between the undersigned and the Village of Bayside, Wisconsin. Capitalized terms used herein which are not defined have the meanings given to them in the Development Agreement, as amended.

The undersigned hereby certifies the Initial Site Infrastructure has been completed in accordance with the requirements of the terms and conditions of the Site Improvement Agreement.

BAYSIDE DEVELOPMENT PARTNERS II, LLC

By: Cobalt Investment Holdings LLC,
Administrative Manager

By: Cobalt Partners, LLC, Manager

By: _____
Scott J. Yauck, sole member and
manager

EXHIBIT G

Form of Bond

MRO BOND

UNITED STATES OF AMERICA
STATE OF WISCONSIN
COUNTY OF MILWAUKEE
VILLAGE OF BAYSIDE

TAXABLE TAX INCREMENT PROJECT MUNICIPAL REVENUE OBLIGATION (“**MRO**”)

<u>Date of Original Issuance</u>	<u>Amount</u>
_____	\$ _____

FOR VALUE RECEIVED, the Village of Bayside, Milwaukee County, Wisconsin (the “Village”) promises to pay to Bayside Development Partners II, LLC, a Wisconsin limited liability company (the “**Developer**”), through the Developer’s payment receiving agent, _____ (“**Payment Agent**”), or registered assigns, but only in the manner, at the times, from the source of revenue and to the extent hereinafter provided, the principal amount not to exceed \$ _____, with interest at the annual rate of 4.5%.

This MRO shall be payable in installments of principal due on September 1 (the “**Payment Dates**”) in each of the years set forth in Schedule 1 attached hereto in an amount equal to the MRO Surplus Tax Increment, as such term is defined in the Development Agreement, for the prior year provided such payments are due under the Development Agreement; provided, however, final payment under this MRO contemplated in the year 20__ may occur at any time after May 31, 20__, but no later than September 1, 20__, as determined in the Village’s discretion (the “**Final Payment Date**”).

This MRO has been issued to finance projects within the Village’s Tax Incremental District No. __ (“**District**”) and is payable only from the income and revenues herein described, which income and revenues have been set aside as a special fund for that purpose and identified as the “Special Redemption Fund” provided for under the Resolution adopted on _____ by the Village Board of the Village (the “**Resolution**”). This MRO is issued pursuant to the Resolution and pursuant to the terms and conditions of the Development Agreement dated as of _____, 202__ between the Village and the Developer (“**Development Agreement**”). This MRO does not constitute an indebtedness of the Village within the meaning of any constitutional or statutory limitation or provision. This MRO shall be payable solely from MRO Surplus Tax Increment and appropriated by the Village Board to the payment of this MRO (the “**Revenue**”). Reference is hereby made to the Resolution and the Development Agreement for a more complete statement of the revenues from which and conditions and limitations under which this MRO is payable and the general covenants and provisions pursuant to which this MRO has

been issued. The Resolution and Development Agreement are incorporated herein by this reference. Capitalized terms used in this MRO which are not defined in this MRO shall have the meaning attributable to such terms as set forth in the Development Agreement.

The Village shall have no obligation to pay any amount of this MRO which remains unpaid after the Final Payment Date.

The Village 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 Village's payment obligations hereunder are subject to appropriation, by the Village Board, of MRO Surplus Tax Increment to make payments due on this MRO. In addition, as provided in Article II of the Development Agreement, the total amount to be paid shall in no event exceed \$ _____. When the amount of Revenue has been appropriated and applied to payment of this MRO, the MRO shall be deemed to be paid in full and discharged, and the Village shall have no further obligation with respect hereto. Further, as provided in Section IX.B of the Development Agreement, the Village shall have no obligation to make payments on this MRO in the event of certain defaults under the Development Agreement.

This MRO is a special, limited revenue obligation and not a general obligation of the Village and is payable by the Village only from the sources and subject to the qualifications stated, incorporated or referenced herein. This MRO is not a general obligation of the Village, and neither the full faith and credit nor the taxing powers of the Village are pledged to the payment of the principal of this MRO. Further, no property or other asset of the Village, except the above-referenced Revenues, is or shall be a source of payment of the Village's obligations hereunder.

This MRO is issued by the Village pursuant to, and in full conformity with, the Constitution and laws of the State of Wisconsin.

This MRO may be transferred or assigned, in whole or in part, only with the consent of the Village. Interests in this MRO may not be split, divided or apportioned. In order to transfer or assign the MRO, the transferee or assignee shall surrender the same to the Village either in exchange for a new, fully-registered municipal revenue obligation or for transfer of this MRO on the registration records for the MRO maintained by the Village. Each permitted transferee or assignee shall take this MRO subject to the foregoing conditions and subject to all provisions stated or referenced herein.

It is hereby certified and recited that all conditions, things and acts required by law to exist or to be done prior to and in connection with the issuance of this MRO have been done, have existed and have been performed in due form and time.

IN WITNESS WHEREOF, the Village Board of the Village of Bayside has caused this MRO to be signed on behalf of the Village by its duly qualified and acting Village President and Village Clerk, and its corporate seal to be impressed hereon, all as of the date of original issue specified above.

VILLAGE OF BAYSIDE

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

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