



City of Green Bay
Department of Community and Economic Development

DEVELOPMENT AGREEMENT 21-__

H.J. MARTIN REDEVELOPMENT OF FORMER SHOPKO SITE AT 216 S. MILITARY AVE.

This Development Agreement is made this _____ day of _____, 2021,
by THE CITY OF GREEN BAY, a Wisconsin municipal corporation (“City”),
THE REDEVELOPMENT AUTHORITY OF THE CITY OF GREEN BAY (“RDA”),
and Martin Neufeld LLC, also known as H.J. Martin, a Wisconsin limited liability company (“Developer”).

RECITALS

A. Developer has proposed redevelop certain real property, identified for real estate tax purposes and address as:

Tax Parcel	Address	Acres	Assessed Value
6-266-E	216 S. Military Ave.	8.362	\$3,571,400

B. The parcel listed above shall be referred to as the “Property.” The Property comprises approximately eight and three hundred sixty-two thousandths (8.362) acres of land. A map of the Property is herein attached as EXHIBIT A; the legal description of the Property is as follows:

Lot 1 of 5 Volume 5 Certified Survey Maps, Page 177, Map Number 1366, Document number 802454, Being Part of Private Claim I West and Being Part of Vacant Strip in the City of Green Bay, West of the Fox River, Brown County, Wisconsin.

C. Developer intends to complete a Project to temporarily reuse and redevelop the Property, which includes the following:

- 1) A future addition of a new commercial, residential and/or mixed-use building or buildings to be determined in the future, and/or the reuse of the existing structure for commercial or mixed-uses, subject to approval of a concept plan, future rezoning and possible land division, all as determined to be necessary by the City.
- 2) An immediate temporary reuse of the existing retail building for warehousing, employee training and leased space for product assembly and maintenance by Bellin Health or their direct affiliate.
 - a. The temporary use shall be governed by a Planned Unit Development (“PUD”) overlay zoning designation subject to the review and approval by the Plan Commission and the City Council.
 - b. The requested PUD shall address the storage of the following materials to be stored in the existing building:
 - i. Flooring Materials (Hardwood, Ceramic Tile, Vinyl, Carpet, Carpet Pad)
 - ii. Flooring Sundries (Adhesive, Caulk, Grout, Metals)
 - iii. Tools & Equipment (Power tools, Hand tools)

- iv. Acoustical Ceiling Tile & Grid
- v. Shower Doors & Mirrors
- vi. Wheelchairs
- vii. Oxygen Tanks
- viii. Other Medical Equipment

c. [THINK WE NEED TO ALSO ADDRESS TRAINING FACILITY USE(S).]

- d. The permanent future use of the structure with the proposed temporary use will be determined in a future rezoning and/or land division of the Property.

The proposed Project improvements are shown on a Preliminary Concept Plan, which is herein attached as EXHIBIT B.

- D. Developer and the City acknowledge that the proposed temporary uses of warehousing, employee training and leased space for product assembly and maintenance by Bellin Health or its direct affiliates are not permitted by the current C-3 Community Center Commercial zoning and are inconsistent with the City's adopted 2022 Smart Growth Comprehensive Plan, and are being considered only in the context of future redevelopment plans for the site. The temporary uses as listed are in no way intended to set a precedent in any manner for allowing these types of uses in commercial districts.
- E. The City and RDA desire to provide the Developer the opportunity to temporarily utilize the existing structure and site in order to provide time to market the site for more appropriate uses as well as to maintain some economic activity and tax base for the community, consistent with the City Comprehensive Plan and the City Zoning Ordinance.
- F. In order to induce Developer to undertake the Project, such that it will bring new investment to the area and so that the public will generally benefit, the City has agreed to allow the Developer to pursue approval for the temporary uses in exchange for cooperatively planning for the redevelopment of the property which is expected to take place within the next 3 years as provided by this Agreement, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

I. PURPOSE

- A. Incorporation of Proceedings, Exhibits, and Recitals. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City or RDA, including but not limited to adopted or approved plans or specifications on file with the City or RDA, along with all of the Recitals set forth above, shall be incorporated into this Agreement by reference, upon attachment, or upon consent by amendment if necessary if not referenced or attached at the time of execution of this Agreement.
- B. Implementation Schedule. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth and/or incorporated herein. Any material modification or deviation from an approved schedule described in this Agreement shall occur only upon approval of the City and RDA, with any such approvals required to be in writing as an amendment to this Agreement, and which approvals shall not be unreasonably withheld. City shall cooperate and act promptly with respect to any and all permits or approvals necessary for completion of the Project. Notwithstanding the above, this Agreement shall not limit the discretion of the City, or any of its duly appointed and authorized

governing bodies, boards or entities, in approving or rejecting any aspect of the Project or improvements contemplated on or about the Property.

- C. Entire Agreement. This writing including all Exhibits hereto, and the other documents and agreements referenced herein, constitutes the entire Agreement between the parties hereto in respect to the Project and all prior letters of intent or offers, if any, are hereby terminated. This Agreement shall be deemed to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City or RDA, granting approvals or conditions attendant with such approval, the terms of this Agreement shall be deemed controlling and the City and RDA will take the necessary action to amend any conflicting approvals or conditions.
- D. Purpose of the Agreement. In order to allow the Project to occur and to induce Developer to undertake the Project as well as the marketing and future compliant redevelopment of the Property, to promote community development, industry and job creation and to expand and enhance the tax base within the City, the parties herein intend to enter into this Agreement to record the understandings and undertakings of the parties and to provide a framework within which the Project may proceed.

II. DEFINITIONS; EXHIBITS

Whenever in this Agreement a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand. As used in this Agreement, the following terms, when having an initial capital letter, shall have the following meanings:

- A. "Agreement" means this Development Agreement among the City, RDA, and Developer, as amended and supplemented from time to time.
- B. "Annual Assessed Value" means the assessed value of the Private Improvements and the Property, as defined in this Agreement, as of January 1 of any calendar year.
- C. "Available Tax Increment" means the amount of Tax Increment (as defined below) actually received by the City generated by any increase of value of the Property above the base value and attributable to development within a tax incremental finance district, during the twelve (12) month period preceding a payment date, that has not been previously used to make payment on bonds or other obligations as determined by the City. The amount of Available Tax Increment may fluctuate based on variations in the property valuations, tax rate, depreciation and other independent factors.
- D. "Base Value" means the aggregate assessed value of the Property when this Agreement was created, which shall be three million five hundred seventy-one thousand and four hundred dollars (\$3,571,400)
- E. "City" means the City of Green Bay, Brown County, Wisconsin.
- F. "Concept Plan" means the plan for the project which shall include but not be limited to:
 - 1. Architectural renderings, elevations, and list of building materials
 - 2. Building site plan that identifies existing and new building dimensions, site dimensions, setbacks, easements, public rights of way, parking areas, driveway locations, and any other improvements on the site.

3. Utility plan that identifies existing and new public and private utility connections including but not limited to water, sanitary sewer, storm water, electric, natural gas, telecommunications, and any other utility infrastructure and related easements.
 4. Storm water management plan that identifies conveyance, storage and treatment of storm water in accordance with City ordinances.
 5. Landscaping plan that identifies any required or proposed planting, screening or other beautification of the site.
 6. Lighting plan that identifies any exterior lighting on the building and site.
 7. Signage plan that identifies any on building and any other publicly visible signage on the site
 8. A building and site restoration plan (if necessary)
 9. Traffic impact analysis (if determined to be necessary by the Department of Public Works at time of submittal)
- G. “Developer” means Martin Neufeld LLC, also known as H.J. Martin, or any assignee of the same.
- H. “Exhibits” means the supplementary reference information attached to this development agreement that shall include the following:
1. Exhibit A – Map of the Property
 2. Exhibit B – Preliminary Concept Plan
- I. “Future Project” means any Private Improvements that will be constructed in the future not specifically detailed in this Agreement
- J. “Plans and Specifications” means the plans and specifications necessary to design, review, and construct all or part of the Project.
- K. “Preliminary Concept Plan” means the initial Concept Plan, a copy of which is attached as EXHIBIT B and which is subject to such changes as Developer, the City or RDA may propose and the City and RDA may accept in its sole discretion.
- L. “Private Improvements” means the improvements to be constructed on the Property that are not Public Improvements.
- M. “Project” means the Project as defined in the Recitals.
- N. “Public Improvements” means the infrastructure improvements in connection with the Project that will ultimately be dedicated for public service, including, without limitation:
1. road, pedestrian, and bicycle improvements; and
 2. sanitary sewer, storm sewer, and potable water and wastewater mains and laterals, and storm water management facilities; and
 3. telephone, high-speed cable, and related technology infrastructure; and

4. natural gas, electrical power, and other public utilities; and
 5. any related engineering, grading, erosion control, and landscaping; and
 6. any related land acquisitions and anticipated and intentional corrections to adjacent property affected by the public improvements, including grading.
- O. “Special Assessment” means any special assessment levied against the Property by the City under §66.0701-0733, Wis. Stats., the City Code of Ordinances and this Agreement.
- P. “Special Charge” means any special charge levied against the Property by the City under §66.0627, Wis. Stats., the City Code of Ordinances and this Agreement.
- Q. “Tax Increment” means that amount obtained by multiplying the total county, city, school and other local general property taxes levied on all taxable property within a TID in a year by a fraction having as a numerator the value increment for that year in the district and as a denominator that year’s equalized value of all taxable property in the TID.
- R. “Temporary Use” means any land uses intended to only be permitted for a short-term, fixed period, and intended to be replaced by a permitted use or uses after the herein agreed upon three (3) year period.

III. OBLIGATIONS OF DEVELOPER

Planned Unit Development Zoning for Temporary Uses. The Developer shall obtain a Planned Unit Development (“PUD”) overlay zoning designation over the property to temporarily permit warehousing, employee training and leased space for product assembly and maintenance by Bellin Health or their direct affiliates. The application for the PUD shall be reviewed in accordance with all applicable City and RDA standards and procedures. The PUD shall not constitute a property right of the Developer and its existence is solely contingent and predicated upon this Agreement being in full force and effect. Any termination of this Agreement shall automatically and immediately terminate the PUD without further notice to the Developer. The Developer acknowledges and agrees that a failure to comply with any of the PUD obligations and terms shall be grounds for termination of this Agreement as set forth in Section VII.

- A. The expiration of the PUD shall be December 31, 2024. The application for the PUD zoning shall include, but not be limited to, the following obligations and terms
1. A detailed building plan and site illustrating the areas for each of the defined temporary uses
 2. A list of permitted materials and equipment to be stored indoors.
 3. Screening of loading areas from public streets and adjacent uses.
 4. Prohibition of outdoor storage, outdoor displays, and long-term parking or vehicle storage
 5. Ensuring adequate ingress and egress from each use area in the existing building.
 6. Ensuring traffic patterns to and from the building are routed in the least disruptive manner from adjacent areas.
 7. Ensure that parking for employees and customers is located in the least disruptive areas away from adjacent areas.

8. A plan for any improvements to the exterior of the building including landscaping and lighting.
 9. Requirements for minimum property maintenance standards.
- B. Extension of Temporary Uses. The Developer may request up to Two (2), One (1) - year extensions for the temporary use. Such requested extensions shall be reviewed for approval by the RDA and or the City based on the following factors: Developer is able to 1) demonstrate significant activity and progress related to the future redevelopment of the site, and 2) show consistent code compliant maintenance of the property and structure(s), including the temporary uses, in compliance with the applicable zoning and general ordinance requirements of the City.
- C. Concept Plan. The redevelopment of the Property shall require the creation of a full Concept Plan as defined in this Agreement, to be submitted to the City no later than December 31, 2024, which shall be based on, but may differ in minor respects from the Preliminary Concept Plan presented in this Agreement. Failure to provide said concept plan shall be considered a default by the Developer as contemplated under the terms of this Agreement.
- D. Future Requests. The Future Project may be subject to additional requirements not addressed in this Agreement and will need to be addressed at a future time including but not limited to rezoning, variances, land division, development agreement amendment(s) and the potential request by the Developer for financial assistance.
- E. RDA Approvals. The RDA shall indicate its approval or further requirements in writing within thirty (30) days from the date of receipt of the Concept Plan, , or any revisions; provided, however, that the RDA shall approve such revised Concept Plan, unless it determines such revisions would impair the objectives of this Agreement, impose substantial burdens on the City or the RDA, or adversely affect the Concept Plan. The RDA will make all reasonable efforts to determine the acceptability of plans in less than thirty (30) days, including convening for special meetings to review and consider such plans. At any time during the implementation of the development contemplated by this Agreement, the RDA or Developer may propose modifications to the Preliminary Concept Plan and the approved Concept Plan subject to the agreement of the RDA and the Developer. At any time during the implementation of the development contemplated by this Agreement, Developer may submit to the RDA proposed revisions in the approved Concept Plan, in order to enhance the achievement of the objectives of this Agreement and to improve and refine the approved Concept Plan.
- F. Compliance with Planning; Zoning; Permits and Use. Be it understood that the RDA does not have regulatory control over the property. Therefore, Developer shall obtain from the City and all other appropriate governmental bodies (and all other councils, boards, and parties having a right to control, permit, approve, or consent to the development and use of the Property) all approvals and consents necessary to develop and use the Property as set forth above, including, but not limited to:
1. Developer shall pay all water, sewer, and other impact fees that may be due and payable in connection with the Project.
 2. The acceptance of this Agreement and granting of any and all approvals, licenses, and permits by the City shall not obligate the City to grant any variances, exceptions, or conditional use grants, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City, or in the best interests of the City or the RDA.

3. Developer shall have obtained the approval of the City, RDA, and State of Wisconsin Department of Transportation to conduct a traffic impact analysis regarding the Project.
 4. Developer acknowledges that failure to abide by and maintain any and all of the requirements of the temporary PUD zoning will result in the automatic termination of the PUD, revocation of the temporary uses, ordering the immediate cessation of the uses previously permitted under the overlay zoning, and subject the Developer to any and all enforcement actions permitted by law as well as termination of this Agreement.
- G. Termination or Relocation of Easements. Developer shall have agreements with all holders of easements or any other rights that may be affected by the Project, regarding the termination, modification or relocation of such easements and other rights in order to accommodate the Concept Plan.
- H. Reports and Information. During the period before the commencement of construction of the Project, Developer shall from time to time provide to the RDA information having a bearing upon the interests of the City and the RDA in the Property or under this Agreement. Upon request of the RDA, Developer shall submit progress reports during the course of planning.
- I. Copies of Documents. All documents from Developer to the City or RDA shall be submitted electronically and in paper form.
- J. Maintenance and Repair. Developer shall at all times keep and maintain, or cause to be kept and maintained, the Property in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.
- K. Transfer or Sale of Project Property.
1. Notice of Intent to Transfer. If Developer intends to sell, transfer or convey the Property or any part thereof before termination of this Agreement, Developer shall provide to the City and RDA a written request for transfer thirty (30) days prior to the anticipated transfer. The City or RDA may deny the request for any commercially reasonable reason. Developer may assign all rights and obligations under this Agreement only to an entity controlled and affiliated with Developer to own, manage and operate the Property. This Agreement inures to the benefit and becomes the obligation of the heirs, successors and assigns of Developer. This Agreement shall run with the land and shall be binding upon all current and future owners of the Property. Owner shall not be required to provide the City or RDA with written notice of its intent to transfer in connection with the granting of any mortgage or security agreement to finance or refinance loans for the purchase of the Property or payment of costs of the Project.
 2. No Transfer to Exempt Entities. Prior to the closure of the TID, the Property shall not be sold, transferred or conveyed to, leased, or owned by any entity or used in any manner that would render any part of the Project Property exempt from taxation, unless the purchaser, transferee, lessee or owner first executes a written agreement with the City and RDA in a form satisfactory to the City providing for acceptable payments to the City in lieu of taxes.
- L. Easements. Developer shall grant to the City such easements as are reasonably necessary for public improvements, infrastructure, ingress or egress, utilities, lighting or landscaping or any other access necessary to effectuate this Agreement. Developer shall cause existing easements to be relocated or terminated to accommodate the Project.

M. Environmental.

1. Presence of Hazardous Materials and Compliance with Environmental Laws. Before commencement of the Project, Developer and the City shall be satisfied, through such means as are commercially reasonable, that the Property is free of Hazardous Materials or that any Hazardous Materials on or within the Property are being stored and handled in strict compliance with all Environmental Laws. Developer shall provide the City and RDA with copies of all environmental reports pertaining to the Property no later than ten (10) days after receiving the same.
 2. Developer's Environmental Indemnification. Developer shall indemnify, pay on behalf of, defend and hold the City, the RDA, and their respective agents, officials, employees, representatives, successors and assigns, harmless from and against any loss, damage, claim, fine, penalty, assessment, liability, or other charge or claim, and all costs (including, without limitation, reasonable legal, accounting, consulting, engineering, and similar expenses incurred with respect to such matter and/or incurred in enforcing this indemnity):
 - a) Arising from the actual existence, treatment, deposit, release, storage, or disposal of any Hazardous Materials on, within or about the Property; or
 - b) Arising from the breach of any warranty, covenant or representation of Developer to the City or RDA, or any other obligation of Developer to the City or RDA regarding Hazardous Materials under this Agreement.
 3. Hazardous Materials Defined. As used herein, the term "Hazardous Materials" means:
 - a) Hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1802; the Resource Conservation and Recovery Act, 42 U.S.C. 9601. et seq.; the Clean Water Act, 33 U.S.C. 1251; the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinances now or hereafter in effect relating to environmental matters (collectively, "Environmental Laws"); and
 - b) Any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any Environmental Law, now or hereafter in effect, including but not limited to: petroleum, refined petroleum products, waste oil, waste aviation or motor vehicle fuel, and asbestos containing materials.
- N. Insurance. Before commencement of construction activities on the Project, Developer shall deliver to the City and RDA certificates of insurance, copies of endorsements, and other evidence of insurance requested by the City or RDA, which Developer is required to purchase and maintain, or

cause to be purchased or obtained, in the types and amounts of coverage listed below, each of which shall name the City and RDA as additional insured parties:

1. Workers Compensation and Related Coverage. Coverage for state and federal workers compensation shall be defined by state and federal statute. The amounts of employer's liability coverage shall be in not less than the following limits:
 - a) Bodily Injury by Accident – one hundred thousand dollars (\$100,000.00) per accident;
 - b) Bodily Injury by Disease – one hundred thousand dollars (\$100,000.00) per employee; and
 - c) Five hundred thousand dollars (\$500,000.00) policy limit.
2. Waiver of Workers Compensation Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, RDA, its officers, officials, employees, and volunteers for losses paid under the terms of the policy that arises from the work performed by the names insured for or on behalf of the City or RDA.
3. Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages for personal injury, including accidental death, as well as claims for property damages which may arise from operation under this Agreement, whether such operations be by Developer, any subcontractor, or anyone directly or indirectly employed by either of them in such manner as to impose liability on the City or RDA. The amounts of such insurance shall be not less than the following limits:
 - a) General Aggregate Limit – two million dollars (\$2,000,000.00); Personal and Advertising Injury Limit (per person/organization) – two million dollars (\$2,000,000.00);
 - b) Bodily Injury and Property Damage – two million dollars (\$2,000,000.00) per occurrence;
 - c) Fire Legal Liability Damage Limit – one hundred thousand dollars (\$100,000.00) per occurrence; and
 - d) Medical Expense Limit – ten thousand dollars (\$10,000.00) per person.
4. Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement from claims or damages associated with operations of owned, hired, and non- owned motor vehicles. The amounts of such insurance shall be not less than the following limits:
 - a) Bodily Injury – two hundred fifty thousand dollars (\$250,000.00) per person; and
 - b) One million dollars (\$1,000,000.00) per occurrence; and Property Damage – two hundred fifty thousand dollars (\$250,000.00) per occurrence.

5. Umbrella Coverage. Coverage shall protect Developer and any subcontractor during the performance of work covered by this Agreement with limits of one million dollars (\$1,000,000.00) for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Paragraphs III. N. 1. to III N. 3. above.
6. Builder's Risk Insurance. Before commencing construction of any improvements on the Property and during any construction activities contemplated by this Agreement, Developer shall obtain and keep in full force and effect and all builders risk insurance policy for all portions of the Property with coverage equal to the total amount of the construction contracts for all such construction activities. Nothing in this Agreement is intended to relieve Developer of its obligation to perform under this Agreement and, in the event of loss, Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.
7. Fire and Casualty Insurance. Developer shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount equal to the assessed value of such improvements. In the event of loss the Developer shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

O. General Indemnity.

1. Protection Against Losses. Developer shall indemnify, defend and hold harmless the City, RDA, and their respective officers, employees, agents, attorneys, insurers and the successors and assigns of all of the foregoing, from any and all liabilities, claims, losses, damages, judgments or awards, costs or expenses, including reasonable attorneys' fees, of whatsoever nature and by whomsoever asserted, whether asserted by a third party or by a party to this Agreement (hereinafter "Losses"), directly or indirectly, arising out of, resulting from or in any way connected with:
 - a) Any breach by Developer of the terms of this Agreement;
 - b) Any non-compliance with laws, ordinances, rules or regulations applicable to Developer's obligations under this Agreement; or
 - c) Any governmental, regulatory or other proceedings to the extent any such proceedings result from Developer's failure to comply with its obligations under this Agreement or otherwise.
2. Indemnification Procedures. Developer shall promptly assume full and complete responsibility for the investigation, defense, compromise and settlement of any claim, suit or action arising out of or relating to the indemnified matters following written notice thereof from the City or RDA, which notice shall be given by the City or RDA within ten (10) days of their knowledge of such claim, suit or action. Failure to provide such timely notice shall not eliminate Developer's indemnification obligations to the City and RDA unless, and only to the extent to which, such failure has substantially prejudiced Developer. Notwithstanding the foregoing, in its sole discretion and at its expense, the City and RDA may participate in or defend or prosecute, through their own counsel(s), any claim suit or action for which either of them is entitled to indemnification by Developer; provided, however, that if the City or RDA is advised in writing by its legal counsel that there is a conflict between the positions of Developer and City or RDA, as appropriate, in conducting the defense of such action or that there are legal defenses available to the City or RDA different from or in addition to those available to Developer, then counsel for the City or RDA, at Developer's expense, shall be

entitled to conduct the defense only to the extent necessary to protect the interests of the City or RDA. Developer shall not enter into any compromise or settlement without the prior written consent of the City or RDA, as appropriate, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against the City or RDA shall be reasonable grounds for the City or RDA to refuse to provide written consent to a compromise or settlement. If Developer does not assume the defense of such claim, suit or action, Developer shall reimburse the City and RDA for the reasonable fees and expenses of counsel(s) retained by the City and by RDA, and shall be bound by the results obtained by the City and RDA; provided, however, that no such claim, suit or action shall be settled without Developer's prior written consent, which consent shall not be unreasonably withheld. The absence of a complete and general release of all claims against Developer shall be reasonable grounds for Developer to refuse to provide written consent to a compromise or settlement.

IV. CONDITIONS PRECEDENT TO OBLIGATIONS OF CITY AND RDA

The City's and RDA's obligations under this Agreement are conditioned upon the following:

- A. Existence. Developer shall have provided City and/or RDA a certified copy of its organizational documents and a certificate from the Department of Financial Institutions for the State of Wisconsin indicating Developer's existence and good standing.
- B. Incumbency; Due Authorization. Developer shall have provided a certificate of incumbency and resolutions of the company, demonstrating Developer has been duly authorized to enter into this Agreement and authorizing the person signing this Agreement to execute and deliver it to the City and/or RDA, and to bind Developer to its terms.
- C. No Violation or Default. Developer shall not be in violation of any of its governing documents or other contracts subject to this Agreement or of any other agreement between Developer and the City and/or RDA.
- D. Insurance. Developer shall have delivered to the City and/or RDA certificates of all insurance required under this Agreement.

V. CONDITIONS PRECEDENT TO OBLIGATIONS OF DEVELOPER

The obligations of Developer under this Agreement are conditioned upon the following:

- A. Due Authorization. The City Council shall consent to the City entering into this Agreement and shall authorize the person(s) signing this Agreement to execute and deliver it to Developer and to bind the City to its terms. All actions required to authorize RDA to enter into this Agreement shall have been taken and evidence of such actions, including authorization of the person signing this Agreement on behalf of RDA shall have been provided to Developer.

VI. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Developer represents and warrants to the City and RDA as follows:

- A. No Material Change in Documents. All contract documents and agreements have been furnished to the City and RDA, as the case may be, and are true and correct and there has been no material change in any of the same.
- B. No Material Change in Developer Operations. There has been no material change in the business operations of Developer since the date the parties began negotiation to enter into this Agreement.
- C. Compliance with Zoning. The Property is currently zoned for commercial and retail uses and Developer shall obtain a Planned Unit Development Overlay zoning designation for the requested temporary uses described in this Agreement. If granted, the Developer shall ensure that it conforms and will continue to conform at all times and in all respects with applicable zoning and land division laws, rules, regulations and ordinances.
- D. Payment. Developer shall pay for all work performed or materials furnished for the Project when and as the same become due and payable. Developer shall not suffer any construction or other involuntary lien to be imposed upon the Property, except for liens for claims to payment that are subject to a bona fide dispute, and, in that case, such liens shall be removed by Developer posting bond or other security, paying one hundred and twenty percent (120%) of the lien claimed into court, escrowing funds or promptly taking other steps to remove the lien of record. Developer shall pay all other obligations relating to the Project, including all creditors holding liens or mortgages against the Property when and as the same become due. Developer will pay all taxes and assessments levied against the Property when and as the same become due.
- E. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City or RDA pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.
- F. Good Standing. Developer is a limited liability company organized and existing in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business.
- G. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by Developer hereunder have been duly authorized by all necessary company action of Developer and constitute valid and binding obligations of Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
- H. No Conflict. The execution, delivery, and performance of the obligations of Developer pursuant to this Agreement will not violate or conflict with the Articles of Organization or Operating Agreement of Developer or any indenture, instrument or material agreement by which Developer is bound, nor will the execution, delivery, or performance of obligations of Developer pursuant to this Agreement violate or conflict with any law applicable to Developer.
- I. No Litigation. There is no litigation or proceeding pending or threatened against or affecting Developer or the Property that would adversely affect the Project, Developer or the priority or enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

- J. No Default. No default, or event that with the giving of notice or lapse of time or both would be a default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which Developer is a party or an obligor.
- K. Compliance with Laws and Codes. The Project shall conform and comply in all respects with all applicable laws, rules, regulations and ordinances, including without limitation, all building codes and ordinances of the City. Developer shall comply with, and shall cause the Project to be in compliance with all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances.
- L. Fees or Commissions. Neither the City nor RDA shall be liable for any broker fees or commissions incurred by Developer in connection with the Property or any transactions contemplated by this Agreement.
- M. No Objection to Property Assessment. Prior to termination of this Agreement, Developer shall not file an objection to real or personal property assessment as provided under §70.47(7)(a), Wis. Stats.

VII. DEFAULT

- A. Developer Default. Each of the following shall be an Event of Default by Developer:
 - 1. Failure to comply with PUD. Developer fails to comply with any of the obligations and terms of the Planned Unit Development overlay zoning designation. Such default shall automatically terminate the PUD and this Agreement without further notice to the Developer.
 - 2. Failure to Abide by Other Terms. Developer fails to perform any other of its obligations under this Agreement and such failure continues for a period of thirty (30) days from the date of notice from the City or RDA; provided, however, if such cure cannot reasonably be accomplished within such thirty (30) days and the delay in cure does not materially impair the financial interests of the City or RDA, and if Developer promptly commences cure within the initial thirty (30) days and diligently pursues cure thereafter, Developer shall have a reasonable time, not to exceed sixty (60) days after the initial thirty (30) days, for a total of ninety (90) days to cure;
 - 3. Misrepresentation. Any representation or warranty of Developer in this Agreement or any agreement contemplated by this Agreement is untrue in any material respect;
 - 4. Fraud and Other Illicit Behavior. Developer or any of its members is convicted of, pleads no contest to, or enters into any other agreement other than a dismissal with no conditions as to any allegation of:
 - a) Fraud; or
 - b) Indecent or illicit behavior that in the determination of the City or RDA would threaten the reputation of Developer or its ability to complete the Project according to the requirements of this Agreement;
 - 5. Insolvency. Developer or any guarantor of the obligations of Developer hereunder is insolvent or becomes the subject of a petition in bankruptcy, a receivership, a composition or any other proceeding designed for the benefit of creditors generally that is not dismissed within sixty (60) days of the date of filing;

6. Involuntary Liens. Any lien is imposed upon the Property involuntarily due to the acts or omissions of Developer and such lien is not removed within sixty (60) days of it being imposed upon the Property.
- B. Remedies Upon Default. In the event of the occurrence of an Event of Default by Developer, the City may in its discretion:
1. Termination. Terminate this Agreement without further notice to Developer;
 2. Offset and Recoupment. Offset or recoup against any amounts that may then or thereafter come due from the City or RDA to Developer, whether under this Agreement or otherwise, an amount of damages reasonably estimated by the City or RDA resulting from Developer's breach;
 3. Specific Performance. Sue for specific performance;
 4. Sue for Damages. Sue for all damages caused by the Event of Default;
 5. Other Remedies. Pursue any other remedies available to the City or RDA at law or in equity;
 6. Interest. Collect interest on all delinquent amounts at the rate of twelve percent (12%) per annum from the date such amount was due; and
 7. Costs and Attorney Fees. Collect all costs and fees, including reasonable attorney fees incurred by the City and RDA, or either of them, by virtue of the Event of Default.
- C. City or RDA Default. Developer shall have all rights and remedies available under law or equity with respect to any failure of the City and/or RDA to perform their obligations under this Agreement, but only after providing the City and RDA notice of such default and a failure by the City and/or RDA to commence attempts to cure such default within the thirty (30)-day notice period. If the City and/or RDA, as appropriate, commences cure within the thirty (30)-day notice period and thereafter reasonably and continuously takes action to complete such cure, then the failure to perform shall not be an Event of Default.
- D. Limitation of Damages. The foregoing notwithstanding, none of the parties shall be liable to any other party for any incidental, consequential, indirect, punitive or exemplary damages. All claims and damages asserted against the City or RDA shall be subject to statutory protections of municipalities and their officials and employees, including the immunity and limitations set forth in §893.80 Wis. Stats.
- E. No Waiver. Any delay in instituting or prosecuting any actions or proceedings or otherwise asserting the rights granted in this Agreement, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way, nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- F. Remedies Cumulative. Except as expressly provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise of it, at the same or different times, of any other such remedies for any other default or breach by any other party.

VIII. TERMINATION

- A. Date of Termination. This Agreement shall terminate upon the earliest of the date:
1. This Agreement is terminated because of an Event of Default; or
 2. The parties agree in writing to terminate this Agreement.
- B. Survival of Certain Provisions. Sections III. F., III. G., III. K. 2., III.K 3., III. L., III. M. 2., III. O., IV. A., IV. B., IV. C., IV. D., VI. C., VI. D., VI. E., VI. G., VI. K., VI. L., VII. B., VII. D., VII. E., VII. F., IX. B., IX. C., IX. G., IX. J., IX. M., IX. O., IX. P., and IX. R. shall survive the termination of this Agreement.

IX. MISCELLANEOUS PROVISIONS

- A. No Effect Until Executed. The terms of this Agreement shall have no force and effect unless and until this Agreement is executed by all Parties.
- B. Assignment. Developer may not assign its rights under this Agreement without the express prior written consent of the City and RDA, until the obligations of the Developer hereof are fully performed and satisfied. Thereafter, this Agreement may be assigned by Developer only upon the prior, written consent of the City and RDA, which shall not be unreasonably withheld.
- C. Nondiscrimination. In the performance of work under this Agreement, Developer shall not discriminate against any employee or applicant for employment nor shall the Property or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of the basis of race, color, national or ethnic origin, ancestry, age, religion or religious creed, disability or handicap, sex or gender (including pregnancy), gender identity and/or expression, sexual orientation, military or veteran status, genetic information, or any other characteristic protected under applicable federal, state or local law. Retaliation is also prohibited. The construction and operation of the Property shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.
- D. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or RDA have any personal liability arising out of this Agreement, and Developer shall not seek or claim any such personal liability.
- E. No Personal Interest of Public Employee. No official or employee of the City or RDA shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities that are parties to this Agreement. No official or employee of the City or RDA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or RDA, or for any amount that becomes due to the Developer or its successors under this Agreement.
- F. Relationship of Parties. The City and the RDA are not partners or joint venturers with Developer in the Project or otherwise. Under no circumstances shall the City or RDA be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third party beneficiaries of this Agreement.
- G. Force Majeure. No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent,

whether of the class of causes herein above enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. The foregoing notwithstanding, a Force Majeure event may not be used to avoid an Event of Default if the delay caused by the Force Majeure event exceeds ninety (90) days from the date the event occurred.

- H. Parties and Survival of Agreement. Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.
- I. Time. TIME IS OF THE ESSENCE with regard to all dates and time periods set forth herein. In the event this Agreement is not executed by both Parties prior to DECEMBER 31, 2021, any and all approvals granted pursuant hereto or in conjunction herein by the City which are contemplated as part of this Agreement shall automatically expire.
- J. Notices. All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given:
 - 1. Upon receipt if sent via electronic mail (e-mail) or facsimile; or
 - 2. Upon receipt if hand-delivered to the party or person intended; or
 - 3. One (1) business day after deposit with a nationally-recognized overnight commercial courier service, air bill pre-paid; or
 - 4. Three (3) business days after deposit in the United States Postal Service (USPS), postage prepaid, by certified mail, return receipt requested.

All correspondence shall be addressed by name and address to the party or person intended as follows:

To the City: City of Green Bay
 Attn: City Clerk
 100 North Jefferson Street
 Green Bay, WI 54301
 e-mail: celestine.jefferies@greenbaywi.gov
 facsimile: 920-448-3010

To RDA: Redevelopment Authority of the City of Green Bay
 Attention: Executive Director
 100 North Jefferson Street, Room 608
 Green Bay, WI 54301
 e-mail: neil.stechschulte@greenbayi.gov
 facsimile: 920-448-3426

To the Developer: Martin Neufeld LLC
 Attention: _____
 Insert Address Here
 Insert Address Line 2 Here
 Insert Phone

Insert email

with a copy to: Attorney Ryan D. Krumrie
Hager, Dewick & Zuengler, S.C.
200 South Washington Street, Suite 200
Green Bay, WI 54301
(920) 430-1900
rkrumrie@hdz-law.com

The foregoing addresses shall be presumed to be correct until notice of a different address is given according to this paragraph.

- K. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.
- L. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- M. Execution in Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature thereto and hereto were upon the same instrument.
- N. Severability. If any provision of this Agreement shall be determined to be unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained unenforceable to any extent whatever.
- O. Recording of Agreement. The City may record this Development Agreement or a Memorandum of this Agreement with the Register of Deeds for Brown County, Wisconsin. Upon request of the City, Developer shall execute and deliver to the City any such Memorandum or any other document in connection with such recording.
- P. Priority Over Subsequent Liens. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. As such, the current and all future owners of the Property shall be subject to all of the obligations stated herein. Owner warrants and represents that there will not be any mortgage or any other lien against the Property at the time this Development Agreement is recorded other than mortgages for the purchase of the Property and to finance costs of constructing the Project. This Development Agreement shall have precedence and shall take priority over any mortgage, lien or other encumbrance that may be recorded against the Property (or any portion thereof) after the recording of this Development Agreement (or Memorandum thereof).
- Q. No Construction Against Drafter. This Agreement is a product of the negotiation and drafting of attorneys for the parties, and, as such, the rule of construing ambiguous contracts against the drafter shall not apply to this Agreement.
- R. Venue. The venue for any proceeding involving the negotiation, drafting, interpretation or enforcement of this Agreement shall be the circuit court for Brown County, Wisconsin, all other venues being inappropriate for any such proceeding.

- S. Signatures and Counterparts. Electronic, facsimile and photocopy signatures shall have the same effect as original signatures.

[Signature pages follow]

EXHIBIT A
Property Map

EXHIBIT B
Preliminary Concept Plan