

**CITY OF EAU CLAIRE, WISCONSIN
TAX INCREMENTAL DISTRICT
DEVELOPMENT AGREEMENT -
COMMUNITY ARTS FACILITY**

_____, 2015

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List of Exhibits:

- Exhibit A - General Development Plan
- Exhibit B - Site Plan
- Exhibit C - Description of Public Improvements
- Exhibit D - City Expenditures (Estimated)
- Exhibit E - Developer Cost
- Exhibit F - Private Infrastructure
- Exhibit G - Easement and Conveyance Illustration
- Exhibit H - Funding Schedule
- Exhibit I - Form City Guaranty

Exhibit J - Scope of Services

**CITY OF EAU CLAIRE, WISCONSIN TAX INCREMENTAL DISTRICT
DEVELOPMENT AGREEMENT – COMMUNITY ARTS FACILITY**

This Development Agreement is made this ___ day of November, 2015, by and among Haymarket Concepts, LLC, a Wisconsin limited liability company (the “Developer”), Eau Claire Confluence Arts, Inc., a non-stock, non-profit, corporation organized under the laws of the State of Wisconsin (the “Owner”), and the City of Eau Claire, a municipal corporation of the State of Wisconsin, located in Eau Claire County, Wisconsin (the “City”), collectively the “Parties”.

RECITALS

WHEREAS, the Developer owns certain parcels of real estate along the Chippewa River in the downtown area of the City of Eau Claire that it wishes to develop;

WHEREAS, the Developer wishes to erect a community arts facility with associated classrooms, meeting rooms, common spaces, and associated facilities (“CAF”) on part of the Developer’s land for sale to Owner;

WHEREAS, the proposed site is believed to have development issues, including inadequate soils, potential environmental hazards, and flood plain development limitations;

WHEREAS, the proposed development will not occur but for assistance from the City being granted;

WHEREAS, the properties are currently located within the City’s Tax Incremental Financing District No. 10 (“TID #10”);

WHEREAS, the Developer is willing to provide the City certain access to its property to proceed with the construction of the infrastructure improvements for the Development Property

and the City is similarly willing to provide Developer certain access to its property to proceed with the construction of the infrastructure improvements for the Development Property;

WHEREAS, the Development (as defined below) contemplated by this Agreement is necessary and desirable to serve the interests of the City and its residents by promoting the arts, economic development and re-development of the surrounding area, increasing pedestrian traffic, and enhancing the overall desirability of the area, thereby expanding the tax base of the City and providing additional development and employment opportunities;

WHEREAS, the State of Wisconsin, University of Wisconsin System Board of Regents (“University”) has been in the process of locating and planning for a state-of-the-art performing arts facility for the University of Wisconsin-Eau Claire (“UWEC”);

WHEREAS, the City, UWEC, and the University agree that a combined facility would offer both the City and UWEC better facilities at a lower cost than if a separate facility were built, owned, and operated for each such entity;

WHEREAS, the CAF will be developed and constructed by Developer with the intent and objective of transferring and selling the same to Owner, to be operated as set forth herein;

WHEREAS, the Confluence Council, Inc., a Wisconsin non-stock corporation (“Confluence Council”), was formed and constituted, in consultation with the City, as a separate non-profit corporation to provide operational governance for the CAF;

WHEREAS, the operations of the Owner and of the Confluence Council are for the direct benefit of the City as they will enhance and promote the public health and welfare, will encourage business to locate in and around downtown Eau Claire, and will generally promote the public welfare and economic development and growth;

WHEREAS, the Development is an arts facility intended for broad public use and enjoyment funded with and made possible by donations from the public and capital and operational support by public entities, the Development shall be designed, constructed, and operated in a manner that is as open and accessible to the public as feasible and consistent with sound non-profit business fiscal and operational practices; and

WHEREAS, under certain terms and conditions, the City is willing to provide support to Developer, Owner, and Confluence Council.

NOW THEREFORE, in consideration of the recitals, the terms and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1 - DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

Section 1.1 Agreement. This document and all its component parts, as the same may be amended, restated or modified from time to time.

Section 1.2 Annual VEC Contribution. The obligation of the City to ensure that: (a) on April 15, 2016, and on April 15, 2017, an amount equal to at least One Hundred Thousand Dollars (\$100,000) shall be paid to the Confluence Council through the City's agreement with Visit Eau Claire as outlined in Section 2.1(b) for the Confluence Council's share of the operating expenses and reserves for the Development; (b) on April 15, 2018, an amount equal to at least Two Hundred Thousand Dollars (\$200,000) shall be paid to the Confluence Council in accordance with the City's agreement with Visit Eau Claire or that Visit Eau Claire issues

the VEC Guaranty; and (c) commencing on April 15, 2019, and continuing thereafter on each annual anniversary of said date through April 15, 2025, an amount equal to at least Two Hundred Thousand Dollars (\$200,000) shall be paid to the Confluence Council in accordance with the City's agreement with as outlined in Section 2.1(b) for the Confluence Council's share of the operating expenses and reserves for the Development.

Section 1.3 Annual Building Reserve Payment. The annual payment from the Confluence Council to the Owner of Two Hundred Thousand Dollars (\$200,000) for deposit into the Building Reserve Fund which payment shall commence on December 31 of the first full calendar year following issuance of an occupancy permit for the Development and shall continue on December 31 of each year thereafter.

Section 1.4 Annual Supplemental Reserve Payment. The annual payment from the Confluence Council to the Owner of One Hundred Thousand Dollars (\$100,000) for deposit into the Supplemental Reserve Fund which payment shall commence on December 31 of the first full calendar year following issuance of an occupancy permit for the Development and shall continue on December 31 of each year thereafter until such time as the balance in the Supplemental Reserve Fund totals One Million Dollars (\$1,000,000).

Section 1.5 Building Reserve Fund. A reserve fund established by the Owner and funded by Confluence Council to be used to fund such capital expenditures, defined in accordance with generally accepted accounting principles (GAAP), as may be required to maintain the Development from time to time.

Section 1.6 City Expenditures. Such expenditures as will be incurred by the City in fulfillment of its obligations under this Agreement, which expenditures are set forth on attached Exhibit D.

Section 1.7 City Guaranty. That certain guaranty executed by the City, in form and substance satisfactory to the Developer, Owner, and the City and attached hereto as Exhibit I, pursuant to which the City guarantees all obligations and responsibilities of the Confluence Council and Owner in connection with the operation and maintenance of the Development, excluding only such obligations and responsibilities as are the direct obligations and responsibilities of the State of Wisconsin or the University (on account of their use of a portion of the Development) up to a cumulative maximum of One Million Dollars (\$1,000,000); provided, however, that, before the City Guaranty may be enforced to pay creditors of the Confluence Council or Owner all funds and guaranties listed in Section 8.5(a) shall first be exhausted in the order set forth therein.

Section 1.8 County Contribution. The contribution to be made by the County of Eau Claire to or for the benefit of the Owner to comprise a portion of the Local Contribution, which contribution shall be not less than Three Million Five Hundred Thousand Dollars (\$3,500,000) (or such other lesser amount if the total cost of the Development is less than the Expected Cost after the Developer or Owner has taken such steps as may be appropriate under the circumstances to Value Engineer the Development).

Section 1.9 Design Steering Committee. The committee comprising representatives of the Developer, Owner, UWEC, Confluence Council, and City who discuss and review the design and construction processes.

Section 1.10 Developer Cost. The amount expended on the Development by Developer or Owner, including, but not limited to amounts expended for acquisition of the Development Property, site preparation, demolition of existing buildings, soft costs, real estate taxes, interest and financing costs, and construction of the Development and the Private Infrastructure; provided, however, that, Developer Cost shall not include the cost of construction of any portion of the Development that would be deemed a recreational or community building under Wis. Stat. Sec. 66.1105(2)(f) 2.a. The Developer's estimate of Developer Cost is set forth on Exhibit E.

Section 1.11 Developer Incentive Payment. The payment made by the City to or for the benefit of the Owner to be applied by Owner or for Owner's benefit to reimburse Developer and Owner for Developer Cost, which amount shall be equal to Five Million Dollars (\$5,000,000).

Section 1.12 Development. The CAF and all offices, classrooms, and other facilities related thereto, which shall include a larger theater with a normal seating capacity of at least 1,200 people, a flexible theater with a normal seating capacity of at least 400 people, a presentation and rehearsal room, and associated staging and storage areas, backstage areas, concessions, and public areas, including restrooms (supplied at least to state code and Governmental Requirements) and other associated facilities, as illustrated on the Site Plan and General Development Plan, and as generally outlined in the Scope of Services, and at the Expected Cost (or such other lesser amount if the total cost of the Development is less than the Expected Cost after the Developer or Owner has taken such steps as may be appropriate under the circumstances to Value Engineer the Development).

Section 1.13 Development Property. The real property depicted on the Site Plan as the proposed site of the Development, which property is owned by the Developer or will be transferred to Developer by operation of this Agreement, and is to then be sold to the Owner.

Section 1.14 Expected Cost. The expected total cost for the Development Property, architectural services, engineering services, and construction of the Development, including in-kind contributions, which amount is Forty Million Dollars (\$40,000,000).

Section 1.15 Force Majeure. The occurrence of any of the following which results in a delay, but only to the extent beyond the reasonable control of Developer or Owner: (a) acts of God, (b) emergency conditions (including weather conditions) incompatible with safety or good quality workmanship, (c) strikes, shortages, or unavailability of labor or materials, (d) lockouts or labor difficulty, (e) sabotage, accidents, riots, or civil commotion, (f) acts of war, (g) injunction or other legal order preventing Developer or Owner from acting in accordance with this Agreement, or (h) other similar causes.

Section 1.16 General Development Plan. The general development plan for the Development, attached hereto as Exhibit A. The General Development Plan is the general development plan approved by the City. It is intended that the General Development Plan will change as the Development proceeds and will be changed after consultation with the Design Steering Committee, approval of the Developer or Owner, and satisfying all Governmental Requirements.

Section 1.17 Governmental Requirements. Those approvals and municipal zoning, building, and such other lawful rules and ordinances applicable to the Development as outlined for reference but without limitation in Sections 4.1, 4.2, and 4.3 of this Agreement.

Section 1.18 Haymarket Plaza. The public plaza to be constructed by the City on the Haymarket Plaza Site, which plaza shall incorporate features, landscaping, and site amenities, including but not limited to the following with the specifics, except as outlined herein, determined by the City: pedestrian walkways; pedestrian lighting; connections to the Riverwalk Trail; seating; trash and recycling collectors; and bicycle racks, in each case, designed and constructed to a standard consistent with the features, landscaping, and other site amenities found in Eau Claire's Phoenix Park.

Section 1.19 Haymarket Plaza Site. The parcel adjacent to the Development Property that is owned by the City and identified on the Site Plan as "Haymarket Square" less the Haymarket Transfer Parcel to be transferred to Developer and which shall become part of the Development Property upon acceptance thereof by Developer or Owner, as applicable.

Section 1.20 Haymarket Transfer Parcel. That portion of City owned property of approximately 9,900 square feet generally northerly of the Development Property as more specifically described and depicted in Exhibit G and that the City shall transfer "as is" without warranty or representation said property to Developer for the benefit of Owner and the construction of the Development.

Section 1.21 Local Contribution. That portion of Developer Cost to be paid by the Owner utilizing funds received by it or by the Developer (on Owner's behalf), from the County of Eau Claire, New Markets Tax Credits (sometimes referred to herein as "NMTC(s)"), and various philanthropic donors and grants, all as set forth in this Agreement, which funds shall be in an amount equal to at least Twenty Million Dollars (\$20,000,000) (or such other lesser amount if the total cost of the Development is less than the Expected Cost after the Developer or

Owner has taken such steps as may be appropriate under the circumstances to Value Engineer the Development).

Section 1.22 NMTC Contingency Loan. The loan from the City to the Owner of an amount equal to Three Million Dollars (\$3,000,000) plus any costs of issuance added thereto and less the aggregate value of NMTC proceeds actually received by the Developer as of July 31, 2017.

Section 1.23 Operations Reserve Fund. A reserve fund established by the Confluence Council to be used to pay operational expenses of the Development if revenues generated by the Development and expected ongoing private philanthropic support of Confluence Council programming and operations related to the Development are insufficient for such purpose and the Confluence Council is unable to satisfy its obligations as and when the same become due.

Section 1.24 Primary Guaranties. Those certain guaranties executed by the Primary Guarantors, in form and substance satisfactory to the City, Developer, and Owner, pursuant to which the Primary Guarantors guarantee obligations and responsibilities of the Confluence Council relating to operation and maintenance of the Development, in an amount equal to the Primary Guaranty Requirement then in effect, excluding obligations and responsibilities that are the direct obligations and responsibilities of the University on account of the UWEC's use of the Development. The Primary Guaranties may only be enforced if the Confluence Council is unable to satisfy its obligations with respect to the operation and management of the Development as and when the same become due, and has exhausted its own funds, its Operations Reserve Fund, and the Supplemental Reserve Fund. If the Primary

Guaranties are comprised of multiple individual Primary Guaranties, each such guaranty shall guaranty obligations of the Confluence Council in an amount equal to or greater than One Hundred Thousand Dollars (\$100,000).

Section 1.25 Primary Guarantors. Individuals and entities with a demonstrably sound financial condition, integrity, and historical ability to satisfy obligations as and when the same become due, as determined by the City, Developer, and Owner.

Section 1.26 Primary Guaranty Requirement. The minimum aggregate value of all issued and outstanding Primary Guaranties, which shall initially be equal to One Million Dollars (\$1,000,000), and shall be reduced only in such amounts and at such times as the requirements set forth in Section 8.5(c) are met.

Section 1.27 Private Infrastructure. The Private Infrastructure includes those improvements listed in Exhibit F that are located on, under, or above the Development Property and are (a) associated with the Development or (b) required by Governmental Requirements as necessary for construction, support, and maintenance of the Development, except those items expressly identified as Public Improvements herein.

Section 1.28 Public Improvements. The improvements (excluding those improvements defined as Private Infrastructure) that are to be constructed, re-constructed, upgraded, and maintained by the City in conjunction with the Development, specifically: road improvements and public sidewalks; storm and sanitary sewer mains and service stubs in the right of way; water mains and service stubs for fire protection and potable water supply; other City owned utility improvements in the streets adjoining the Development Property or in the

Haymarket Plaza Site; ornamental street lighting; Haymarket Plaza; and the Riverwalk Trail; all subject to Governmental Requirements and as more particularly described in Exhibit C.

Section 1.29 Reserve Fund(s). The term Reserve Fund(s) shall mean the Operations Reserve Fund and the Supplemental Reserve Fund, and shall not include the Building Reserve Fund.

Section 1.30 Riverwalk Trail. The pedestrian trail and related fixtures, approaches, equipment, and appurtenances, including, but not limited to trail lighting, landscaping, and riverside retaining wall and railing(s), to be constructed by the City along the Chippewa River embankments bordering the Development Property and the Haymarket Plaza Site, which shall be operated and maintained by the City as a pedestrian, non-motorized, passive recreational trail for the benefit of the public.

Section 1.31 Scope of Services. The scope of services for the Development attached hereto as Exhibit J.

Section 1.32 Site Plan. The site plan attached hereto as Exhibit B.

Section 1.33 State Commitment. The commitment of the State of Wisconsin to provide funding for the Development in an amount equal to but not less than Fifteen Million Dollars (\$15,000,000) (or such other lesser amount if the total cost of the Development is less than the Expected Cost after the Developer or Owner has taken such steps as may be appropriate under the circumstances to Value Engineer the Development).

Section 1.34 Supplemental Reserve Fund. A reserve fund established by the Owner and funded with the initial Supplemental Reserve Contribution set forth in Section 2.4 and with Annual Supplemental Reserve Payments from the Confluence Council, which fund

shall be used to pay operational expenses of the Development if revenues generated by the Development are insufficient for such purpose, the Confluence Council is unable to satisfy its obligations as and when the same become due, and the Confluence Council has exhausted the Operations Reserve Fund.

Section 1.35 Supplemental Reserve Requirement. The term Supplemental Reserve Requirement shall mean an amount equal to the sum of the initial Supplemental Reserve Contribution (as set forth in Section 2.4) plus all Annual Supplemental Reserve Payments as have become due and payable since issuance of an occupancy permit for the Development, up to a maximum of One Million Dollars (\$1,000,000).

Section 1.36 Value Engineer. The process by which the Developer or Owner after consulting with the Design Steering Committee may adjust the construction plans for the building in response to a reduction in the budget for the Development below the Expected Cost. Such Value Engineering may include square footage reductions, use of alternative materials, reduction or elimination of any expenditures associated with historic replication, and such other, similar techniques as the Developer or Owner may determine appropriate and in accordance with all Governmental Requirements.

Section 1.37 VEC Guaranty. That certain guaranty executed by Visit Eau Claire, in form and substance satisfactory to the City, Developer, and Owner and in an amount equal to Two Hundred Thousand Dollars (\$200,000), pursuant to which Visit Eau Claire shall guarantee obligations and responsibilities of the Confluence Council relating to operation and maintenance of the Development excluding obligations and responsibilities that are the direct obligations and responsibilities of the University or UWEC on account of their use of the

Development. The VEC Guaranty may only be enforced if the Confluence Council is unable to satisfy its obligations with respect to the operation and management of the Development as and when the same become due, and has exhausted its own funds, its Operations Reserve Fund, and the Supplemental Reserve Fund.

Section 1.38 Visit Eau Claire. The Eau Claire Area Convention and Visitors Bureau, Inc. (d/b/a Visit Eau Claire).

ARTICLE 2 - THE TRANSACTION

Section 2.1 City Payments.

(a) The Developer Incentive Payment in the amount of Five Million Dollars (\$5,000,000) shall become payable by the City to or for the benefit of the Owner contingent upon the following and then on the schedule attached hereto as Exhibit H. The Developer Incentive Payment shall be due from the City according to the terms and conditions of this Agreement and if and only if satisfactory proof of the following are provided to the City from the Developer or Owner:

(1) Evidence of fund availability, through the Local Contribution, Developer Incentive Payment, and State Commitment, in an amount sufficient to substantially construct the Development for the Expected Cost;

(2) An executed construction contract for the Development;
and

(3) Evidence demonstrating substantial construction of the footings and building foundation of the Development.

(b) The City entered into a Tourism Promotion and Development Agreement (“Tourism Agreement”) with Visit Eau Claire to help ensure payment of the Annual VEC Contribution through December 31, 2025. The Tourism Agreement provides for an initial term which continues through December 31, 2020, and an option to continue the Tourism Agreement through December 31, 2025. Notwithstanding the foregoing, the City agrees that in the event that the Tourism Agreement terminates, for any reason, prior to December 31, 2025, the City shall continue making the Annual VEC Contribution to the Confluence Council for the Confluence Council’s share of the operating expenses and reserves for the Development through December 31, 2025, but only with room tax revenue allocated to and paid exclusively through a tourism commission or tourism entity. The City shall have no obligation to make or ensure the Annual VEC Contribution after December 31, 2025 but the City shall use best efforts to ensure such annual support for the Development continues after December 31, 2025.

Section 2.2 Completion of Development. Subject to Force Majeure on the condition that Developer or Owner furnishes written notice to City immediately upon becoming aware of the occurrence of any Force Majeure condition, the Developer or Owner shall use best efforts to substantially complete, on or before December 31, 2018, the construction of the Development and private infrastructure improvements on and in the Development Property.

Section 2.3 Operations Reserve Fund Contributions.

(a) On or before December 31, 2017, a contribution to the Operations Reserve Fund shall be made in the amount of at least Two Hundred Fifty Thousand Dollars (\$250,000) for pre-opening operational expenses.

(b) On or before a date that is within thirty (30) days of issuance of an occupancy permit for the Development, a contribution to the Operations Reserve Fund shall be made in the amount of at least Two Hundred and Fifty Thousand Dollars (\$250,000) for post-opening operational expenses.

(c) The foregoing contributions shall be made from a source other than State, City, or County funds, provided, such other funding sources may include the Annual VEC Contribution.

Section 2.4 Initial Supplemental Reserve Fund Contribution. On or before a date that is within thirty (30) days of issuance of an occupancy permit for the Development, a contribution to the Supplemental Reserve Fund in the amount of at least Two Hundred and Fifty Thousand Dollars (\$250,000) shall be made from a source other than State, City, or County funds.

Section 2.5 Transfer and Exchange of Development Property.

(a) The Developer, Owner, and the City shall enter into such agreements, in form and substance satisfactory to both parties, regarding conveyance, transfer, or exchange, among the parties, of portions of the Development Property as may be necessary to establish an ownership pattern for the Development Property that is consistent with the placement of public infrastructure and private improvements thereon. This shall include the reaffirmation of the existing easement for the Riverwalk Trail and expansion of the same to include the “Easement Expansion Area” (in each case, as shown on Exhibit G-1), and, if the Development depicted on the Site Plan approved by the City includes encroachments into the Haymarket Plaza Site, may also include such transfers, easements, and licenses as may be necessary to accommodate said

encroachments subject to Governmental Requirements. All such transfers to be made pursuant to the mutual consideration and upon the terms and conditions of this Agreement however at no additional purchase price or cost of transfer to any Party.

(b) Prior to commencing construction of the footings and building foundation of the Development, the Developer will transfer its portion of the Development Property and assign its rights and obligations under any easements or licenses appurtenant thereto, to Owner. Accordingly, Owner is a party to this Agreement and will, prior to commencement of construction of the footings and building foundation of the Development, take title to that portion of the Development Property subject to this Agreement.

Section 2.6 Construction of Public Improvements. The City shall construct the Public Improvements, at the City's cost and expense, as set forth in Exhibit C. The Public Improvements will be completed on a schedule agreeable to Developer and Owner and shall be reasonably coordinated with the construction of the Development; provided, the required utility work and any work on Graham Avenue which abuts the Development shall be completed by December 31, 2017, and all Public Improvements shall be completed by December 31, 2018, unless otherwise agreed to in writing by the Parties and subject to Force Majeure. The City may not seek reimbursement of these costs from the Developer, the Development Property, the Confluence Council, or the Owner and specifically will not impose special assessments or special charges on the Development Property for the Public Improvements. For the avoidance of doubt, nothing in this Agreement shall limit the City's ability to seek reimbursement of these costs from independent and unrelated sources such as state or federal grants. As to those portions of the Public Improvements on the Development Property and Haymarket Plaza Site:

(a) Due to the size, nature of the contemplated development and nature and condition of the Development Property, the Parties recognize and agree that certain public improvements, usually confined to public rights of way, may need to be located outside the public rights of way to adequately serve the Development Property and Haymarket Plaza Site. The Parties further agree that the City, through its contractors and engineers, is the appropriate party to construct those portions of the Public Improvements.

(b) The Developer and Owner shall grant the City all permanent and construction easements reasonably deemed necessary by the City for the construction and maintenance of the Public Improvements to be located on the Development Property. The Public Improvements shall remain the property of the City.

(c) Subject to Section 5.2, the City and its agents and contractors may enter the Development Property for the purposes of constructing any Public Improvements to be located on the Development Property.

(d) The City shall construct the Public Improvements, at the City's cost and expense.

(e) The City shall furnish Owner with both hard copy and digital "as built" plans for the Public Improvements located on the Development Property and Haymarket Plaza Site. The Owner shall not impede the City's access to the Public Improvements except as expressly agreed by the City in writing.

(f) The City and the Owner will, in good faith, further coordinate work, work commencement date, and the like, so all Public Improvements are complete prior to the opening of the Development for occupancy and use.

Section 2.7 Construction of Development. As to the Development and Development Property the Developer and Owner shall construct the Development, at the Developer's and Owner's cost and expense, as set forth on Exhibits A and F, generally as set forth on Exhibit J, and in compliance with Governmental Requirements. The Development will be completed on a schedule agreeable to the Parties and shall be reasonably coordinated with the construction of the Public Improvements and the Development shall be completed by December 31, 2018, unless otherwise agreed to in writing by the Parties:

(a) Developer or Owner shall make timely application to the City for all construction easements and street and/or lane closures reasonably deemed necessary by Developer or Owner for the construction and maintenance of the Development, which the City shall promptly review and not unreasonably deny and which shall be subject to Governmental Requirements. This will further include the temporary closure of the Haymarket Plaza Site to the public and the consent of the City to Developer or Owner repositioning and storing equipment and materials on the Haymarket Plaza Site during the construction of the Development. Temporary closure of sidewalks or streets adjacent to the Development Property may also be necessary; subject to City approval and Developer and Owner compliance with terms of such temporary closures to allow for street maintenance, snow removal, and public use when construction conditions allow it to be safe and appropriate.

(b) Design and construction of the Development will be consistent with the policy of creating a facility open, accessible, and inviting to the public that integrates with the surrounding public spaces and private properties while striving to achieve a distinctive iconic

architectural presence and ensuring responsible and appropriate application of available resources. To that end:

(1) The design and building process will necessarily involve an on-going weighing and balancing of resources available to fund construction of the Development with functionality and public aesthetic appeal.

(2) The design and building process will include evaluation of locally sourced and natural materials, various glass and glass alternatives, as well as stone, brick, and manufactured materials in light of their functionality, energy efficiency, environmental impact, viewer/user appeal, and cost (both for material and installation cost differences). The design of the Development shall maximize glass and glass alternatives on the façade facing the Haymarket Plaza, and on the first floors of the façades facing Graham Avenue, and the Chippewa River with use of stone, brick, or like materials to the extent feasible and all as per Governmental Requirements.

(3) Owner and Developer represent that as of November 4, 2015, the design process has primarily focused on programming, been completed with input and advice from UWEC, the Eau Claire Regional Arts Council, Inc. (“ECRAC”), and the Confluence Council, and, as of such date, no decisions regarding exterior elevations, materials, or finishes have been made.

(4) The City will have the opportunity participate in and provide input in discussions regarding the design and building process as result of (A) its having a representative on the Design Steering Committee, (B) holding up to two (2) director positions on Owner’s board of directors and one (1) director position on the Confluence Council board of

directors, and (C) the various reviews of the project necessary that will be to satisfy Governmental Requirements.

(c) The Development shall remain the property of the Developer until such time as it is transferred to the Owner, subject to the State's reversionary right and the terms of this Agreement.

(d) The Developer, Owner and their respective agents and contractors may enter the City's property for the purposes of constructing the Development to be located on the Development Property.

(e) The Owner shall furnish City with both hard copy and digital "as built" plans for the Development located on the Development Property for any portion it contracts to build. The City shall not impede the access of Developer or Owner to the Development Property except as expressly agreed by the Developer or Owner in writing or by operation of Governmental Requirements.

Section 2.8 Construction of Private Infrastructure. As to the Private Infrastructure and Development Property the Developer and Owner shall construct the Private Infrastructure, at the Developer's and Owner's cost and expense, as set forth on Exhibits A and F, generally as set forth on Exhibit J, and in compliance with Governmental Requirements. The Development will be completed on a schedule agreeable to the Parties and shall be reasonably coordinated with the construction of the Public Improvements and the Private Infrastructure shall be completed by December 31, 2018, unless otherwise agreed to in writing by the Parties:

(a) Developer or Owner shall make timely application to the City for all construction easements, for temporary lane or street closures, and for temporary closure of the

Haymarket Plaza Site to the public as reasonably deemed necessary by Developer or Owner for the construction and maintenance of the Private Infrastructure to be located on the Development Property which the City shall promptly review and not unreasonably deny and which shall be subject to Governmental Requirements. The Private Infrastructure shall remain the property of the Developer until such time as it is transferred to the Owner, subject to the State's reversionary right and the terms of this Agreement. The City shall further grant a permit and temporary construction license to locate, use, and store materials and equipment on the Haymarket Plaza Site and, from time to time, on parts of Eau Claire Street, Gibson Street, and Graham Avenue upon Developer or Owner application, payment of permit fee and continued compliance with permit and license terms.

(b) The Developer, Owner and their respective agents and contractors may enter the City's property for the purposes of constructing the Private Infrastructure to be located on the Development Property consistent with the construction easements, permits, and license terms.

(c) The Owner shall furnish City with both hard copy and digital "as built" plans for the Private Infrastructure located on the Development Property. The City shall not impede the access of Developer or Owner to the Private Infrastructure except as expressly agreed by the Developer or Owner in writing or by operation of Governmental Requirements.

(d) Connection of the Private Infrastructure to the Public Improvements shall be made at a time agreeable to the City and under City supervision.

(e) The Developer or Owner shall construct the Private Infrastructure at the sole cost and expense of Developer or Owner, except as otherwise specifically set forth in this Agreement.

Section 2.9 Refuse, Storm Water Facility, Gibson Street, and Transformer Locations.

(a) The City, Developer, and Owner will work together and coordinate with the utility provider(s) to relocate the electrical transformers and related infrastructure and equipment from its current location within the Haymarket Plaza Site to a location mutually agreeable to the parties. The relevant party shall grant the utility provider(s) any and all permits, licenses, easements and other rights as may be necessary to locate the electrical transformers and related equipment in said location, and shall refrain from vacating the same without the consent of the other party. Developer or Owner shall bear the expense of any such relocation.

(b) The Owner or Developer shall relocate at its sole cost the storm water facility currently within the Haymarket Transfer Parcel over which the Development is projected to be constructed to a location agreeable to the City northerly of the Development while maintaining the same outfall location to the Chippewa River.

(c) The City agrees to grant the Developer and Owner a permanent license to encroach upon the northern half (1/2) of the Gibson Street right-of-way between Graham Avenue and the Chippewa River for the placement of loading and unloading, refuse, and service facilities associated with the Development subject to Governmental Requirements. All costs related to the encroachment shall be the sole responsibility of the Owner or Developer including without limitation the cost to fill, grade to an elevation approved by the City, construct the loading dock

and backfill and resurface or reseed and stabilize the grounds disrupted. The City will also consider vacating a portion of the Gibson Street right-of-way if requested by Owner or Developer provided the City maintains public access to and along the Chippewa River in this location.

(d) The City agrees to execute such agreements as may be necessary to remove any refuse container(s) currently located within the Haymarket Plaza Site and terminate any third party rights for use of said location for such purpose on or before June 1, 2016.

Section 2.10 Access to the Development Property from Public Streets.

The City hereby approves the entrances and exits from the Development Property and the public streets adjoining the Development Property as depicted on the General Development Plan, subject to the following:

(a) the Developer or Owner may, with the consent of the City, which consent shall not be unreasonably withheld, relocate said entrances and exits as reasonably required for the Development;

(b) if relocated, the access points shall conform, if practicable, to applicable Wisconsin Department of Transportation requirements (if any); and

(c) at a minimum, the City shall permit all of the following entrances and exits:

(1) One (1) vehicle entrance/exit on Graham Avenue;

(2) One (1) vehicle entrance/exit on Gibson Street; and

(3) Pedestrian connection to Riverwalk Trail and Haymarket Plaza as

depicted on General Development Plan.

Section 2.11 NMTC Contingency Loan.

(a) The Developer or Owner shall seek to obtain an NMTC loan in an amount equal to at least Three Million Dollars (\$3,000,000) on or before July 31, 2017, on terms at least as favorable to the Development as the following: (1) interest, net of NMTCs, at a rate of two percent (2%) or less; (2) principal amortized over a period of at least twenty (20) years; and (3) total financing costs of less than Fifty Thousand Dollars (\$50,000).

(b) If neither Developer nor Owner is able to obtain an NMTC loan, on terms at least as favorable to the Development as those set forth in Section 2.11(a), and in an amount equal to at least Three Million Dollars (\$3,000,000) on or before July 31, 2017, the Developer shall notify the City and the City shall extend the NMTC Contingency Loan to the Owner, as follows:

(1) The terms of the NMTC Contingency Loan shall provide for the following: (A) interest at a rate equal to the City's cost of funds for loans of a like maturity plus 25 basis points; (B) annual payments of interest-only for the first three (3) years of the loan; (C) the same prepayment terms as the City's normal borrowing agreements; (D) a requirement that borrower reimburse City for reasonable costs of issuance, which costs may, at the option of the Owner, be added to principal; (E) a requirement that upon receipt of an NMTC loan on terms at least as favorable to the Development as those set forth in Section 2.11(a), Owner shall make a payment on the loan in an amount equal to the NMTC proceeds actually received; and (F) a balloon payment due on the third (3rd) anniversary of the NMTC Contingency Loan with an option exercisable by Owner, in its discretion, to amortize such payment over a term of at least

twenty (20) years during which period the terms set forth in items (A), (C), (D), and (E) of this Section 2.11(b)(1) shall continue to apply.

(2) Notwithstanding the foregoing, if the interest rate set forth in Section 2.11(b)(1)(A) is greater than three percent (3%) (after factoring in the additional 25 basis points), the Owner's option described in Section 2.11(b)(1)(F) shall be to amortize such payment over a term of at least twenty-five (25) years during which period the terms set forth in items (A), (C), (D), and (E) of Section 2.11(b)(1) shall continue to apply and the terms of such loan shall further provide for a balloon payment due on the twentieth (20th) anniversary of the closing of NMTC Contingency Loan.

(3) In connection with the City's issuance of an NMTC Contingency Loan to the Owner, Owner shall grant the City a mortgage on the Development Property subordinate to any and all other construction and philanthropic lenders and the State of Wisconsin's reversionary right under its non-state agency grant to the Owner, and the City shall execute any and all subordination agreements or similar documents requested by Developer or Owner in connection with the same.

(4) Proceeds of the NMTC Contingency Loan shall be delivered to the Owner on (A) September 30, 2017, or (B) the date on which the footings and building foundation for the Development are substantially complete, whichever is earlier.

ARTICLE 3 - COVENANTS OF THE PARTIES

Section 3.1 City Covenants. The City covenants that:

(a) it irrevocably commits to funding a portion of the Developer Cost incurred in connection with the construction of the Development, which funding shall be comprised of the

Five Million Dollar (\$5,000,000) Developer Incentive Payment to be paid to or for the benefit of Owner in accordance with this Agreement on the schedule attached hereto as Exhibit H, and applied by Owner, or for Owner's benefit, to reimburse Developer for Developer Cost (exclusive of Developer Cost attributable to the construction of any space within the Development that would be considered costs of construction of a recreational or community building as those terms are used in Wis. Stats. Section 66.1105(2)(f)2.a.);

(b) it will construct the Public Improvements as agreed;

(c) it shall be responsible for maintenance and upkeep of the Riverwalk Trail, all necessary retaining walls (provided such retaining wall(s) shall not be expected to take any structural load from the Development) and railings within the Expanded Riverwalk Easement (as defined below), and any City installed decorative lighting and personal property improvements to the Expanded Riverwalk Easement area; provided it shall coordinate with Developer and Owner regarding the location of lighting for the Riverwalk Trail and costs of same shall be apportioned according to use, based on mutual agreement of the Parties;

(d) it irrevocably commits to ensure payment of the Annual VEC Contribution as set forth in Section 2.1(b) of this Agreement; and

(e) it will abide by and comply with the terms of this and all other written agreements with the Developer and/or Owner.

Section 3.2 Developer and Owner Covenants. The Developer and Owner, each in its own right, covenant that:

(a) it will construct or otherwise provide for the construction of the Development and associated Private Infrastructure as described herein;

(b) it shall grant the City easements, in form and substance satisfactory to the City, as depicted on Exhibit G and for all construction needs as may be practical;

(c) it shall maintain all retaining walls necessary to support the Development, landscaping, private terraces, or patios on the Development Property;

(d) it shall reaffirm the grant of the existing easement in favor of the City along the Chippewa River embankment bordering the Development Property for the Riverwalk Trail (“Riverwalk Easement”) and shall expand the same to include the Easement Expansion Area (as shown on Exhibit G-1, and together with the Riverwalk Easement, the “Expanded Riverwalk Easement”);

(e) it shall coordinate with the City regarding the location of lighting for the Riverwalk Trail and costs of same shall be apportioned according to use, based on mutual agreement of the Parties;

(f) the City will not own any portion of or have any responsibilities with respect to the Development, except as specifically stated herein, or as subsequently agreed to in writing; and

(g) it will abide by and comply with the terms of this and all other written agreements with the City and other applicable and lawful Governmental Requirements.

ARTICLE 4 - APPROVALS

Section 4.1 Code Compliance Required. The improvements to be constructed upon the Development Property (including the Private Infrastructure) and their uses, shall be in compliance with all applicable municipal zoning and building ordinances of the City and Governmental Requirements. The Agreement shall not further obligate the City to grant

variances, exceptions, or conditional use permits. Notwithstanding the foregoing, the City shall not unreasonably withhold approval of any and all variances, exceptions, and conditional use permits properly presented and necessary in order to approve the Development and to allow its construction.

Section 4.2 Approval of Public Bodies. Developer or Owner will seek to 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 Development Property) all approvals and consents necessary or appropriate to develop and utilize the Development Property as set forth in this Agreement.

Section 4.3 Acceptance of Agreement No Waiver. 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 permit, or approve any building or use the City determines not to be in compliance with the municipal codes and ordinances of the City.

ARTICLE 5 - DEVELOPMENT STANDARDS

Section 5.1 Construction Requirements. With respect to the construction of the Development, the Private Infrastructure and the Public Improvements, the Parties agree as follows:

(a) The Developer and Owner agree that the Development shall be consistent, to the extent reasonably possible, with the General Development Plan and architectural elevations of the Development (in each case as on file with the City), as modified from time to time subject to Governmental Requirements. Prior to commencing construction of buildings and

other improvements on the Development Property, Developer or Owner shall submit plans therefor to the City for review and approval conducted in accordance with the City's standard site plan review process. The City may set reasonable conditions on such improvements to ensure compliance with the quality of construction anticipated by the General Development Plan for the Development. Any conditions so imposed may not be revoked or amended without the prior written consent of the City, its duly elected or appointed representatives or staff, as appropriate. Such conditions shall survive the expiration or termination of this Agreement and shall be deemed to be covenants running with the land. In addition to the foregoing, the Developer and/or Owner shall construct the Development and Private Infrastructure on the Development Property in compliance with the following terms and conditions:

(1) the buildings to be constructed on the Development Property shall be quality buildings the same or similar to the types of buildings depicted on the General Development Plan;

(2) the Developer or Owner shall be responsible for all erosion control related to the Development, except for the erosion control related to the Public Improvements; and

(3) from and after acquisition of each parcel constituting the Development Property, the Developer or Owner, as applicable, will keep the Development Property and any easement areas granted to Developer or Owner, as applicable, in a safe, clean, and attractive condition, and reasonably free of all trash, litter, refuse, and waste, subject to construction activities contemplated by this Agreement.

(4) the Developer and Owner shall construct and maintain any and all decorative finishes and retaining walls or other features necessary to construct the Development, as depicted in the Site Plan and architectural elevations of the Development (in each case, as on file with the City) to create and maintain an elevation and stable construction platform sufficient for the Development.

(b) The City shall construct the Public Improvements on its property and the Development Property in compliance with the following terms and conditions:

(1) the Riverwalk Trail, Haymarket Plaza, and other Public Improvements to be constructed by the City on the Development Property and Haymarket Plaza Site shall be comprised of quality features and amenities constructed to the same standard as the equivalent features and amenities located in Eau Claire's Phoenix Park; and

(2) the City will keep the Haymarket Plaza Site and any easement areas granted to the City in a safe, clean, and attractive condition, and reasonably free of all trash, litter, refuse, and waste, subject to construction activities contemplated by this Agreement.

Section 5.2 Access Permitted. Developer or Owner shall permit representatives of the City to have reasonable access to the Development Property at all reasonable times for the purposes of reviewing compliance with this Agreement, including, but not limited to inspecting all work being performed in connection with this Agreement. Such access shall be at City's own risk and City shall indemnify the Developer and Owner from and against all loss, costs, injury, death, or damage to persons or property that at any time may be suffered or sustained by any person or entity in connection with City activities conducted on the Development Property.

Section 5.3 Amendment of the General Development Plan. At any time prior to the completion of the Development, the Developer or Owner may submit to the City proposed revisions in the General Development Plan or Site Plan. Provided that such revisions are consistent with the objectives of this Agreement and still cause the Development to be a quality development, the City Building Inspector or Plan Commission, as appropriate, will review and act on such revisions within sixty (60) days of their submittal. Notwithstanding the foregoing, the City may deny approval of such revisions if the revisions, in the reasonable discretion of the City, impose additional material financial burdens on the City, adversely affect the financial viability of the Development, or, in the City's sole administrative or legislative discretion, do not meet City code applicable to any such revisions.

Section 5.4 Effect of Budget Reduction. Notwithstanding anything in this Agreement to the contrary, in the event a reduction is realized in the Local Contribution, the State Commitment, Developer Incentive Payment, or in other project funds, the Developer and Owner shall be permitted to Value Engineer the Development so as to reduce the Developer Cost accordingly.

Section 5.5 Limitations. The standards and conditions set forth in this Article excluding only such conditions as the City may impose pursuant to Section 5.1, shall terminate and be of no further force and effect at such time as the Developer and Owner have substantially completed the construction of the buildings and other improvements on the Development Property as set forth in this Agreement.

Section 5.6 Reports. A City representative will be invited to attend regularly scheduled construction meetings to monitor progress, which meetings shall occur not less than monthly.

ARTICLE 6 - WORK QUALITY AND REPRESENTATIONS

Section 6.1 Workmanlike Manner Required. All work to be performed by the Developer or Owner on the Development Property shall be performed in a good and workmanlike manner consistent with the prevailing industry standards for quality construction in the applicable area of the City. All work to be performed by the Developer or Owner on the Development Property shall be performed in compliance with all applicable laws, regulations, ordinances, and permits, and the Developer or Owner shall at their respective sole cost and expense obtain and maintain all necessary permits and licenses for such work.

Section 6.2 Representations of Developer and Owner. As of the date of this Agreement the Developer and Owner, each in its own right, represent as follows:

(a) the Developer and Owner are duly organized and existing as a Wisconsin limited liability company and a Wisconsin non-stock, non-profit corporation, respectively, and are in good standing under the laws of the State of Wisconsin;

(b) the Owner plans to execute a use agreement with Confluence Council that requires Confluence Council to make the Annual Supplemental Reserve Payment and the Annual Building Reserve Payment to the Owner;

(c) the Confluence Council plans to execute a use agreement with UWEC or the University that will provide Confluence Council at least \$400,000 in annual payments for the shared operations of the Development;

(d) the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved, and no other or further acts or proceedings are necessary to authorize and approve the execution, delivery, and performance of this Agreement, and the matters contemplated hereby;

(e) this Agreement and the exhibits, documents, and instruments associated herewith and/or made a part hereof, have been duly executed and delivered and constitute its legal, valid, and binding agreement and obligation of the Developer and the Owner enforceable against each in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles; and

(f) there are no lawsuits filed or pending, or to the knowledge of the Developer and Owner, threatened against the Developer or Owner, that may in any way jeopardize the ability of the Developer or Owner to perform its obligations hereunder.

Section 6.3 Representations of City. As of the date of this Agreement, the City represents as follows:

(a) the City has authority, subject to the approval of the City's Common Council, to undertake the obligations provided for in this Agreement, specifically to:

- (1) convey and accept the conveyance of any interest in property (whether by easement or otherwise) required by this Agreement;
- (2) construct all Public Improvements as provided herein;
- (3) enter into this Agreement and perform its terms; and

(b) there are no lawsuits filed or pending or, to the knowledge of City, threatened against City that may in any way jeopardize the ability of City to perform its obligations hereunder, except that certain case previously pending before the Eau Claire County Circuit Court, which case was captioned *Voters with Facts et al vs. City of Eau Claire et al*, filed as case number 2015CV000175, dismissed on August 17, 2015, and appealed on September 10, 2015.

ARTICLE 7 - CONDITIONS AND LIMITATIONS

Section 7.1 Conditions and Limitations on Obligations of City.

(a) Notwithstanding anything to the contrary in this Agreement, the following are conditions to and limitations on each and all of the obligations of the City hereunder; and the City shall not be obligated to expend any amounts in connection with the Development Property and may suspend and terminate the performance of any and all of its obligations under this Agreement if:

(1) the Developer fails to provide necessary easements or otherwise impedes the ability of the City to construct the Public Improvements;

(2) the State of Wisconsin fails to timely authorize disbursement or release of payment(s) in an amount equal to the State Commitment, and the Developer and/or Owner are unable to Value Engineer the Development to account for the resulting shortfall in the budget for the Development;

(3) the Owner and the Confluence Council fail to execute such documentation as may be required to establish the governance structure outlined in Article 8 of this Agreement, as modified by agreement of the Parties to this Agreement;

(4) approval of the required zoning, site plans, and permits required for construction of the Development is not obtained;

(5) the Local Contribution less the amount of the NMTC Contingency Loan is not received or is not sufficient to enable the Development (even after Value Engineered) to be constructed;

(6) the Development is not constructed generally in accordance with the terms of this Agreement; or

(7) the City is not legally able to form or lawfully maintain Tax Incremental Districts (“TID”) 8, 10, or 11 so as to ensure that one or in combination the City has sufficient TID increment to cover at least the Developer Incentive Payment.

(b) Notwithstanding anything to the contrary in this Agreement, if the Primary Guaranty Requirement is not obtained or maintained as required, the City shall not be obligated to execute and deliver the City Guaranty or, if applicable, abide by its terms, until such time as the Primary Guaranty Requirement is in effect as required under this Agreement.

Section 7.2 Conditions and Limitations on Obligations of Developer and Owner. Notwithstanding anything to the contrary in this Agreement, the following are conditions to and limitations on each and all of the obligations of Developer and Owner hereunder. Developer and Owner shall not be obligated to expend any amounts in connection with the Development Property and may suspend and terminate the performance of any and all obligations under this Agreement and exercise any and all remedies under Article 9 if:

- (a) final approval of a non-state agency grant for the Development in an amount equal to the State Commitment is not obtained from the State of Wisconsin, State Building Commission, on or before June 30, 2016;
- (b) the City fails to deliver the executed City Guaranty in a timely fashion;
- (c) the City fails to deliver the Developer Incentive Payment on a timely basis;
- (d) the Annual VEC Contribution, including the portion comprised of the VEC Guaranty, is not delivered in accordance with this Agreement;
- (e) the City is not legally able to form or lawfully maintain a tax incremental financing district from which to fund its obligations under this Agreement;
- (f) any required governmental approval is not obtained to allow the construction in accordance with the Site Plan and General Development Plan;
- (g) the Local Contribution is not received or is not sufficient to enable the Development (even after Value Engineered by the Developer) to be constructed;
- (h) bids for the planned construction and site work exceed the estimates used in plan financing;
- (i) Confluence Council fails to enter into the agreement described in Section 8.4;
- (j) the UWEC or the University fails to enter into a use agreement or other similar arrangement with the Confluence Council that will generate operating revenues of at least Four Hundred Thousand Dollars (\$400,000) per year, of which One Hundred Thousand Dollars (\$100,000) shall be dedicated to fund one half (1/2) of the Annual Building Reserve Payment;

(k) a Force Majeure condition; or

(l) any construction or other financing necessary for the Developer and/or

Owner to construct the Development is not able to be obtained on normal and usual market terms.

ARTICLE 8 - CAF GOVERNANCE AND OPERATIONS

Section 8.1 CAF Space Allocation. Space within the Development will generally be comprised of a large theater, flexible theater, presentation and rehearsal room, classrooms, meeting rooms, associated staging and storage areas, backstage areas, concessions, and public areas, including restrooms (supplied at least to state code) to be used by various community non-profit groups and other organizations and by the UWEC to present and promote a variety of art forms by and for the University and the community and region at-large.

Section 8.2 The Owner.

(a) Formation and Purpose. Owner has been formed as a non-stock, non-profit corporation organized under the laws of the State of Wisconsin, whose function is planned to be limited to:

(1) accept donations and obtain guaranties from private individuals and entities to cover the cost of the construction, development, and/or acquisition of the Development;

(2) acquire and own the Development Property and the Development;

(3) receive and use the Developer Incentive Payment;

(4) receive and use the County Contribution;

(5) contract for construction of the Development;

(6) establish and operate the Supplemental Reserve Fund and the Building Reserve Fund and ensure that draws from the latter are limited to capital expenditures (as defined in accordance with GAAP); and

(7) oversee the Confluence Council's governance and management of the Development as outlined in this Agreement.

(b) Governance. Except as otherwise provided below, the Owner will be governed by a board of directors which may include each and every Primary Guarantor for so long as they remain liable under their guaranty and in compliance with its terms, and shall consist of up to two (2) representatives selected by or under the authority of the Blugold Foundation, up to two (2) representatives from the City, one (1) representative of the Eau Claire Regional Arts Council Endowment Trust, and one (1) representative from Developer. The use agreement between Owner and Confluence Council and Confluence Council's Articles of Incorporation and/or By-laws shall provide, among other things, that:

(1) the Confluence Council shall accept donations from private individuals and entities to initially fund the Operations Reserve Fund and shall at all times maintain the same in accordance with the terms of this Agreement;

(2) if the Confluence Council: (A) is unable to satisfy its financial obligations with respect to the operation of the Development and has exhausted the Operations Reserve Fund or (B) fails to timely deliver the Annual Building Reserve Payment, Annual Supplemental Reserve Payment, or any other payments due to Owner under this Agreement or the use agreement, the Owner shall have the right to remove and replace up to a majority of the directors on the Confluence Council's board of directors, which replacement directors shall serve

until the Operations Reserve Fund has been restored to at least Five Hundred Thousand Dollars (\$500,000), provided, however, that the Owner may not remove any director appointed by the City, UWEC, or the University. The Owner shall also, acting on its own, then have the ability to require the termination of any management or employment agreement then in effect with respect to the Development;

(3) upon the disbursement by Owner of fifty percent (50%) or more of the Supplemental Reserve Fund to Confluence Council, the Owner shall have the right to remove and replace all then serving directors on the Confluence Council's board of directors, excluding only such directors as were appointed by UWEC or the University. The foregoing replacement directors shall serve until the Supplemental Reserve Fund has been restored to the Supplemental Reserve Requirement. The Owner shall also, acting on its own, then have the ability to require the termination of any management or employment agreement then in effect with respect to the Development;

(4) upon the exhaustion of the Supplemental Reserve Fund, the VEC Guaranty, and the Primary Guaranties and the enforcement of or draw on, in whole or in part, the City Guaranty, the City shall have the right to (i) terminate any management or employment agreement then in effect with respect to the Development, and (ii) replace up to four (4) of the directors as are then serving on the Owner's board of directors. The board of directors of the Owner, as reformed, shall have the right to replace all then serving directors on the Confluence Council's board of directors, excluding only: one (1) of the directors appointed under Section 8.2(b)(2) above, and all such directors as were appointed by UWEC or the University. The foregoing replacement directors (on the boards of directors of both the Owner and the

Confluence Council) shall serve until the City, Visit Eau Claire, and each Primary Guarantor have been reimbursed for all amounts paid under their respective guaranties and the Supplemental Reserve Fund has been restored to the Supplemental Reserve Requirement;

(5) if at any time the amount paid by the City in respect of the City Guaranty exceeds Two Hundred and Fifty Thousand Dollars (\$250,000) and such amount remains outstanding for more than one (1) year, the City shall have the right to replace all then serving directors on the Owner's board of directors, and the board of directors of the Owner, as reformed, shall have the right to replace all then serving directors on the Confluence Council's board of directors (except UWEC or University directors), which rights shall continue until the City has been reimbursed for all amounts paid under the City Guaranty;

(6) until Section 8.5(c)(2) applies, if any Primary Guarantor should (i) die, (ii) revoke or attempt to revoke its Primary Guaranty, or (iii) refuse or fail to honor its Primary Guaranty within thirty (30) days of any demand thereon, the Owner shall obtain a replacement guaranty reasonably satisfactory to the City within one hundred twenty (120) days. If the Owner is not able to obtain a replacement guaranty reasonably satisfactory to the City within such one hundred twenty (120) day period, the City shall have the rights granted under Section 8.2(b)(4) until such replacement guaranty is obtained; and

(7) the Confluence Council shall not be permitted to withdraw funds from the Building Reserve Fund to satisfy its financial obligations with respect to the operation of the Development; draws on the Building Reserve Fund may only be made for capital expenditures (as defined in accordance with GAAP), to the extent the same are required to maintain the Development from time to time.

(8) the Confluence Council shall not be able to change its Articles of Incorporation or Bylaws as to these matters or the matters specified in Section 8.3 without Owner's written consent and may not dissolve, merge, or transfer a material portion of their assets without Owner's written consent.

(9) until the termination of the City Guaranty under Section 8.5(d), the Owner may not dissolve, merge, or transfer a material portion of their assets without City's written consent and shall inform the City of any amendment to its Articles of Incorporation or Bylaws.

Section 8.3 The Confluence Council. The Confluence Council was formed as a separate non-profit corporation to govern the operation of the Development. The Confluence Council shall at all times be governed by a board of directors of not less than nine (9) nor more than eleven (11) voting members. Except as otherwise provided in Section 8.2(b), the voting members on the Confluence Council board of directors shall be comprised of at least the following members: two (2) representatives from the University, two (2) community members at-large, one (1) representative selected by the local arts organizations in the City and County of Eau Claire, and one (1) representative each from the City, ECRAC, Visit Eau Claire, and until the NMTC loan has been repaid in full, the Developer. The manager, executive director, or similar position of the Development shall serve as a non-voting member of the Confluence Council's board of directors. The by-laws of the Confluence Council shall include the provisions set forth in Section 8.2(b) above.

Section 8.4 Governance Agreement. The Developer and the City shall take such steps as are necessary to cause the Owner and the Confluence Council to enter into an

agreement, in form and substance satisfactory to the City and the Developer, setting forth the relationship between such entities and their respective rights and obligations, in each case with respect to the ownership, control, oversight, operations and maintenance of the Development.

Such agreement shall set forth, among other things, the following:

- (a) the provisions set forth above;
- (b) the obligation of the Confluence Council to prepare and deliver to the Owner for approval not less than sixty (60) days prior to the beginning of each fiscal year of the Confluence Council, an annual budget setting forth in reasonable detail the estimated revenues and projected operating and maintenance expenses for the Development in such fiscal year;
- (c) the obligation of the Confluence Council to prepare and deliver to the Owner a monthly operating report, within thirty (30) days of the end of each month, setting forth in reasonable detail the revenues and operating and maintenance expenses for the Development in such month, together with an account of past due obligations and aged accounts receivable, if any;
- (d) the obligation of the Confluence Council to annually prepare and deliver to the Owner a business and operations plan addressing the business and operations of the Development as a whole which plan shall be subject to the approval of Owner;
- (e) the obligation of the Confluence Council to annually deliver to the City the Owner-approved business and operations plan addressing the business and operations of the Development of a whole, the Owner-approved annual budget, and an annual audit report;

(f) the obligation of the Confluence Council to prepare and deliver to the Owner such other and further reports and information as the Owner may reasonably request at any time and from time to time;

(g) the obligation of the Confluence Council to deliver the Annual Building Reserve Payment to the Owner for deposit into the Building Reserve Fund, which obligation shall commence on December 31 of the first full calendar year following issuance of an occupancy permit for the Development and shall continue on December 31 of each year thereafter;

(h) the obligation of the Confluence Council to deliver the Annual Supplemental Reserve Payment to the Owner for deposit into the Supplemental Reserve Fund, which obligation shall commence on December 31 of the first full calendar year following issuance of an occupancy permit for the Development and shall continue on December 31 of each year thereafter until such time as the balance in the Supplemental Reserve Fund totals One Million Dollars (\$1,000,000);

(i) the obligation of the Confluence Council to notify the Owner at least ten (10) days prior to making a draw on the Operations Reserve Fund once such fund has less than: (A) One Hundred Thousand Dollars (\$100,000) prior to issuance of the occupancy permit, and (B) Two Hundred and Fifty Thousand Dollars (\$250,000) after issuance of the occupancy permit, which notice shall specify the current balance in the Operations Reserve Fund, amount of the proposed draw, the date of the proposed draw, and the reason for the proposed draw;

(j) the obligation of the Confluence Council, commencing in any fiscal year in which a draw is made on the Supplemental Reserve Fund, to deposit in such Reserve Fund

within (30) days after the close of that fiscal year and each fiscal year thereafter, an amount equal to the revenues generated by the Development in such year less the amounts required, under the annual budget for the Development, for operation and management of the Development in such fiscal year, which obligation shall continue until the Supplemental Reserve Fund has been restored to the Supplemental Reserve Requirement;

(k) the obligation of the Confluence Council to make any and all payments to Owner as required by the NMTC Contingency Loan if extended by the City or any other NMTC loan as provided for in this Agreement so that Owner may make its payments under the same;

(l) the obligation of the Confluence Council to refrain from amending, restating, or otherwise modifying its articles of incorporation or bylaws without Owner's consent; and

(m) the obligation to include in any management or employment contract the right to terminate that contract without penalty on no more than thirty (30) days advanced notice should the Owner or City's right to terminate arise under the terms of this Agreement.

Section 8.5 Guaranties and Reserve Fund.

(a) Application and Enforcement. In the event that revenues generated by the Development are insufficient to cover its operational expenses, and the Confluence Council thereby becomes unable to satisfy its obligations as and when the same become due, the Confluence Council must first exhaust its own funds and, second, must draw down and expend the Operations Reserve Fund and, third, must draw down and expend the Supplemental Reserve Fund and, fourth, must draw down on the VEC Guaranty and, fifth, must draw down on the

Primary Guaranties and, sixth, and only after the other sources have been exhausted, the Confluence Council may make a claim against the City on account of the City Guaranty.

(b) Release of VEC Guaranty. On and after the date on which the balance in the Supplemental Reserve Fund reaches Four Hundred Fifty Thousand Dollars (\$450,000) the VEC Guaranty shall cease and be of no further force and effect, and the City, Owner, and the Developer shall execute such documentation as is reasonably required to evidence such termination and release.

(c) Reduction and Release of Primary Guaranties.

(1) For each One Hundred Thousand Dollar (\$100,000) increase in the aggregate balance in the Reserve Funds over Five Hundred Thousand Dollars (\$500,000), if such increased aggregate balance is maintained, without draws, for a period of not less than two (2) years, the Primary Guaranty Requirement shall be reduced by One Hundred Thousand Dollars (\$100,000). Accordingly, on and after a date that is two (2) years from the date on which the aggregate balance in the Reserve Funds reaches, or is restored to, the levels set forth in Column A of the table below, the Primary Guaranty Requirement shall be reduced to the corresponding amount set forth in Column B of the table below. Each such reduction will be allocated pro rata to reduce the Primary Guaranty of each Primary Guarantor.

<u>Column A</u> Aggregate Balance in Reserve Funds (As maintained for more than 2 yrs.)	<u>Column B</u> Primary Guaranty Requirement
\$500,000	\$1,000,000
\$600,000	\$900,000
\$700,000	\$800,000
\$800,000	\$700,000
\$900,000	\$600,000
\$1,000,000	\$500,000

\$1,100,000	\$400,000
\$1,200,000	\$300,000
\$1,300,000	\$200,000
\$1,400,000	\$100,000
\$1,500,000	\$0

(2) On and after the earlier to occur of the following: (A) a date on which it is shown on the Confluence Council’s audited financial statements for two (2) consecutive fiscal years that the aggregate balance in the Reserve Funds was equal to at least One Million Five Hundred Thousand Dollars (\$1,500,000); or (B) December 31, 2030, the Primary Guaranties shall cease and be of no further force and effect, and the City, Owner, and Developer shall execute such documentation as is reasonably required to evidence such termination and release.

(d) Release of City Guaranty. The City Guaranty shall cease and be of no further force and effect two (2) years after the earlier to occur of the following: (1) the Primary Guaranties are fully and finally released pursuant to Section 8.5(c); or (2) December 31, 2030. The City may terminate its obligations to provide the City Guaranty at any earlier date upon deposit by the City of One Million Dollars (\$1,000,000) into Supplemental Reserve Fund, provided, said amount shall thereafter be excluded from the calculations for the release of Primary Guaranties under Section 8.5(c). Owner shall execute such documentation as is reasonably required to evidence such termination and release.

ARTICLE 9 - DEFAULT

Section 9.1 Events of Default; Cure Period. An event of default is any failure by the City, Developer, or Owner to perform or observe any and all covenants, conditions, obligations, or agreements on its part to be observed or performed when and as required under

this Agreement, within sixty (60) days after written notice to the defaulting party delivered in the manner required by Section 11.7, which notice shall specify the precise nature of the alleged default (including references to relevant sections of this Agreement) and the manner in which the alleged default may satisfactorily be cured; provided, however, that, if an event is not financial and cannot be cured within such sixty (60) day period, but the defaulting party commences to cure such matter within the sixty (60) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within such time as is reasonably necessary under the circumstances, such default will not constitute an event of default.

Section 9.2 Options Upon Developer or Owner Event of Default. Whenever a Developer or Owner event of default occurs the City may take one or more of the following actions:

(a) the City may suspend the performance of any or all of its undertakings and obligations under this Agreement until it receives adequate assurances from Developer or Owner that Developer or Owner will cure such event of default and continue its performance under this Agreement and, failing that, City may elect to terminate this Agreement, in which case, the obligations of all parties hereunder shall cease and be of no force or effect as to either party hereto;

(b) upon termination, the City may take action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to City to recover all sums paid to Developer or Owner hereunder; and

(c) the City may, in addition to all other rights and remedies, but subject to any rights and remedies accruing to the State of Wisconsin, be allowed to recover any sum paid

to Developer or Owner as a special charge or by special assessment levied on the Development, and Developer and Owner hereby each consent to such assessment or charge. Their agreement shall run with the land and be included in any conveyance by Developer or Owner of the Development and the Development Property.

Section 9.3 Options Upon City Event of Default. Whenever a City event of default occurs Developer and/or Owner may take one or more of the following actions:

(a) the Developer and/or Owner may suspend the performance of any or all of its undertakings and obligations under this Agreement until they receive assurances from the City deemed adequate by Developer and Owner, that City will cure its event of default and continue its performance under this Agreement and, failing that, Developer may elect to terminate this Agreement, in which case, the obligations of all parties hereunder shall cease and be of no force or effect as to either party hereto; and

(b) the Developer and/or Owner may take action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of City under this Agreement, or to seek remedy for its breach.

Section 9.4 Delay in Exercise of Rights Not Waiver. Except as specifically provided for herein, no delay or omission to exercise any right or power accruing to a party upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.5 Written Waiver Required. Whenever any event of default occurs under this Agreement, and such event of default is expressly waived in writing by the non-defaulting party, such waiver shall be limited to the particular event of default so waived and shall not be deemed to waive any other concurrent, previous, or subsequent event of default hereunder. A party's acquiescence in enforcing any portion of this Agreement shall not provide a basis for the application of estoppel or other like defense or otherwise constitute waiver. Any waiver of any provision of this Agreement by a party must be expressed and in writing.

Section 9.6 Compensation for Costs of Event of Default. As to any event of default under Section 9.1, which occurs due to the actions or inaction of a party, if the non-defaulting party employs attorneys and/or incurs other expenses for the collection of payments due or to become due for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand of the other party, pay to the other party the reasonable fees of such attorneys and such other reasonable expenses incurred by the non-defaulting party.

Section 9.7 Dispute Resolution. If a dispute arises out of or relates to this Agreement, or an event of default hereunder, and if the dispute cannot be settled through negotiation, the parties agree to first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or similar auspices agreed to by the parties, before resorting to arbitration, litigation or similar dispute resolution procedure.

ARTICLE 10 - INDEMNIFICATION/INSURANCE

Section 10.1 Indemnification for Actions Taken Pursuant to this Agreement.

(a) In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement, or any documents incorporated herein by reference, Developer and Owner shall indemnify and save harmless City, its officers, agents, representatives, and employees and shall defend the same, from and against any and all liabilities, claims, losses, damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees, and the like to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from, relate to, or arise in the course of, any act or failure to act by Developer or Owner in connection with its development of the Development Property.

(b) In addition to, and not to the exclusion or prejudice of any provisions of this Agreement, or any documents incorporated herein by reference, City shall indemnify and save harmless Developer and Owner, its respective officers, agents, representatives, and employees and shall defend the same, from and against any and all liabilities, claims, losses, damages, interest, actions, suits, judgments, costs, expenses, attorneys' fees, and the like to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from, relate to, or arise in the course of, any act or failure to act by City in connection with this Agreement.

Section 10.2 Environmental Indemnification. Each party shall indemnify, defend, and hold the other party and its officers, employees, agents, and representatives harmless from any and all claims, judgments, damages, penalties, fines, costs, or loss (including fees for attorneys, consultants, and experts) that arise as a result of or in connection with the presence or suspected presence in or on a parcel owned by a party prior to its conveyance to the other party, of any toxic or hazardous substances. Without limiting the generality of the foregoing, the

indemnification by a party shall include costs incurred in connection with any site investigation or any remedial, removal, or restoration work required by a party or any governmental agencies in connection with any such toxic or hazardous substances, whether in the soil, groundwater, air, or any other receptor. Each party shall assign all such claims to the other party upon receipt of assurances from or through the other party deemed to be acceptable by the other party. In the event any such toxic or hazardous substance is discovered or suspected, a party shall comply with all applicable laws, ordinances, rules, and regulations.

Section 10.3 Insurances Required. Before commencement of any land disturbance activities on the Development Property, Developer or Owner, as applicable, shall deliver to City certificates of insurance, copies of endorsements, and other evidence of insurance requested by City, which Developer or Owner, as applicable, is required to purchase and maintain, or cause to be purchased or obtained, in the types and amounts of coverage listed below:

(a) Comprehensive General Liability Insurance. Coverage shall be written on a commercial general liability form, and shall protect Developer, Owner, 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 damage which may arise from operation under this Agreement, whether such operations be by the Developer, Owner, any subcontractor, or anyone directly or indirectly employed by the Developer, Owner, or any subcontractor in such manner as to impose liability on City. The amounts of such insurance shall be subject to the following limits: General Aggregate Limit- \$2,000,000; Personal and Advertising Injury Limit (per person/organization) - \$2,000,000; Bodily Injury and Property

Damage - \$2,000,000 per occurrence; Fire Legal Liability Damage Limit - \$100,000 per occurrence; Medical Expense Limit - \$10,000 per person;

(b) Comprehensive Automobile Liability and Property Damage. Coverage shall protect Developer, Owner, 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 subject to the following limits: Bodily Injury - \$250,000 per person; \$1,000,000 per occurrence; and Property Damage - \$250,000 per occurrence;

(c) Umbrella Coverage. Coverage shall protect Developer, Owner, and any subcontractor during the performance of work covered by this Agreement with limits of \$1,000,000 for bodily injury, personal injury, and property damage on a combined basis with the stated underlying limits of Section 10.3(a) and Section 10.3(b).

(d) Builder's Risk Insurance. Prior to commencing the construction of any improvements on the Development Property as contemplated by this Agreement, Developer or Owner shall obtain and keep in full force and effect during any construction activities contemplated by this Agreement an all builders risk insurance policy for all portions of the Development Property upon which construction is occurring with coverage equal to the total amount of the construction contracts for any and all such construction activities. Nothing in this Agreement is intended to relieve Developer or Owner of their obligation to perform under this Agreement and, in the event of loss, Developer and Owner shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements; and

(e) Fire and Casualty Insurance. Upon the construction of any improvements on the Development Property, Developer or Owner shall obtain and keep in full force adequate fire and casualty insurance with coverage in an amount at least equal to the assessed value of such improvements. In the event of loss Developer and Owner shall use the proceeds of such insurance to promptly reconstruct the damaged or lost improvements.

ARTICLE 11 - MISCELLANEOUS PROVISIONS

Section 11.1 Financial Interest Prohibited. No member of the governing body or other official of City shall have any financial interest, direct or indirect, in this Agreement, the Development Property, or any contract, agreement, or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other such official participate in any decision relating to this Agreement which affects his/her personal interest or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested. No member, official, or employee of City shall be personally liable to City in the event of any default or breach by Developer or Owner or any successor to Developer or Owner on any obligation under this Agreement.

Section 11.2 Incorporation of Attachments. All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

Section 11.3 Non-waiver of Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer or Owner to obtain all necessary approvals, licenses, and permits from City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of City to approve or

disapprove any plans and specifications, or any part thereof, or to impose reasonable limitations, restrictions, and requirements on the development, construction, and/or use of the Development Property as a condition of any such approval, license, or permit, including without limitation, requiring any further development and/or other, similar, agreements as may reasonably be required to facilitate construction of the Development as contemplated hereunder.

Notwithstanding the foregoing, the City shall not unreasonably withhold approval of any plans or specifications properly submitted or license or permit properly applied for. City will act diligently and in good faith to review all necessary approvals, licenses, and permits duly requested by Developer.

Section 11.4 Assignment. The Developer may, without City consent, assign, designate, or delegate all or any portion of its rights, duties, or obligations under this Agreement to the State of Wisconsin, or any agency or instrumentality thereof, and to the Owner. Upon notice to the City, Developer or Owner may also assign their rights hereunder to a lender solely as collateral. Except as provided herein, Developer and Owner may not otherwise assign their respective rights under this Agreement without the express prior written consent of City.

Section 11.5 Time of the Essence. Time is deemed to be of the essence with regard to all dates and time periods set forth herein and incorporated herein.

Section 11.6 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 11.7 Delivery of Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows:

To City: City of Eau Claire
Attn: Russell Van Gompel, City Mgr.
203 So. Farwell Street
Eau Claire, WI 54701

With a copy to: Mr. Stephen Nick, City Attorney
203 So. Farwell Street
Eau Claire, WI 54701

To Developer: Haymarket Concepts, LLC
Attn: Daniel Clumpner
Commonweal Development Corporation of Wisconsin
P.O. Box 617
3506 Oakwood Mall Drive, Suite B
Eau Claire, WI 54702-0617

With a copy to: Attorney Randi L. Osberg
Ruder Ware, L.L.S.C.
P.O. Box 187
Eau Claire, WI 54702-0187

To Owner: Eau Claire Confluence Arts, Inc.
Attn: Gerald Jacobson, President
Northwestern Bank
P.O. Box 49
Chippewa Falls, WI 54729

With a copy to: Attorney Heather M. Hunt
Wiley Law, S.C.
PO Box 370
119 ½ North Bridge Street
Chippewa Falls, WI 54729

Notice shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; or (b) in the case of certified or registered mail, on the date when deposited in the United States mail with sufficient postage to effect such delivery.

Section 11.8 Entire Agreement. This Agreement and all other documents and agreements expressly referred to herein contain the entire agreement between Developer, Owner,

and City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

Section 11.9 Law Applicable. This Agreement shall be construed in accordance with the internal laws of the State of Wisconsin.

Section 11.10 Originals and Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 11.11 Change to Agreement. This Agreement may not be changed orally but only by agreement of the parties in writing signed by the appropriate representatives of each party and with the actual authority of each party.

Section 11.12 Limitation on Liability. Developer and Owner acknowledge and agree that in carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of City's officers, agents, employees, or representatives, it being understood and agreed that in such matters they act as agents and representatives of City.

Section 11.13 No Partnership. This Agreement specifically does not create any partnership or joint venture between the parties, or render any party liable for any debts or obligations of the other party.

Section 11.14 Recording of Agreement. The parties hereto agree that City may record this Agreement or a memorandum of this Agreement on the record title to the Development Property. Developer and/or Owner shall upon request of City execute and deliver any such memorandum or other document in connection with such recording.

Section 11.15 Consents Running with the Land. This Agreement and all consents, obligations, waivers, and other requirements of Developer or Owner with respect to the levy of special assessments and otherwise, as set forth in this Agreement, shall be deemed to be a covenant running with the land and shall be binding upon the Development Property and any and all owners of all or any portion of the Development Property, and their representatives, successors, and assigns.

Section 11.16 Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns.

Section 11.17 Severance. In the event that one portion of this Agreement, or the application of this Agreement to any extent is deemed invalid or unenforceable by a court of competent jurisdiction, then (unless in the judgment of the party adversely effected thereby such provision was a material part of the consideration for their entering into this Agreement and that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision shall be valid and enforceable to the fullest extent permitted by law.

Section 11.18 Third Parties. This Agreement is made for the exclusive benefit of the parties hereto, and is not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other party.

Section 11.19 Neutral Construction. This Agreement is the result of a negotiated agreement by the parties hereto and prior to the execution of this Agreement each party had

sufficient opportunity to have review of the Agreement by legal counsel. Nothing in this Agreement shall be construed more strictly for or against either party because that party's attorney drafted this Agreement or any portion thereof or attachment hereto.

Section 11.20 Survival and Non-Merger. Any provision of this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have been terminated, but shall survive unless expressly waived in writing, and shall be in full force and effect until performed.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date stated in the first paragraph of this Agreement.

HAYMARKET CONCEPTS, LLC (“DEVELOPER”):

By: MARCOM INVESTMENTS II, LLC, Member

By: Commonweal Development Corporation of Wisconsin, Member

By: _____
Daniel C. Clumpner, its duly authorized officer

ACKNOWLEDGMENT

STATE OF WISCONSIN }
 } SS
COUNTY OF EAU CLAIRE }

Personally came before me this _____ day of _____, 2015, the above-named Daniel C. Clumpner, to me known to be the Principal of Commonweal Development Corp. of Wisconsin and the person who executed the foregoing instrument.

* _____
Notary Public, State of Wisconsin
My Commission: _____

By: Market & Johnson, Inc., Member

By: _____
Dan Market, a duly authorized officer

ACKNOWLEDGMENT

STATE OF WISCONSIN }
 } SS
COUNTY OF EAU CLAIRE }

Personally came before me this _____ day of _____, 2015, the above-named Dan Market, to me known to be the Principal of Market & Johnson, Inc. and the person who executed the foregoing instrument.

* _____
Notary Public, State of Wisconsin
My Commission: _____

By: BLUGOLD REAL ESTATE, LLC, Member

By: _____
Kimera K. Way, a duly authorized agent

ACKNOWLEDGMENT

STATE OF WISCONSIN }
 } SS
COUNTY OF EAU CLAIRE }

Personally came before me this _____ day of _____, 2015, the above-named Kimera K. Way, to me known to be a duly authorized agent for Blugold Real Estate, LLC, a Wisconsin limited liability company, and the person who executed the foregoing instrument.

* _____
Notary Public, State of Wisconsin
My Commission: _____

EAU CLAIRE CONFLUENCE ARTS, INC. (“OWNER”)

By: _____
Gerald Jacobson, President

ACKNOWLEDGMENT

STATE OF WISCONSIN }
 } SS
COUNTY OF EAU CLAIRE }

Personally came before me this ____ day of _____, 2015, the above-named Gerald Jacobson, who to me represented that he is the President of Eau Claire Confluence Arts, Inc., and is known to me to be the person who executed the foregoing instrument in the capacity indicated.

* _____
Notary Public, State of Wisconsin
My Commission: _____

CITY OF EAU CLAIRE (“CITY”)

By: _____

By: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN }
 } SS
COUNTY OF EAU CLAIRE }

Personally came before me this ____ day of _____, 2015, the above-named _____, who to me represented that they are the _____ of the City of Eau Claire, Wisconsin, and to me known to be the persons who executed the foregoing instrument in the capacities indicated.

* _____
Notary Public, State of Wisconsin
My Commission: _____

CAF Development Agreement
Exhibit A – General Development Plan

See attached.

**CAF Development Agreement
Exhibit B – Site Plan**

To be subsequently filed with the City.

CAF Development Agreement
Exhibit C – Description of Public Improvements

1. Street, public sidewalk, streetscape, tree grates and trees, decorative lighting and other elements of the street construction projects as approved by the City.
2. Utility reconstruction in the public rights of way.
3. Riverwalk Trail lighting (provided, it shall coordinate with Developer and Owner regarding the location of lighting for the Riverwalk Trail and costs of same shall be apportioned according to use, based on mutual agreement of the Parties), retaining wall (provided such wall shall not be expected to take any structural load from the Development), and railing(s), in each case constructed to a standard consistent with the pedestrian trail lighting, walls, and railings found in Eau Claire's Phoenix Park.
 - a. The Riverwalk Trail will be located within the existing Riverwalk Easement Area and Easement Expansion Area (as shown on Exhibit G-1).
 - b. It is anticipated that the Riverwalk Trail will be constructed at an elevation that is not more than three feet (3') below the top of the retaining wall located on the riverside boundary of the Development Property (as described in item 5 of Exhibit F). It is further anticipated that a retaining wall and railings will be required on the riverside edge of the Riverwalk Trail to meet the existing grade at or within the established bulkhead line (as shown on Exhibit G-1), but such retaining wall is not expected to take any structural load from the Development.
4. Riverwalk Trail and all related features or approaches designed and constructed to a standard consistent with the pedestrian trails and related features and approaches found in Eau Claire's Phoenix Park.
5. Haymarket Plaza and all related features, landscaping, and site amenities, including but not limited to: pedestrian walkways; pedestrian lighting; connections to the Riverwalk Trail; seating; trash and recycling collectors; and bicycle racks, in each case, designed and constructed to a standard consistent with the features, landscaping, and other site amenities found in Eau Claire's Phoenix Park.
6. Execute such agreements as may be necessary to remove any refuse container(s) currently located within the Haymarket Plaza Site and terminate any third party rights for use of said location for such purpose on or before June 1, 2016.

**CAF Development Agreement
Exhibit D – City Expenditures**

<u>ITEM</u>	<u>COST</u>
I. Developer Incentive Payment	\$5,000,000
II. Other Expenditures	\$2,000,000
Riverwalk Trail and Haymarket Plaza including:	
Construction of Haymarket Plaza to be completed in conjunction with Development construction.	
Construction of a Riverwalk Trail and any related features or approaches.	
III. Total City Expenditures (estimate)	\$7,000,000 ¹

¹ Excludes contingent obligations, specifically the City Guaranty and NMTC Contingency Loan.

**CAF Development Agreement
Exhibit E – Developer Cost**

1. Site Acquisition
2. Site Preparation
3. Demolition Costs
4. Construction Costs¹
5. Real Estate Taxes
6. Financing Costs

Costs exceeding at least \$5,000,000; full Developer Cost anticipated to be at or above \$40,000,000.

¹ Excluding costs of construction of any portion of space deemed to be a part of a recreational or community building as those terms are used in Sec. 66.1105(2)(f) 2.a., Wis. Stats.

**CAF Development Agreement
Exhibit F – Private Infrastructure**

1. Sewer and water laterals.
2. Stormwater claims and laterals.
3. Gas, electric, and other utility services from the property line.
4. Plaza, patios, walks, and approaches to the Development (including those portions within the Haymarket Transfer Parcel).
5. A retaining wall with outer (riverside) face located at the 100 Year Floodway Line per FEMA DFIRM Mapping (as shown on Exhibit G-1), as necessary to support the Development. It is anticipated that the top of such wall will be at an elevation of approximately one foot (1') below finished floor elevation of the first floor of the CAF. The outer (riverside) face of the retaining wall will be located at a distance of fifteen feet (15') from the exterior riverside wall of the CAF.
6. Landscaping and related features.

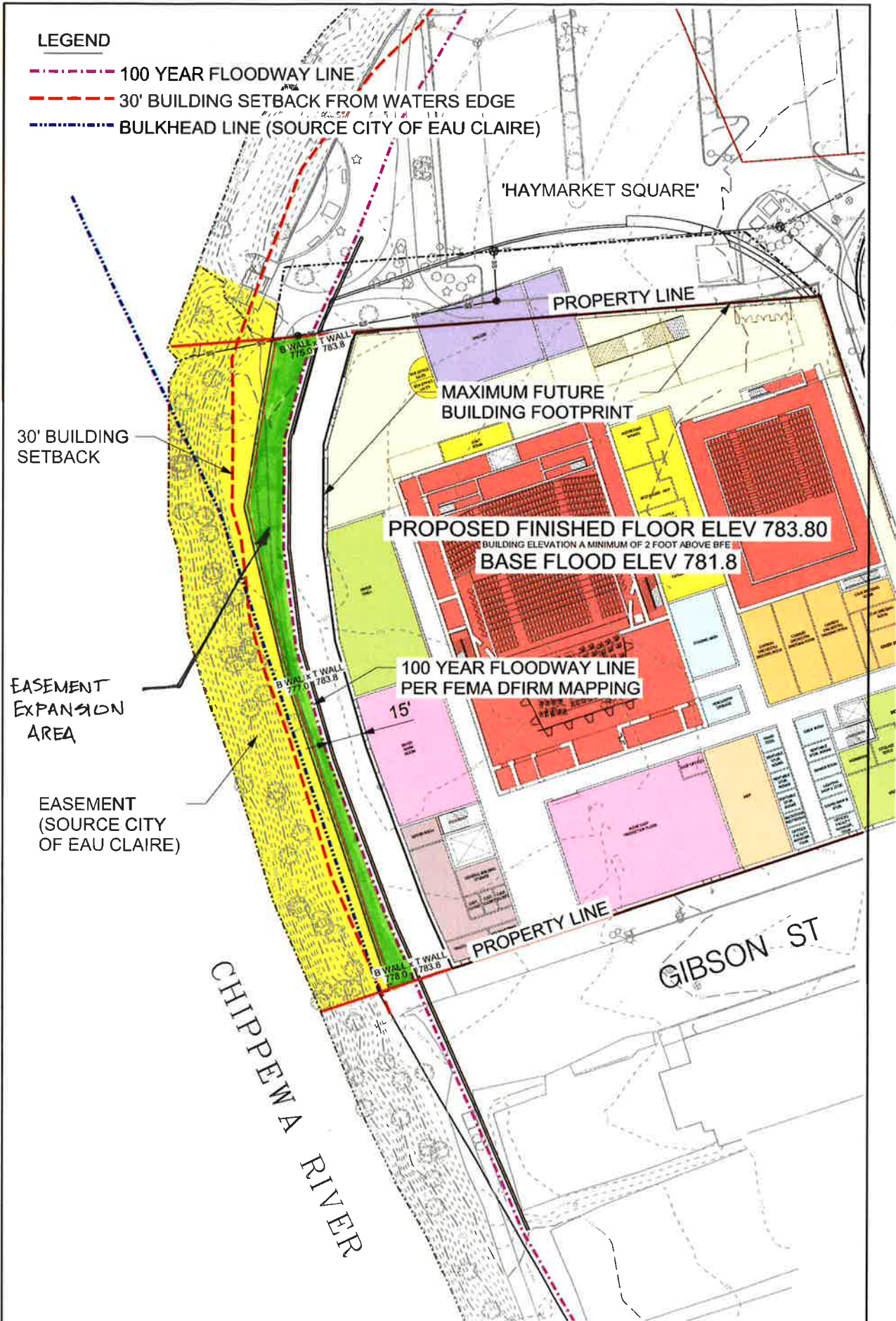
CAF Development Agreement
Exhibit G – Easement and Conveyance Illustration

See attached. (Note: Illustrations of easements, licenses, encroachments, transfers and similar to be provided by the party receiving said easements, licenses, encroachments, transfers, or similar, which illustrations are subject to approval by all other parties)

EXHIBIT G-1

LEGEND

- - - - - 100 YEAR FLOODWAY LINE
- - - - - 30' BUILDING SETBACK FROM WATERS EDGE
- - - - - BULKHEAD LINE (SOURCE CITY OF EAU CLAIRE)



DESIGNED BY: DLW
 DRAWN BY: CRB
 CHECKED BY: DLW
 DATE: NOV 2015

PERFORMING ARTS CENTER CITY TRAIL
 HAYMARKET CONCEPTS, LLC
 EAU CLAIRE, WISCONSIN

AVRES
 ASSOCIATES
 EAU CLAIRE, WISCONSIN

DRAWING

SHEET NO

CAF Development Agreement
Exhibit H – Funding Schedule

Once the conditions set forth in Section 2.1(a)(1)-(3) have been satisfied, City will pay the Developer Incentive Payment in accordance with the following schedule:

- A. Developer and/or Owner will provide evidence (in a form satisfactory to City) of Construction Costs¹ having been incurred and paid from other sources of funds in an amount equal to at least \$5,000,000. City will pay \$2,000,000 of the Developer Incentive Payment within forty-five (45) days of receipt of such evidence.
- B. Developer and/or Owner will provide evidence (in a form satisfactory to City) of an additional \$15,000,000 in Construction Costs having been incurred and paid (over the first \$5,000,000). City will pay \$1,500,000 of the Developer Incentive Payment within forty-five (45) days of receipt of such evidence.
- C. Developer and/or Owner will provide evidence (in a form satisfactory to City) of an additional \$10,000,000 in Construction Costs having been incurred and paid (over the prior \$20,000,000). City will pay \$750,000 of the Developer Incentive Payment within forty-five (45) days of receipt of such evidence.
- D. City will pay the final \$750,000 of the Developer Incentive Payment within forty-five (45) days of the issuance of an occupancy permit for the Development.

¹ Construction Costs shall exclude land acquisition costs, but shall include the fair value of any donated materials and services related to the construction.

**CAF Development Agreement
Exhibit I – Form City Guaranty**

**CAF Development Agreement
Exhibit J – Scope of Services**

See attached.