CITY OF WAUWATOSA

COMMON COUNCIL

AGENDA ● JULY 15, 2014

Regular Meeting | **Common Council Chambers** | **7:30 PM**

7725 West North Avenue, Wauwatosa, WI 53213

PLEASE NOTE: The items on this agenda may be revised before the time of the Common Council meeting, some items may be removed and others added prior to the completion of the final Common Council agenda. The final agenda will be available in the City Clerk's office and on the city website at www.wauwatosa.net. It is anticipated that each item listed on the agenda may be discussed, referred or acted upon unless it is noted in the specific agenda item that no action is contemplated.

ROLL CALL

Approval of minutes of previous meeting

Resolution changing the start time of the August 5, 2014 Common Council meeting

PUBLIC HEARING

1. Public hearing to satisfy public notice requirements for the assessment of the following completed street improvement projects: W. Center Street (N. 117-124 Street), W. Capitol Drive (N. 92nd Street - N. Mayfair Road), and W. Meinecke Avenue (N. 81st Street to Swan Blvd)

2. Public hearing to consider proposed amendments to Chapter 24 of the Wauwatosa Municipal Code to clarify various sections within the Zoning Code (zoning code housekeeping update #2)

APPOINTMENTS BY THE MAYOR

1. Energy and Recycling Advisory Committee (appointment, final reading)

   Deb Konopacky, 7621 Rogers Avenue (Dist. 1)
   Wauwatosa business owner
   Term expires 12/31/16

   Andy Korb, 2212 N. 64th Street (Dist. 1)
   Architect
   Term expires 12/31/16

APPLICATIONS, COMMUNICATIONS, ETC.

1. Request by Maya Romboy, East Tosa Alliance, for a Street Festival Permit for the 5th Annual Chili'n on the Avenue on Saturday, September 13, 2014

   Community Development Committee

FROM THE PLAN COMMISSION

1. Resolution approving a Conditional Use in the C1 District at 7734 Harwood Avenue for a drinking establishment (Bridgetowne Lounge), Peter Haise, Bridgetowne Lounge

Commission recommended approval 6-0

2. Resolution approving a Conditional Use in the C0 District at 12121 West North Avenue for a childcare center, Rosemary Krause and Janey Brandt, Wauwatosa Day Care and Learning Centers, and Wauwatosa School District, applicants

Commission recommended approval 5-0-1

3. Resolution approving a Conditional Use in the C2 District at 2500 North Mayfair Road for a coffee shop (Starbucks), David Carr, Ted Moudis Associates, and Steve Smith, General Growth Properties, applicants

Commission recommended approval 6-0

4. Resolution approving a Land Division via Certified Survey Map at 1215 North 62nd Street, Wayne Wiertzema and Stewart M. Wangard, Tosa Reef, LLC., applicants

Commission recommended approval 6-0

5. Resolution approving a Land Combination via Certified Survey Map in the C1 District at 1529 Wauwatosa Avenue, Linda Bergman, MSI General Corp., and Wauwatosa Avenue United Methodist Church, applicants

Commission recommended approval 6-0

6. Resolution approving a Land Division in the R1-6 District at 1926 and 2006 Two Tree Lane, Jeff Johnson and Stephen Kaniewski, applicants

Commission recommended approval 6-0

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

1. Resolution recommending approval of a Development Agreement with Mandel Development for residential development associated with the Eschweiler Buildings at UWM Innovation Campus

Committee recommended approval 6-1

2. Resolution approving a Land Division by Certified Survey Map at approximately 1300 Discovery Parkway, David Gilbert, UWM Real Estate Foundation, applicant

Committee recommended approval 7-0

3. Resolution approving a Planned Development Amendment at 1200 North Mayfair Road for signage, Kim Guerrero, Wangard, and 1200 & 1233 Mayfair TIC Group, applicants

Committee recommended approval 7-0

FROM THE COMMITTEE ON BUDGET & FINANCE

1. Resolution authorizing acceptance of a Site Assessment Grant from the Wisconsin Economic Development Corporation in the amount of $133,500 and approving an associated Level III fund transfer

Committee recommended approval 5-0

2. Resolution denying the claim of Valerie Emerson, 3960 S. 55th Street, Milwaukee

Committee recommended approval 5-0

3. Ordinance amending Section 6.08.475 of the Wauwatosa Municipal Code providing for discretionary standards in the issuance of grants for certain Reserve "Class B" Liquor licenses

Committee recommended approval 5-0

4. Notice of Claim: Murtis Grant-Acquah, 3443 Menomonee River Parkway

City Attorney

5. Bills and Claims

FROM THE BOARD OF PUBLIC WORKS

1. Resolution authorizing an encroachment into city right-of-way at 7700 Harwood Avenue for installation of eight bicycle bollards, Sean Phelan, 7700 Harwood LLC, applicant

Board recommended approval 4-0

2. Resolution rejecting bids received for Contract 14-01, N. 104th Street Storm Sewer Extension

Board recommended approval 4-0

3. Resolution awarding the bid for Contract 14-81, Upgrade City Fueling System, to Walt's Petroleum Service, Inc., for the base bid of $246,000, and allocating $60,000 from the Fleet Reserve Account Fund Balance for this purpose (low of 3 bids)

Board recommended approval 4-0

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires the meeting or materials at the meeting to be in an accessible location or format, must contact the City Clerk at voice telephone 479-8917 or TTY 471-8484 (City Hall, 7725 W. North Avenue, Wauwatosa, Wisconsin 53213) for accommodations. Requests for accommodations for meetings should be made at least three (3) business days prior to the meeting. Every effort will be made to arrange accommodations for all meetings; so please give the City Clerk as much advance notice as possible.

CITY OF WAUWATOSA
Resolution

By:

WHEREAS, the regularly scheduled August 5th Common Council meeting will occur on the day of the annual Tosa's Night Out event; and

WHEREAS, numerous members of the Common Council and city staff may wish to participate in the post-sundown activities on that evening, but may not be able to do so if the meeting of the Common Council begins at 7:30 p.m.

NOW, THEREFORE, BE IT RESOLVED THAT the meeting of the Wauwatosa Common Council on August 5, 2014 shall begin at 6:30 p.m.

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
MEMO

To: **Common Council**

From: **Tamara Szudy**

Date: **July 09, 2014**

Subject: **Public hearing to consider proposed amendments to Chapter 24 of the Wauwatosa Municipal Code to clarify various sections within the Zoning Code (zoning code housekeeping update #2)**

A. Issue

Miscellaneous zoning text amendments to Chapter 24 of the Wauwatosa Municipal Code (zoning code housekeeping update #2)

B. Discussion

See the attached memo for additional information.

C. Recommendation

Staff recommends approval, including setting a public hearing date of July 15, 2014.

History:

06/09/14	Plan Commission	RECOMMENDED FOR APPROVAL

CITY OF WAUWATOSA
PLANNING DIVISION
7725 WEST NORTH AVENUE, WAUWATOSA, WISCONSIN 53213

PHONE (414) 479-8957
FACSIMILE (414) 479-8986
E-MAIL: tplanning@wauwatosa.net
WEB SITE: www.wauwatosa.net

To: Members of the Plan Commission
From: Tammy Szudy, Principal Planner
Re: 2014 Zoning Code Housekeeping Updates #2
Date: June 2, 2014

This is the second round of "housekeeping" amendments to the City's zoning code since it was adopted in March 2013. As this is a text amendment process, a public hearing before the Common Council is scheduled for July 15th. Please feel free to contact me if you have any questions.

1. **24.01.110E.3.A Split-Zoned Parcels, Zoning Map:** Clarify regulations.
   Existing: For existing and proposed uses and structures, the more restrictive provisions of the applicable zoning districts apply to the entire parcel except when one base zoning district applies to at least 75% of the total parcel area and the remainder of the parcel is less than 5,000 square feet in area. The regulations of the zoning district that apply to the larger portion of the parcel apply to the entire parcel.
   Proposed: For existing and proposed uses and structures, the more restrictive provisions of the applicable zoning districts apply to the entire parcel. However, when one base zoning district applies to at least 75% of the total parcel area and the remainder of the parcel is less than 5,000 square feet in area, the regulations of the zoning district that apply to the larger portion of the parcel apply to the entire parcel.

2. **24.03.040 Other Regulations, Commercial Districts:** Add a cross reference to the Overlay Zoning Districts.
   Existing: None
   Proposed: H. Overlay Zoning Districts. See Chapter 24.05

3. **24.06.040C Maximum Height, Lot and Building Standards, SP-PUB, Public Facilities District:** Revise maximum height for principal and accessory building as the current regulations are too low for this district, which is only in two areas of the City (Wauwatosa Public Works facility and Milwaukee County Public Works/Sheriff's Station).
   Existing: Principal Buildings: 35'; Accessory Buildings: 20'
   Proposed: Principal Buildings: 50'; Accessory Buildings: 35'

4. **24.06.070I.1 Setbacks, SP-RP, Research Park District**: Clarify regulation.
   Existing: From property line (50 feet from curbline) on Mayfair, Watertown Plank and Wisconsin: 25 feet
   Proposed: From property line on Mayfair, Watertown Plank and Wisconsin: 50 feet

Attachment: 2014Zoning Code housekeeping (2237 : Zoning Code housekeeping update #2)

5. **24.07.030 Use Table:** Various revisions to allowed uses or terminology.
   - M1 District – Add a footnote to cross reference a regulation in the Manufacturing section (24.04.040F)
     Existing: None
     Proposed: M1 District (top of column): [5]; Footnote: [5] See Section 24.04.040 F - Outdoor storage activities require a Conditional Use

   - Personal Improvement Services – Inadvertent C in SP-PKG column – no uses other than parking are allowed in SP-PKG district.
     Existing: C
     Proposed: -

6. **24.12.020B.1 Standards, Perimeter Vehicular Use Area Landscaping:** Clarify regulation (in bold below).
   Existing: A landscape strip with a minimum depth of 7 feet must be provided between the vehicular use area and the **street frontage**. This perimeter vehicular use area must include at least 3 deciduous trees and 10 shrubs per 50 feet of vehicular use area frontage.
   Proposed: A landscape strip with a minimum depth of 7 feet must be provided between the vehicular use area and the **public right-of-way**. This perimeter vehicular use area must include at least 3 deciduous trees and 10 shrubs per 50 feet of vehicular use area frontage.

7. **24.15.040C.2 Intentional Damage or Destruction, Loss of Nonconforming Status, Nonconforming Structures:** Incorrect terminology – should be structure instead of use (in bold below).
   Existing: When a nonconforming structure is intentionally destroyed or damaged by causes within the control of the owner and the extent of damage or destruction is more than 50% of the fair market value of the structure at the time of damage, based on information provided by the assessor's office, the **use** may not be reestablished except in compliance with all regulations applicable to the zoning district in which it is located.
   Proposed: When a nonconforming structure is intentionally destroyed or damaged by causes within the control of the owner and the extent of damage or destruction is more than 50% of the fair market value of the structure at the time of damage, based on information provided by the assessor's office, the **structure** may not be reestablished except in compliance with all regulations applicable to the zoning district in which it is located.

8. **24.16.030G Review Criteria and Standards, Zoning Map Amendments (Rezonings**): Extra comma between public and health (in bold below).
   Existing: Zoning map amendments are legislative decisions of the common council based on their consideration of the **public, health**, safety and general welfare.
   Proposed: Zoning map amendments are legislative decisions of the common council based on their consideration of the **public health**, safety and general welfare.

9. **24.16.040 Conditional Use Permits:** Add expiration language. The Code has such language for Planned Developments and Variances but not for Conditional Uses.

Attachment: 2014Zoning Code housekeeping (2237 : Zoning Code housekeeping update #2)

Existing: None

Proposed: I. Lapse of Approval. A Conditional Use will lapse and have no further effect one year after it is approved by the Common Council, unless:
1. a building permit has been issued (if required);
2. the use or structure has been lawfully established; or
3. unless a different lapse of approval period or point of expiration has been expressly established by the Common Council.

10. **24.16.110F.3 Notice of Hearing, Appeal of Administrative Decisions:** Incorrect terminology – should be district instead of ward (in bold below).

    Existing: Notice of the filing of an appeal must be forwarded to the common council president and the alderperson of the **ward** in which the subject property is located.

    Proposed: Notice of the filing of an appeal must be forwarded to the common council president and the alderpersons of the **district** in which the subject property is located.

11. **24.17.010D.2 Composition, Historic Preservation Commission, Review and Decision-Making Bodies:** Reduce membership of the Historic Preservation Commission to seven members as it is increasingly difficult to find people to serve on all City Boards and Commission. Now is the optimal time to reduce the Commission size as there are currently three vacancies on the Historic Preservation Commission.

    Existing: The historic preservation commission consists of 9 members, one of whom must be an alderperson and 8 of whom must be citizens.

    Proposed: The historic preservation commission consists of 7 members, one of whom must be an alderperson and 6 of whom must be citizens.

11. **Various code sections** - 24.01.050, 24.09.090E.1, 24.13.010E.2, 24.13.010G.1.b, 24.13.010M.1, 24.13.010N.1.a, 24.16.080E.4: correct department head title or name of department as Community Development is no longer used.

    Existing: Director of Community Development or Department of Community Development

    Proposed: Development Director or Development Department

Attachment: 2014Zoning Code housekeeping (2237 : Zoning Code housekeeping update #2)

EAST TOSA

EAST TOSA ALLIANCE
www.easttosa.org

July 11, 2014

Dear Clerk Ledesma,

The East Tosa Alliance would like to request the opportunity to host our 5th Annual Chili'n on the Avenue on Saturday, September 13, 2014 from 8am-5pm on North Avenue in East Tosa. This event has grown to include a charity run (2011), family area, music, and chili cook off. To accommodate the approximate crowd we had last year, we are requesting the following from 7:00am-6:00pm on September 13, 2014:

- Street closures between 68th(west side) through Lefeber Avenue (east side)
- Closure of the public parking lot at 69th and North Avenue

As with last year, we will meet with staff from Health, Police and Public Works Departments to review and assess the event details. We will also secure public liability insurance, based on the anticipated number of attendants.

We respectfully request a recommendation to the Common Council for approval of this event. Should you have any questions, please contact me via phone at 414.507.5000 or email at maya@easttosa.org.

Regards-

Maya Romboy

MAYA ROMBOY
Vice Chair / Special Events
East Tosa Alliance

c: Meg Miller, Board Chair; Kathryn Knowlton, Secretary; Josh Fulfer, Marketing Chair
District 1 and 5 Alders, James Moldenhaur, Matthew Stippich, Robert Pantuso and Joel Tilleson

CITY OF WAUWATOSA
Resolution

By: Plan Commission

WHEREAS, Peter Haise, Bridgetowne Lounge, applied for a Conditional Use in the C1 District at 7734 Harwood Avenue for a drinking establishment, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Peter Haise, Bridgetowne Lounge, for a drinking establishment in the C1 District at 7734 Harwood Avenue, with the following conditions:

1. hours of operation 8 a.m. to 12 a.m. daily with patio hours of 8 a.m. to 11 p.m. daily
2. occupancy, including outdoor seating and employees, is limited to maximum 49 persons
3. compliance with building and fire codes
4. obtaining any necessary licenses and permits

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Plan Commission

WHEREAS, Rosemary Krause and Janey Brandt, Wauwatosa Day Care and Leaning Centers, and Wauwatosa School District applied for a Conditional Use in the C0 District at 12121 West North Avenue for a childcare center, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Rosemary Krause and Janey Brandt, Wauwatosa Day Care and Leaning Centers, and Wauwatosa School District for a childcare center in the C0 District at 12121 West North Avenue with the following conditions:

1. hours of operation 6:30 a.m. to 6 p.m. daily
2. obtaining any necessary licenses and permits

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Plan Commission

WHEREAS, David Carr, Ted Moudis Associates, and Steve Smith, General Growth Properties, applied for a Conditional Use in the C2 District at 2500 North Mayfair Road for a coffee shop (Starbucks), and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to David Carr, Ted Moudis Associates, and Steve Smith, General Growth Properties, for a Starbucks coffee shop in the C2 District at 2500 North Mayfair Road, with the following conditions:

1. hours of operation 7 a.m. to 10 p.m. daily
2. obtaining any necessary licenses and permits

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Plan Commission

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin that permission be and the same is hereby granted to Wayne Wiertzema and Stewart M. Wangard, Tosa Reef, LLC., for a Land Division by Certified Survey Map at 1215 North 62nd Street. The location of the parcels is more particularly described as follows:

Parcel 3 of Certified Survey Map No. 7639, recorded as Document No. 9060977, being a part of the Southwest ¼ and the Southeast ¼ of the Southeast ¼ of Section 22 and the Northwest ¼ and the Northeast ¼ of the Northeast ¼ of Section 27 in the Town 7 North, Range 21 East, in the City of Wauwatosa, Milwaukee County, Wisconsin

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 17.02.070 of the Code of the City of Wauwatosa.

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Plan Commission

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin that permission be and the same is hereby granted to Linda Bergman, MSI General Corp., and Wauwatosa Avenue United Methodist Church for a Land Combination by Certified Survey Map at 1529 Wauwatosa Avenue. The location of the parcel is more particularly described as follows:

Being the South 30 feet of Lots 1 and 2 and all of Lots 4, 5, 6, and 7 of Assessors Plat No. 22; Also all of Lots 16 and 17 of the Resubdivision of Lots 1, 2, 3, 4, 10, and Part of Lot 5 in Greenwoods Sub'd; Also all of Lots 1, 2, 18, 19, 20, and the North ½ of Lot 3 and the North 10 Feet of Lot 17, all in Coulthards Sub'd; and a Part of the NE ¼ of the SE ¼ of Section 21 in the Township 7 North, Range 21 East, in the City of Wauwatosa, Milwaukee County, Wisconsin

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 17.02.070 of the Code of the City of Wauwatosa.

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Plan Commission

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin that permission be and the same is hereby granted to Jeff Johnson and Stephen Kaniewski for a Land Division in the R1-6 District at 1926 and 2006 Two Tree Lane. The land being divided is more particularly described as follows:

The East 110.5 ft of Lot 7, Block 1, and part of the East 110.55 feet of Lot 8, Block 1, Amended Plat of Washington Highlands, being a subdivision of a part of the NE 1/4 and the Southeast 1/4 of Sec 22, Township 7 North, Range 21 East described as follows: Commencing at the Northeast corner of Lot 7, Block 1, thence S 88°36'54"W, 110.55 ft; thence S 01°08'21"E, 133.99 feet; thence N 88°36'54"E, 110.92 ft; thence N 01°17'56"W, 133.99 ft to the point of beginning. Said land containing 14,838 sf.

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 17.02.070 of the Code of the City of Wauwatosa.

Passed and Dated _____

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Clerk

Approved _____

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Mayor

CITY OF WAUWATOSA
Resolution

By: Community Development Committee

BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT appropriate City Officials are hereby authorized to execute the proposed Development Agreement with Echelon LLC for residential development associated with the Eschweiler Buildings at the UWM Innovation Campus in a form substantially in compliance with the version which was amended and approved by the Committee on Community Development at its meeting of July 8, 2014, a copy of which is attached hereto and incorporated herein.

Passed and Dated _____

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Clerk

Approved _____

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Mayor

DEVELOPMENT AGREEMENT

by and between

ECHELON LLC

and the

CITY OF WAUWATOSA

RELATIVE TO RESIDENTIAL DEVELOPMENT WITHIN WAUWATOSA TAX INCREMENTAL DISTRICT NO. 6 FOR RESIDENTIAL DEVELOPMENT ASSOCIATED WITH THE HISTORIC ESCHWEILER BUILDINGS

This DEVELOPMENT AGREEMENT ("Agreement") is made and entered into by and between Echelon LLC, a Wisconsin limited liability corporation, and its successors and assigns however designated ("Developer" or "Owner"), Echelon Parking Corporation ("Parking Unit Owner") and the CITY OF WAUWATOSA, a Wisconsin municipal corporation located in Milwaukee County, Wisconsin, and its successors and assigns however designated ("City").

RECITALS

City, Parking Unit Owner and Developer (collectively, the "Parties") acknowledge the following:

I. As part of the UWM Real Estate Foundation's ("UWMREF") development of the Innovation Campus in Tax Incremental District Number 6 ("TID #6"), which development UWMREF is undertaking through its affiliate, UWM Innovation Park, LLC ("UWMIP"), the Developer proposes to construct a residential development ("Project") in an area adjacent to and dispersed among the "Eschweiler Buildings" which are listed on the National Register of Historic Places. The legal description of the parcel upon which the Project is to be constructed (the "Property") is as follows:

Lot 4 of Certified Survey Map Number 8401, City of Wauwatosa, Milwaukee County, State of Wisconsin.

II. The Project currently includes two alternate scenarios, both of which are permitted under the approved amendment to the Planned Unit Development Plan for UWM Innovation Campus (the "Approved PUD Amendment"), and have also been granted the necessary Certificate of Appropriateness by the Wauwatosa Historic Preservation Commission ("HPC"):

a. Scenario 1A (the "Complete Eschweiler Preservation Plan"): The Complete Eschweiler Preservation Plan includes the construction of approximately 192 apartments and underground parking in newly constructed buildings, associated site work, and the rehabilitation of the "Administration Building", one of the Eschweiler Buildings, which will be occupied by Developer or the

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

then owner of the Property ("Owner") for leasing offices and amenity spaces for Owner's residents and which is also anticipated to be occupied by The University Laboratory School for Forest Exploration Center to be established by the Forest Exploration Center, Inc., a Wisconsin non stock corporation ("FEC") or another compatible use entity as described in the Historic Preservation Commission Certificate of Appropriateness approved on May 13, 2013. The rehabilitation of the "Dormitory Building", "Dairy Building", and "Engineering Building", all of which are Eschweiler Buildings, are anticipated to be rehabilitated by the FEC in connection with the use of those buildings as "The University Laboratory School" or another compatible use entity as described in the Historic Preservation Commission Certificate of Appropriateness approved on May 13, 2013, and as reauthorized (the "COA"), The "Powerhouse Building" will be removed.

b. Scenario 2A (the "Administration Preservation Plan"): The Administration Preservation Plan includes the construction of approximately 192 apartments and underground parking in newly constructed buildings, associated site work, and the rehabilitation of the Administration Building which will be occupied by Owner for leasing offices and amenity spaces for Owner's residents. The rehabilitation of the Administration Building will also include community offices and meeting spaces. The Dormitory and Dairy Buildings will be partially demolished and converted into walled gardens (the "Walled Gardens"). The Engineering Building and Powerhouse Building will be removed.

III. Developer was awarded the right to construct the Project as a result of an RFP process conducted by the current land owner, UWMIP, and, together with Parking Unit Owner, is a beneficiary of an existing option to purchase the property between Developer, Parking Unit Owner and UWMIP.

IV. UWMIP has also entered into an option with the FEC for the purpose of allowing FEC to pursue the necessary planning and fundraising related to potential development of the University Laboratory School under scenario 1A, as described above.

V. As part of the Project, Developer, on its own behalf and on behalf of Parking Unit Owner, proposes to construct, among other Project elements, approximately 192 rental units (approximately 219,156 gross square feet) as new construction, the construction of approximately 228 indoor (underground) parking stalls and additional street parking as new construction, to rehabilitate the Administrative Building, and to remove the Powerhouse Building. The manner in which and whether or not the other Eschweiler Buildings are to be included in the Project is dependent upon which scenario is chosen.

VI. Developer and Parking Unit Owner intend to submit the Property to the Wisconsin Condominium Ownership Act by recording the Declaration of Echelon Condominium (the "Declaration") against the Property and creating Echelon Condominium (the "Condominium"). The Condominium will be governed by the Declaration, the Articles of

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

Incorporation and the Bylaws of the condominium association and the other condominium documents (collectively, the "Condominium Documents"). The Condominium improvements will consist of a parking and multi-family residential development on the Property, initially containing at least 2 condominium units (each a "Unit" and collectively, the "Units") as follows: (i) a residential unit generally comprised of apartment homes, parking and related amenities (the "Residential Unit") and (ii) a parking unit generally comprised of underground parking below a portion of the Residential Unit (the "Parking Unit"). At Developer's option, all or a portion of the Administration Building may become a third Unit or possibly a third Unit and a fourth Unit. If scenario 1A proceeds, then the Eschweiler Buildings may also be divided into a separate and additional Unit or Units, which Units may be owned by UWMIP or an affiliate and leased to the FEC and Units in the Administration Building may be leased or subleased to Owner or owned by or otherwise occupied by Owner.

VII. Upon the creation of the Condominium, the Parking Unit Owner will convey all of its interests in those Units in which it has an ownership interest, other than the Parking Unit, to Owner and the Owner will convey all of its interests in the Parking Unit to the Parking Unit Owner.

VIII. The Parking Unit Owner will own and operate the Parking Unit. Developer intends to undertake construction of the Residential Unit and the common elements of the Condominium and will construct the Parking Unit on behalf of the Parking Unit Owner pursuant to an agreement between the Parking Unit Owner and Developer (the "Parking Unit Agreement.")

IX. Developer expects to incur approximately $42,350,000 in estimated overall costs associated with the Project (the "Overall Project Costs") for scenario 1A, or $43,340,000 for scenario 2A, in each case, including the costs of the Parking Unit, which costs will be addressed pursuant to the Parking Unit Agreement.

X. Included within the Overall Project Costs are certain costs that Parking Unit Owner will incur under the Parking Unit Agreement for the creation of certain structured or underground parking, i.e., the Parking Unit, which has been defined as an appropriate expenditure within the project plan for TIF #6. Parking Unit Owner will incur an amount equal to or more than $2,500,000 in costs associated with the construction of underground parking identified herein as the Parking Unit which are extraordinary and associated with redevelopment of the area. Developer has requested financial assistance for the Project for the benefit of Parking Unit Owner consistent with the project plan for TIF #6 in the amount of $2,500,000, for the purpose of creating underground parking to be associated with the Project and owned by Parking Unit Owner.

XI. The Property is presently zoned appropriately for the development and operation of this Project.

XII. The Developer, in connection with the Project and the Property, has participated in the municipal approval process required by the City for this Project, which municipal process

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

has been consistent with the municipal approval process required of a development such as the Project in the City.

XIII. The City, including, without limitation, the Common Council and Plan Commission, have approved the Project and all of the Plans (as defined below) submitted for approval to date, and will use best efforts to facilitate decisions on such future approvals as may be necessary or desirable in order for Developer to proceed with the Project.

XIV. The parties hereto have negotiated and agreed to terms of financing assistance by the City for the costs associated with construction of the Parking Unit associated with the Project.

XV. The City has also agreed to reimburse Developer for the costs of installing the water main that will serve the Project as more particularly set forth herein.

XVI. The parties hereto enter into this Agreement for the purpose of setting forth certain rights, duties and obligations with respect to the Property, the Project (which includes the the Parking Unit) and the financing assistance.

XVII. The City, UWMIP and UWMREF entered into that certain UWM Innovation Campus Development Agreement dated March 28, 2013 (as the same may be amended from time to time, the "UWM Development Agreement") and the parties hereto want to expressly agree that, upon execution of this Agreement and the execution by the County of Milwaukee, Wisconsin (the "County") of that certain Development Agreement Estoppel Certificate (UW-Milwaukee Innovation Park)(the "County Estoppel Certificate"), Developer, Owner and Parking Unit Owner shall have no liability or obligation under the UWM Development Agreement and the Property and the Project shall be governed by this Agreement and not the UWM Development Agreement.

AGREEMENTS

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

SECTION 1. PROJECT OVERVIEW

On May 4, 2010, the City's Common Council adopted O-10-04, an amendment to the Wauwatosa municipal code rezoning the Property from Medical Center and Institutions District to Business Planned Development.

On September 17, 2013, the Common Council adopted R-13-181, a resolution approving the amended plan for the Planned Unit Development overlay applicable to this parcel, approving the Project with conditions (the "Development Plan"). The approval resolution and the content of the approved application and materials are attached hereto as **EXHIBIT A**. **EXHIBIT A** also includes, as Addendum C, a record of the HPC approval dated May 13, 2013.

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On October 15, 2013, the Common Council adopted Resolution R-13-205, approving the terms relevant to this Agreement and the transactions contemplated herein. The Common Council has approved all other agreements and/or transactions that require its approval.

SECTION 2. PLANS

The City, including, without limitation, the City's engineer, has received preliminary site and utility plans (collectively, the "Plans") related to the Project, submitted on _____, 2014, by Graef USA**,** Inc., a list of which plans is attached hereto as **EXHIBIT B** and incorporated herein.

Upon receipt of final versions of each of the Plans, the City represents, warrants and covenants that it and every instrumentality or officer of the City will review the Plans in a timely and professional manner and will not unreasonably delay permit issuance due to plan review, provided such Plans are acceptable and sufficient for approval. The City agrees that it does not need to review or approve any other types of plans, designs or specifications for this Project in order to issue a building permit for the Project.

SECTION 3. AESTHETICS AND VISUAL GUIDELINES

The Project shall comply with all provisions and requirements of the COA. The HPC, acting in its role as Design Review Board, reviewed and approved the Plans at its meeting on July 17, 2013, as more particularly set forth in the minutes for said meeting. Minor changes in the approved Plans, such as a change in exterior colors, materials, design elements and/or changes in dimensions of building footprints amounting to adjustment of less than five (5) feet at any one dimension shall be subject to additional review and approval by the HPC. All more significant changes in the approved Plans (other than minor changes described in the previous sentence that do not require the review and approval of either the Plan Commission or Common Council) shall be subject, not only to additional review and approval by the HPC, but also to additional review and approval by the Plan Commission and/or Common Council as appropriate.

SECTION 4. THE PROJECT

A. Developer covenants and warrants to the City that the development contemplated by this Agreement will consist of the Project in accordance with the Development Plan and including without limitation, amenities referenced in the Plans. Notwithstanding anything to the contrary set forth in this Agreement, the City agrees that this Agreement does not prohibit or restrict Developer from adding additional amenities to the Project, subject to any applicable zoning restrictions and any applicable municipal approval process, provided the latter is of general applicability within the City.

B. If the FEC (or another compatible educational use that would impact the Wauwatosa School District) moves forward in the Eschweiler Buildings under scenario 1A, the release of the TIF Funds (as such term is hereinafter defined) to the Parking Unit Owner under scenario 1A pursuant to Section 6 will be conditioned upon that educational entity entering into an agreement to operate on terms acceptable to the Wauwatosa School District; provided, however, if (i) the FEC or another compatible educational use that would impact the Wauwatosa

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School District) does not move forward in the Eschweiler Buildings under scenario 1A as provided herein or (ii) the FEC or another educational entity selected by Developer, in its sole discretion, is unable to enter into an agreement to operate on terms acceptable to the Wauwatosa School District, then Developer may elect to proceed with any of: (i) scenario 2A, (ii) a use that does not impact the Wauwatosa School District or (iii) a use that is not educational, and if Developer so elects, then this condition shall not apply, the Wauwatosa School District shall have no right to impact or affect the Project or the release of the TIF Funds, and the TIF Funds shall be released as provided in Section 6. Parking Unit Owner may also waive the release of the TIF Funds and Developer may then proceed under scenario 1A without any agreement with the Wauwatosa School District.

C. If scenario 2A or a non-educational compatible use under scenario 1A, moves forward, the restriction set forth in Subsection B above on the release of the TIF Funds to Parking Unit Owner shall not apply thereto.

D. At a time not more than 8 months after the start of construction of the new apartments (as indicated by the earlier of demolition of the Powerhouse Building or commencement of site work), Developer is to notify the City if (i) the FEC (or another compatible educational user, if any that has entered into or been assigned the Lease Option (an "Educational Option Holder")) has not exercised its Lease Option (as hereinafter defined) or has not been able to meet the conditions necessary to timely exercise said Lease Option, (ii) the Developer believes in good faith that the FEC (or an Educational Option Holder) will not be capable of meeting the conditions necessary to timely exercise said Lease Option or otherwise completing its role under scenario 1A, including the rehabilitation of the Eschweiler buildings as described therein, or (iii) the FEC or any another educational entity selected by Developer, in its sole discretion, is unable to enter into an agreement to operate on terms acceptable to the Wauwatosa School District, then, upon such notification the City and Developer shall cooperate, and, at Developer's option, shall work together with the Wisconsin Historical Society, to begin the process of seeking other compatible users able to rehabilitate and utilize the Eschweiler Buildings; provided, however, the determination of whether or not a given use or user is compatible with the Project shall be made by Developer, in its sole discretion. Notwithstanding the foregoing, this notification and seeking of other compatible users in no way limits the rights of Developer to proceed with scenario 2A as permitted by the Approved PUD Amendment on the time table set forth in and as described in the COA, a copy of which is attached hereto as **EXHIBIT C**, i.e., at any time after the date which is 12 months after commencement of construction on the Project if the FEC (or an Educational Option Holder) has not exercised its Lease Option or has not been able to meet the conditions necessary to timely exercise said Lease Option, or if Developer determines, in its sole reasonable discretion, that the FEC (or an Educational Option Holder) will not be capable of meeting the conditions necessary to timely exercise said Lease Option or otherwise completing its role under scenario 1A, including the rehabilitation of the Eschweiler buildings as described therein, then Developer may proceed with scenario 2A. The term "Lease Option" means the certain Lease Option Agreement dated April 1, 2013, as amended from time to time, by and between UWMIP and FEC, as the same may be assigned or replaced with the consent of Developer, which consent may be withheld for any reason. A copy of the current Lease Option has been provided to the City.

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SECTION 5. PROJECT BUDGET

Developer has indicated alternative budget projections for each of the alternative scenarios described above, each of which has been found to require identical amounts of TIF funding in order to be feasible. Both budget projections are described below:

Scenario 1A is the Complete Eschweiler Preservation Plan as described above. Scenario 1A is based on the FEC's or an Educational Option Holder's ability to exercise the Lease Option and raise the necessary funds and proceed with rehabilitation of the Eschweiler Buildings as proposed within the time frames required. This iteration of the Project will include approximately 192 rental units (approximately 219,156 gross square feet) as new construction. Scenario 1A also includes the construction of approximately 228 indoor (underground) parking stalls and additional street parking. The approximate project costs for scenario 1A were estimated by Developer and include the following:

Uses	**Amount**
Land Acquisition	$4,000,000*
Construction Costs	$32,294,112*
Development Costs	$1,683,200*
Marketing & Property Start-up	$330,000*
Financing	$1,435,187*
Operating Reserve	$250,000*
Development Contingency	$250,000*
Developer Overhead and Fee	$2,118,026*
Total Project Costs	**$42,360,526***

*All costs are preliminary estimates and include the costs of the Parking Unit.

Scenario 2A is the Administration Preservation Plan and includes the rehabilitation of the Administrative Building, the Walled Gardens, and construction of approximately 192 rental units (approximately 219,156 gross square feet) as new construction. Scenario 2A also includes the construction of 228 indoor (underground) parking stalls and additional street parking. The approximate project costs of scenario 2A were estimated by Developer and include the following:

Uses	**Amount**
Land Acquisition	$4,000,000*
Construction Costs	$33,196,112*
Development Costs	$1,683,200*
Marketing & Property Start-up	$320,000*
Financing	$1,468,432*

Operating Reserve	$250,000*
Development Contingency	$250,000*
Developer Overhead and Fee	$2,167,250*
Total Project Costs	**$43,344,994***

*****All costs are preliminary estimates and include the costs of the Parking Unit.

SECTION 6. TIF FINANCIAL ASSISTANCE AND FUNDING CONDITIONS

A. TIF funds are payable to Parking Unit Owner for the purpose of constructing underground parking for residents of the Project. TIF funding is available to Parking Unit Owner in an amount equal to $2,500,000 (the "TIF Funds"), less the City's share of any applicable Net Savings (as such term is defined in Subsection F below)(collectively, the "Net TIF Funds"). In the event any Net Savings are realized, the City and Developer shall share equally in those cost savings, in the manner more particularly described below. Except as otherwise described herein, the City's share of any Net Savings shall be applied to the special fund for TID #6 for uses consistent with the approved TID Project Plan.

B. For purposes hereof, the "Project Budget" shall mean the project budget prepared by Developer for either scenario 1A or 2A, (depending on which scenario is chosen) as the final project budget, and a copy of each such budget will be submitted to City Staff prior to the commencement of construction work on the Project. Following Project Completion (as hereinafter defined) of the Project, if there are any Net Savings (as hereinafter defined) from the Project Budget, then the TIF Funds payable to Parking Unit Owner will be reduced by 50% of the Net Savings.

C. Developer, at its sole discretion, will have the right, at any time and from time to time, to (i) move funds between the line items and categories in the Project Budget, including, without limitation, amounts that Developer, in good faith, anticipates will likely be unspent in any category within the Project Budget, including the operating reserve and the construction interest reserve, to offset cost overruns in any other category of the Project Budget and (ii) reduce and/or increase line items or categories in the Project Budget, including without limitation, increases for Qualified Project Upgrades (as hereinafter defined) and provide reasonable incentives to the general contractor. Developer overhead and fees shall remain fixed at an overall percentage equal to or less than the percentage for said amounts shown in the project budgets in Section 5 above without City staff approval. The term "Qualified Project Upgrades" means upgrades and amenities that are consistent with the types and quality of construction, fixtures, equipment, finishes, landscaping, upgrades and amenities that are found in or comparable in purpose or intent to those found in any multifamily or mixed use project developed by an MGP Affiliate or in any other comparable developments in the metropolitan Milwaukee area.

D. The parties understand and agree that at first occupancy of the apartments in the Project, the operating reserve line item is to contain at least $250,000 and, if necessary to so fund

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the operating reserve for the Project (the "Operating Reserve"), Developer may apply savings from any other line item to the Operating Reserve.

E. The parties understand and agree that Net Savings shall not include any savings in the construction interest reserve for the Project (the "Construction Interest Reserve") as Developer may need to or desire to use such savings to cover future interest rate risk or to purchase an interest rate hedging instrument.

F. For purposes hereof, the term "Net Savings" shall mean the amount by which total disbursements by or on behalf of the Developer, Parking Unit Owner or the Project. i.e. actual total costs incurred or to be incurred for the Project, including the Parking Unit, ("Total Disbursements") are less than the full amount of the Project Budget, excluding from "Net Savings" the amount of any savings applied to fund the budgeted Operating Reserve and any savings in the budgeted Construction Interest Reserve, in each case as said reserves are set forth in the Project Budget, and any savings paid to the general contractor pursuant to its contract. The amount of the City's share of Net Savings shall also be reduced by the amount of the Bike Share Contribution (as hereinafter defined).

G. During construction, City staff or a construction consultant retained by the City and reasonably acceptable to Developer shall be provided with copies of all of the construction draws, including the final draw, and all back up material provided to the title company making the disbursements and Developer's lender and, upon Project Completion, the City may elect to have City staff or such consultant independently verify project costs and construction draws through substantial completion of the Project and such review and independent verification shall constitute the City's audit of Project Costs. "Project Completion" means the date upon which the Project is fully completed and all lien waivers have been obtained and the final disbursement of funds for construction has been made.

H. In the event of any Net Savings and as set forth in Subsection B. above, the TIF Funds payable to Parking Unit Owner will be reduced by 50% of said Net Savings. If so much of the TIF Funds have already been paid to Parking Unit Owner at the time the amount of Net Savings is calculated such that the TIF Funds cannot be so reduced by the withholding by the City of any unpaid TIF Funds, then Parking Unit Owner shall repay to the City the amount that cannot be so reduced by withholding within 90 days of the determination of Net Savings. Any such amount which remains unpaid after 90 days may be levied as a special charge against the Parking Unit pursuant to Sec. 66.0627, Wis. Stats.

I. In addition to the application of 50% of the Net Savings to reduce the TIF Funds payable to Parking Unit Owner described in Subsections B and C, above, if there is any change in project finances due to modification of the law regarding the amount or applicability of Historic Tax Credits to the Project, or portions thereof, owned by Developer and Parking Unit Owner which results in additional revenue to the Developer or Parking Unit Owner that is not reflected by a reduction in the Total Disbursements and thus already reflected in Net Savings, then 50% of any such net revenue (revenues from said tax credits directly received by Developer or Parking Unit Owner, less all costs, fees and expenses, including, without limitation, attorneys' consultants', and accountants' fees, incurred in connection with said tax credits) to Developer or

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Parking Unit Owner that is a direct result of said law modification shall be applied to reduce the TIF Funds payable to Parking Unit Owner in the manner described in Subsections B and C. Any savings that are not required to be applied against the TIF Funds may be retained or paid to Developer or Parking Unit Owner, as the case may be, and may be used, applied, or distributed or otherwise handled by Developer or Parking Unit Owner, in Developer's or Parking Unit Owner's sole discretion

J. The City agrees to cooperate with Developer/ Owner and the lenders and investors for the Project to accommodate reasonable requests and/or requirements, including, without limitation, depositing the TIF Funds and/or other security into the escrow account and entering into a multiparty disbursing agreement in connection with the disbursement of the TIF Funds from the escrow. The TIF Funds will be disbursed in accordance with the following disbursement schedule: 25% payable into escrow with the title company acting as escrow agent for the disbursing of funds for the construction of the Project, unless otherwise directed by Parking Unit Owner, when the underground parking is substantially complete as evidenced by a certificate of completion executed by Developer's general contractor or architect, 50% payable into escrow with the title company acting as escrow agent for the disbursing of funds for the construction of the Project, unless otherwise directed by Parking Unit Owner, at substantial completion of 45% of the residential units as evidenced by a certificate of completion executed by Developer's general contractor or architect (i.e., a total of 75% then will have been disbursed), and the balance paid by periodic and relatively equal draws through substantial completion of the Project as evidenced by a certificate of completion executed by Developer's general contractor or architect ("Construction Completion").

K. Developer agrees to review the storm water management plans, including sewer capacity and projected drainage patterns, with the Friends of Monarch Trail organization. However, the approval of the storm water management plans shall be made solely by the City Engineer.

SECTION 7. REPRESENTATIONS AND COVENANTS:

A. Developer hereby represents or agrees, as applicable. to the City that:

(i) Developer is a Wisconsin limited liability company duly formed and validly existing and is qualified to do business in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

(ii) Parking Unit Owner is a Wisconsin corporation duly formed and validly existing and is qualified to do business in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

(iii) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary limited liability company action of Developer and constitute the valid and binding obligations of Developer enforceable in accordance with its respective terms, subject

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only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity and other similar laws of general application affecting the enforceability of creditors' rights generally.

(iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action of Parking Unit Owner and constitute the valid and binding obligations of Parking Unit Owner enforceable in accordance with its respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity and other similar laws of general application affecting the enforceability of creditors' rights generally.

(v) The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's articles of organization or operating agreement or any indenture, instrument or agreement by which Developer is bound, nor, to Developer's knowledge, does it violate or conflict with any law applicable to Developer or the Project; provided that the City acknowledges that the Wisconsin Department of Justice and the Wisconsin Historical Society have threatened to file a claim or lawsuit alleging that the County of Milwaukee, Wisconsin, failed to comply with the preservation easement requirement under Section 66.1111(3)(b) of the Wisconsin Statutes with respect to the Property.

(vi) Subject to reasonable cure rights, the Project shall be completed within sixty (60) months from the commencement of construction, the date of which Developer shall notify the City.

(vii) Owner will provide the City's assessor, upon request, with necessary income and expense information annually for accurate valuation of the Project during the life of TIF #6 consistent with the type and quantity of information that is customarily provided to the City's assessor by like properties.

(viii) During the Critical Taxing Period (as defined below), and except as set forth below, Owner will not contest assessed taxable value of the Project to a value below the minimum taxable value of $20,000,000. The "Critical Taxing Period" shall commence one year after Project Stabilization and end at such time as an amount equal to the final amount of the Net TIF Funds has been paid in real estate taxes in connection with the Project. "Project Stabilization" shall mean the date upon which the Property has achieved and maintained 95% physical occupancy of apartments (including models and marketing and management occupancy) continuously over any ninety (90) day time period. This agreement not to contest shall not apply if the Project is subject to a casualty, condemnation or similar unanticipated circumstances. If there is a change in the manner in which real estate taxes are assessed, the parties will work together to address the situation in an equitable manner.

(ix) The residential portion of the Project and all improvements thereon, except as stated below, shall be subject to an obligation to make payments in lieu of taxes ("PILOTS") as provided in this section, but only if and to the extent of any future exemption from general real estate ad valorem property taxation of the residential portion of the Project and

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all improvements thereon. Such obligation shall run with the land and shall have priority over all other liens and encumbrances, except zoning and municipal ordinances, liens for real estate taxes and other liens accorded priority by statute. The amount of PILOTS payable in respect to the applicable portion of the Project, including land and the improvements thereon, shall be equal to the difference, if any, between the amount of general real estate ad valorem property taxes (including taxes levied by all jurisdictions levying general real property ad valorem taxes) that would be payable on such portion, including land and the improvements thereon, if such portion, including land and the improvements thereon, were not so exempt, and the amount of general real estate ad valorem property taxes actually payable with respect to such portion, including land and the improvements thereon. Such PILOTS shall be due and payable at the same time and in the same manner as the general real estate ad valorem property taxes would have been due and payable for such year. In the event that scenario 1A is developed, the Eschweiler Buildings will be exempted from this obligation to the same extent that the City Assessor determines that such portion of the property would otherwise be exempted from ad valorem property taxes pursuant to Wisconsin Law. In the event that scenario 2A is developed and some of the Eschweiler Buildings removed and converted to the Walled Gardens, then the Walled Gardens will be exempted from this obligation to the same extent that the City Assessor determines that such portion of the property would otherwise be exempted from ad valorem property taxes pursuant to Wisconsin Law.

(x) The landscape plan shall comply with the plan to be adopted by the Mayor's UWM workgroup as a collaborative consensus and will adhere to at least a three-year natural landscape maintenance plan agreed to by Developer and City staff, acting reasonably.

(xi) Developer will use commercially reasonable efforts to cause its contractors to avoid any entry upon existing butterfly habitat adjacent to the Property (the "Habitat"). During construction, Developer will put up a chain link fence separating the construction site from the Habitat along the boundary of the Property that is immediately adjacent to the Habitat, which fence shall be marked with appropriate signage to indicate the sensitivity of the habitat area. Developer will work with Friends of the Monarch Trail in good faith to develop a reasonable and commercially practical tree preservation plan for approval by City staff, which will provide that any trees to be preserved that are located close to construction must be properly pruned, maintained, and monitored during construction in a manner reasonably acceptable to Developer and the City staff.

(xii) If a public bike-share system is created in the City of Wauwatosa which is designed to include a station located at the Project, then Developer will fund $25,000 (the "Bike Share Contribution") of the costs to install, as part of the Project, a public bike share station for the City wide bike share system, which station must be consistent with the capacity and other characteristics recommended or anticipated in the overall system design; provided, that the remainder of the costs are paid by the City and that the City funds are made available to Developer directly or through an escrow before Developer is required to incur any costs relating thereto. The City's share of Net Savings, if any, shall be reduced by the amount of the Bike Share Contribution.

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(xiii) Developer/Owner will install a high quality plaque on the grounds and in the hall on the top floor of the Administration Building recognizing the preservation of the preserved Eschweiler Building(s) in locations and pursuant to plans and specifications reasonably acceptable to Developer/Owner, which plaque shall also acknowledge the City's participation in the Project.

(xiv) Developer/Owner will use good faith efforts to determine whether or not some or all of the exterior lighting for the Project should be some form of "dark sky" lighting and, if commercially reasonable, shall install the same.

(xv) Developer/Owner will allow public access to the Walled Gardens, if such Walled Gardens are created pursuant to scenario 2A, to view the exterior of the Eschweiler Buildings, and to access the Habitat and public trails located in the Habitat and Developer/Owner will allow the public to park in Overflow Project Parking Spaces (as defined below) to assist in such access, subject, in each case, to compliance with reasonable rules and regulations for such access and parking promulgated by Developer/Owner, which, among other rules and regulations, may limit access to certain times and limit the activities that will be permitted. Developer/Owner may close the area to public access for repairs, restoration, special events and as a result of casualty or condemnation and as otherwise necessary for up to 48 hours to preserve the nonpublic nature of the Project. For purposes hereof, the term "Overflow Project Parking Spaces" shall mean only those spaces, from time to time, that are not needed to accommodate the parking needs of the residents, their guests and, under scenario 1A, any other parties entitled to use such parking.

(xvi) Under scenario 2A, Developer/Owner will allow public access to the "grand" hall on the top floor of Administration Building for public and private rentals at a reasonable rate payable to Developer/Owner, subject to compliance with reasonable rules and regulations for such use promulgated by Developer/Owner, which, among other rules and regulations, may limit access to certain reasonable times and limit the activities that will be permitted.

(xvii) Under scenario 1A, the public will have access to the restored Eschweiler Buildings at least one day a year (such as "Open Doors" in the City of Milwaukee) for public viewing and observation of preservation efforts, and at least one day per year for an event with Friends of the Monarch Trail or the Historical Society/Preservation Commission or other groups deemed appropriate by Owner and the City, or on Owner's own accord.

B. The City hereby warrants and represents to the Developer that:

(i) The execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the City, and no other or further acts or proceedings of the City or its officials are necessary to authorize and approve the execution, delivery, and performance of this Agreement, and the matters contemplated hereby.

(ii) This Agreement, the exhibits, documents, and instruments associated herewith and made a part hereof, have, if applicable, been duly executed and delivered by the City and constitute the legal, valid, and binding agreement and obligation of the City, enforceable against the City in accordance with their respective terms.

SECTION 8. MAINTENANCE OF PROPERTY

The Project shall be maintained in accordance with applicable laws.

SECTION 9. NOTICES

All communications or notices required or permitted under this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to the person or entity entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, airbill prepaid, (iii) upon transmission if by facsimile (with confirmation of accepted transmission), but only if notice is also sent under either subparagraph (i) or (ii) within one business day thereafter or (iv) by electronic mail or such other means of electronic communication as is agreed and acceptable to both parties, but only if notice is also sent under either subparagraph (i) or (ii) within one business day thereafter, and each such communication or notice shall be addressed to the following individuals or their successors unless and until any of such parties notifies the other in accordance with this paragraph of a change in contact name or address:

If as to City:

City of Wauwatosa
Wauwatosa City Hall
7725 West North Avenue
Wauwatosa, WI 53213
ATTN: Development Director
tplanning@wauwatosa.net

With a copy to:

City of Wauwatosa
Wauwatosa City Hall
7725 West North Avenue
Wauwatosa, WI 53213
ATTN: City Attorney
tattorney@wauwatosa.net

If to Developer:

Echelon LLC
c/o Mandel Group, Inc.
301 East Erie Street
Milwaukee, WI 53202
ATTN: David A. Pavela
dpavela@mandelgroup.com
ATTN: Phillip Aiello
paiello@mandelgroup.com

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With a copy to:

Foley & Lardner LLP
777 East Wisconsin Avenue
Suite 3600
Milwaukee, WI 53202
ATTN: Sarah O. Jelencic
sjelencic@foley.com

If to Parking Unit Owner:

Echelon Parking Corporation
Mandel Group Properties, LLC
c/o Mandel Group, Inc.
301 East Erie Street
Milwaukee, WI 53202
ATTN: David A. Pavela
dpavela@mandelgroup.com
ATTN: Phillip Aiello
paiello@mandelgroup.com

With a copy to:

Foley & Lardner LLP
777 East Wisconsin Avenue
Suite 3600
Milwaukee, WI 53202
ATTN: Sarah O. Jelencic
sjelencic@foley.com

SECTION 10. WAIVER

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

SECTION 11. UWM DEVELOPMENT AGREEMENT

The parties hereto expressly agree that (i) UWM and UWMREF have complied with Section 13 of the UWM Development Agreement and that Lot 4 referred to in the UWM Development Agreement is the Property and (ii) that, upon execution of this Agreement and delivery to the City of a signed copy of the County Estoppel Certificate, Developer, Owner and Parking Unit Owner shall not be a party to, shall not be bound by and shall have no liability or obligation under the UWM Development Agreement and the Property and the Project shall be governed by this Agreement and shall not be bound by or subject to the UWM Development Agreement.

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SECTION 12. MISCELLANEOUS

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

B. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer/Owner and Parking Unit Owner, and then only to the extent specifically set forth in writing.

C. All agreements, representations, warranties, covenants, liabilities and obligations made in this Agreement and in any document delivered pursuant to this Agreement shall survive the execution and delivery of this Agreement through Project Completion and thereafter with respect to Section 7.A. subsections (vii) - (x), (xii), (xiii), and (xv) - (xvii) and Sections 8 and 9.

D. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

E. This Agreement is intended solely for the benefit of Developer, Owner, Parking Unit Owner and the City and no third party (other than successors and assigns) shall have any rights or interest in any provisions of this Agreement, or as a result of any action or inaction of the City. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer/Owner, Parking Unit Owner or the City or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to construction of the Project.

F. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Wisconsin applicable to contracts made and wholly performed within such state.

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

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

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

J. If any party is delayed or prevented from timely performing any act required under this Agreement, by reason of fire, earthquake, war, terrorist act, flood, riot, strikes, labor

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disputes or shortages, governmental restrictions, judicial order, public emergency, acts of God, or other causes beyond the reasonable control of the party obligated to perform, then performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay.

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

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

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

SECTION 13. TRANSFER OF PROPERTY AND ASSIGNMENT

A. Until a certificate of occupancy is issued for space within the Project, neither Developer/Owner nor Parking Unit Owner, shall sell, convey, or otherwise transfer the Project property, without the City's prior written consent, except that Developer/Owner and/or the Parking Unit Owner may at any time, with or without the City's consent: (i) enter into leases for all or portions of the Project property; (ii) mortgage all or any portion of the Project property as security for the Project's financing; (iii) convey some or all of the Property to an entity that Developer/Owner and/or the Parking Unit Owner or at least one of its direct or indirect owners is directly or indirectly a controlling partner, shareholder or member therein, as long as such entity assumes all of Developer's or Parking Unit Owner's obligations, as applicable, under this Agreement; and (iv) convey some or all of the Project property to an entity that develops or occupies an improvement consistent with the purposes of the Project and the Development Plan. Except as otherwise expressly set forth above, until a certificate of occupancy is issued for space within the Project, neither Developer/Owner nor Parking Unit Owner shall assign this Agreement, without the City's prior written consent.

B. After the issuance of a certificate of occupancy for the Project and the calculation of Net Savings, Developer and Parking Unit Owner shall have the right to assign this Agreement, in whole or in part, to any party owning all or a portion of the Project and upon the assumption by said party of all of Developer's and Owner's and/or Parking Unit Owner's obligations under this Agreement related to such portion of the Property, as applicable, then Developer and the conveying Owner and Parking Unit Owner shall be fully released from all of their obligations hereunder with respect to the portion of the Project so conveyed.

SECTION 14. FEDERAL, STATE & LOCAL LAWS

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

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

SECTION 15. REIMBURSEMENT FOR WATER MAIN

In addition to the above obligations to Developer, the City hereby agrees to reimburse Developer for all costs and expenses incurred by Developer pursuant to the construction contract to be entered into by Developer for the construction, installation and testing of a water main in substantially the location depicted on **EXHIBIT C** (the "**Water Main**"). Developer shall cause the Water Main to be installed in accordance with plans and specifications reasonably and diligently approved by the City. The reimbursement for the Water Main is separate from, is in addition to, and is not included in the TIF Funds and shall be paid by the City from other funds. The City hereby grants and conveys to Developer and its contractors, consultants, agents, and representatives and their employees a temporary construction easement on over and across the crosshatched areas on **EXHIBIT C** for the purposes of constructing, installing, and testing of and connecting to the Water Main. The City shall reimburse Developer for all such costs and expenses within 30 days after receipt by the City of final as-built plans for the Water Main and invoices reflecting the costs associated therewith or other reasonable evidence thereof. The City shall promptly notify Developer if it requires additional information in order to disburse the Water Main reimbursement. Upon payment in full by the City for the Water Main, Developer will dedicate its title and interest in the Water Main to the City.

[Signature Page Follows]

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

IN WITNESS WHEREOF, the Parties have caused the Agreement to be signed on the dates written below.

DEVELOPER:

Echelon LLC

By: Mandel/Echelon LLC

By:_____

Its:_____

CORPORATE ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

BEFORE ME, the undersigned authority, on this ____ day of _____, 2014, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be _____ of Mandel/Echelon LLC, the Manager of Echelon LLC, and acknowledged to me that he executed said instrument for the purposes and considerations therein expressed, and as the act of said corporation.

_____

Notary Public, State of Wisconsin

My commission _____

[Developer's Signature Page to Development Agreement]

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

PARKING UNIT OWNER:

Echelon Parking Corporation

By:_____

Its:_____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

BEFORE ME, the undersigned authority, on this ____ day of _____, 2014, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be _____ of Echelon Parking Corporation, and acknowledged to me that he executed said instrument for the purposes and considerations therein expressed, and as the act of said corporation.

_____

Notary Public, State of _____

My commission _____

[Parking Unit Owner's Signature Page to Development Agreement]

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

CITY:

CITY OF WAUWATOSA, WISCONSIN,
a municipal corporation

By: _____
Kathleen Ehley, Mayor

ATTEST:

By: _____
Carla A. Ledesma, City Clerk

Approved as to form and execution.

_____
Alan R. Kesner, City Attorney

Approved as to availability of funds.

_____
John Ruggini, Finance Director

MUNICIPAL ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

On the ____ day of _____, 2014, before me personally came Kathleen Ehley, Carla A. Ledesma and John Ruggini, who being duly sworn, did depose and say that they are the Mayor, City Clerk and Finance Director of the City of Wauwatosa respectively, a Wisconsin municipal corporation; and that the seal affixed to said instrument is the corporate seal of said Wisconsin municipal corporation; and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority.

_____

Notary Public, Milwaukee County, Wisconsin
My commission _____

This instrument was drafted by:

Alan R. Kesner
City Attorney
City of Wauwatosa, Wisconsin
7725 West North Avenue
Wauwatosa, Wisconsin 53213

[City's Signature Page to Development Agreement]

EXHIBIT A

Planned Unit Development
Approval Resolution and Application Materials

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

EXHIBIT B

Preliminary Site and Utility Plans

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

EXHIBIT C

Depiction of Water Main

Attachment: Mandel Development Agreement - Wauwatosa (2323 : Mandel)

CITY OF WAUWATOSA
Resolution

By: Community Development Committee

BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin that permission be and the same is hereby granted to David Gilbert, UWM Real Estate Foundation for a Land Division by Certified Survey Map at approximately 1300 Discovery Parkway. The location of the parcels is more particularly described as follows:

Being a division of Lot 2 and Lot 3 of Certified Survey Map No. 8523 in the Northwest ¼, Southeast ¼ and the Southwest ¼ of the Southeast ¼ of Section 20 and the Northeast ¼ and the Northwest ¼ of the Northeast ¼ of Section 29 in the Township 7 North, Range 21 East, in the City of Wauwatosa, Milwaukee County, Wisconsin

All in accordance with the application attached hereto and made a part of this resolution, and in compliance with Section 17.02.070 of the Code of the City of Wauwatosa.

Passed and Dated _____

_____

Clerk

Approved _____

_____

Mayor

CITY OF WAUWATOSA
Resolution

By: Community Development Committee

WHEREAS, Kim Guerrero, Wangard, and 1200 & 1233 Mayfair TIC Group applied for signage at the High Pointe office building located at 1200 North Mayfair Road;

WHEREAS, this request was reviewed and recommended by the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants approval to Kim Guerrero, Wangard, and 1200 & 1233 Mayfair TIC Group for signage at 1200 North Mayfair Road.

Passed and Dated _____

_____

Clerk

Approved _____

_____

Mayor

CITY OF WAUWATOSA
Resolution

By: Budget and Finance Committee

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT the appropriate City officials are hereby authorized to execute the Site Assessment Grant Contract between the Wisconsin Economic Development Corporation and the City of Wauwatosa.

BE IT FURTHER RESOLVED THAT the grant amount of $133,500 is hereby accepted as a revenue by the City of Wauwatosa and a Level III transfer of funds allowing the expenditure of the grant funds is hereby approved.

Passed and Dated _____

_____

Clerk

Approved _____

_____

Mayor

CITY OF WAUWATOSA
Resolution

By: Budget and Finance Committee

BE IT RESOLVED, by the Common Council of the City of Wauwatosa THAT the claim filed by Valerie Emerson for injuries be and the same is hereby denied and placed on file for the reason that no liability exists on the part of the City;

BE IT FURTHER RESOLVED THAT the City Clerk is hereby authorized and directed to notify said claimant of this action of the Common Council as provided by law.

Passed and Dated _____

_____

Clerk

Approved _____

_____

Mayor

INTEROFFICE MEMORANDUM

TO: Budget & Finance Committee

FROM: Eileen Miller Carter

RE: Claim of Valerie Emerson

DATE: 6/25/14

The City Attorney's office has reviewed the claim of Valerie Emerson and recommends that it be denied. Ms. Emerson seeks $2,240.66 in damages generated from medical bills caused when she slipped and fell while walking in a City-owned parking lot on January 13, 2014, at 8:30 AM. She alleges the City failed to remove snow and ice that had accumulated the evening before and the parking lot's condition was dangerous. Under Wisconsin law, a municipality is not liable for damages caused by accumulation of ice and snow and is immune, therefrom, unless the snow and ice has existed continuously for 3 weeks from the date of injury. Further, immunity extends to public parking lots.

While it is regrettable that Ms. Emerson was injured, it is respectfully recommended that her claim be denied in accordance with State law.

Eileen Miller Carter
Asst. City Attorney

Ordinance

ORDINANCE AMENDING SECTION 6.08.475 OF THE WAUWATOSA MUNICIPAL CODE PROVIDING FOR DISCRETIONARY STANDARDS IN THE ISSUANCE OF GRANTS FOR CERTAIN RESERVE "CLASS B" LIQUOR LICENSES

The Common Council of the City of Wauwatosa do ordain as follows:

Part I. Section 6.08.475. B. Of the Code of the City of Wauwatosa is hereby amended to read in its entirety as follows:

B. Following the issuance of an original reserve Class B liquor license and upon application, the Common Council may exercise its discretion in determining whether to provide a grant to the licensee in an amount not to exceed $500.00 less than the amount actually paid by the licensee to the City of Wauwatosa for issuance for the new reserve Class B liquor license. Prior to awarding the grant, the Common Council shall make such findings and establish such conditions to ensure that grant funds awarded are provided for purposes of economic development and accessibility, and that fees received by the City shall be used for construction of bicycle and pedestrian facilities to promote the health, safety, and welfare of the community.

Part II. This ordinance shall take effect on and after its date of publication.

Passed and Dated _____

_____

City Clerk

Approved _____

_____

Mayor

CITY OF WAUWATOSA
Resolution

By: Board of Public Works

WHEREAS, the Board of Public Works of the City of Wauwatosa reports that pursuant to the official notice, published as required by law, for proposals for Contract 14-01, 104th Street Storm Sewer Extension; and

WHEREAS, bids and proposals were received at the office of the City Clerk until 10:01 o'clock in the fore noon Friday, the 11th day of July, 2014, and therefore publicly opened; and

WHEREAS, that said bids and proposals are returned herewith, and the bids received are as follows:

Super Excavators, Inc.	$2,548,125.00
Globe Contractors, Inc.	$2,595,872.45; and

WHEREAS, the amount budgeted for Contract 14-01, 104th Street Storm Sewer Extension is $1,190,000.00; and

WHEREAS, the lowest bid received in the amount of $2,548,125.00 is $1,358,125.000 over the budgeted amount; and

WHEREAS the Board of Public Works recommends that the proper City Officials not enter into a contract for doing said work of improvement;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wauwatosa that the bids received for Contract 14-01, 104th Street Storm Sewer Extension be rejected.

BE IT FURTHER RESOLVED that the surety deposits, if any, be returned to the unsuccessful bidders.

Passed and Dated _____

_____

Clerk

Approved _____

_____

Mayor