

RESOLUTION 5867-2023

**RESOLUTION APPROVING SALE OF CITY PROPERTY AT
RIVER KNOLL INDUSTRIAL PARK, LOT NO. 10, TAX KEY 251-1216-1412-012
T/B/K/A 251-1216-1412-015
CITY OF MAYVILLE, DODGE COUNTY, WISCONSIN**

WHEREAS, the Common Council, in accordance with the Municipal Code and the statutes of the State of Wisconsin, has received and accepted an offer to purchase the following described real estate:

Tax Key 251-1216-1412-012 t/b/k/a 251-1216-1412-015

Lot 9 of the Replat of River Knoll Industrial Park Lot No. 10, City of Mayville, Dodge County, Wisconsin.

WHEREAS, in accordance with the terms of an offer to purchase between the City of Mayville and Ty J. Hockers / Hockers Investment LLC (herein the "Purchaser"), the City intends to convey to the Purchaser the real estate described in this resolution. A copy of the seller's packet is attached; and,

WHEREAS, the City of Mayville signed the attached Development Agreement with the Purchaser on September 13, 2022; and,

WHEREAS, the Planning Commission approved the Hockers Investment LLC site plan for the aforementioned property at their September 28, 2022 meeting; and

NOW THEREFORE, by adoption of this resolution, the Common Council of the City of Mayville confirms its acceptance of an offer to purchase, conveying the real estate to the Purchaser, and authorizes Mayor John Guinn and City Clerk Anastasia Gonstead to execute a Quit Claim Deed and all other documents necessary to effectuate the closing of this transaction in accordance with the terms of the offer to purchase.

Dated this 8th day of May, 2023.

BY: 

John Guinn, Mayor

Attest:


Anastasia Gonstead, City Clerk

Guaranty Closing & Title Services, Inc.
 151 North Main Street
 Juneau, WI 53039
 (920) 386-2300

ALTA Combined Settlement Statement

File #:	2023-28246-10	Property	1010 River Knoll Drive	Settlement Date	04/28/2023
Prepared:	04/20/2023		Mayville, WI 53050	Disbursement Date	04/28/2023
Closer:	Roni Lischka	Buyer	Hockers Investments LLC		
		Seller	City of Mayville		
		Lender			

Seller			Buyer	
Debit	Credit		Debit	Credit
		Primary Charges & Credits		
	\$2.39	Sales Price of Property	\$2.39	
		Government Recording and Transfer Charges		
		Recording Fees	\$30.00	
		---Deed: \$30.00		
		---Mortgage: \$0.00		
		Commissions		
\$3,943.50		Listing Commission \$27,500/acre x 2.387 Ac = \$65,725 x 6% to First Weber - FDL		
		Title Charges		
		Title - Closing Fee Buyer to Guaranty Closing & Title Services, Inc.	\$100.00	
		Title - E Recording Service Fee to Guaranty Closing & Title Services, Inc.	\$4.00	
		Title - Closing Fee Seller to Guaranty Closing & Title Services, Inc.	\$100.00	
		Title - Deed and Document Prep to Guaranty Closing & Title Services, Inc.	\$175.00	
		Title - Owner's Gap Endorsement to Guaranty Closing & Title Services, Inc.	\$150.00	
		Title - Owner's Title Policy to Guaranty Closing & Title Services, Inc.	\$678.00	
		Title - Special Assessment Certificate to Guaranty Closing & Title Services, Inc.	\$30.00	
Seller			Buyer	
Debit	Credit		Debit	Credit
\$3,943.50	\$2.39	Subtotals	\$1,269.39	\$0.00
		Due from Buyer		\$1,269.39
	\$3,941.11	Due from Seller		
\$3,943.50	\$3,943.50	Totals	\$1,269.39	\$1,269.39

See signature addendum



Signature Addendum

Acknowledgement

We/I have carefully reviewed the Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the Settlement Statement.

We/I authorize Guaranty Closing & Title Services, Inc. to cause the funds to be disbursed in accordance with this statement.

Hockers Investments LLC, a Wisconsin Limited Liability Company

City of Mayville

By: _____
Ty Hockers, Member

_____ Date

By: _____
John Guinn, Mayor

_____ Date



COPY

Settlement Agent

_____ Date

State Bar of Wisconsin Form 3-2003
QUIT CLAIM DEED

Document Number

Document Name

THIS DEED, made between City of Mayville, a Wisconsin municipal corporation (“Grantor,” whether one or more), and Hockers Investments LLC, a Wisconsin limited liability company (“Grantee,” whether one or more).

Grantor quit claims to Grantee, the following described real estate, together with the rents, profits, fixtures, and other appurtenant interests, in Dodge County, State of Wisconsin (“Property”) (if more space is needed, please attach addendum):

Lot 9 of the Replat of River Knoll Industrial Park Lot No. 10, City of Mayville, Dodge County, Wisconsin.

Recording Area

Name and Return Address
Hockers Investments LLC
N11110 Dairy Road
Brownsville, WI 53006

2023-28246-10

Part of 251-1216-1412-012 t/b/k/a
251-1216-1412-015

Parcel Identification Number (PIN)

This Is Not homestead property.



Dated: _____

City of Mayville

By: _____ (SEAL)
John Guinn, Mayor

(SEAL)

*

AUTHENTICATION

Signature(s)

authenticated on _____.

*

TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, _____
authorized by Wis. Stat. § 706.06)

ACKNOWLEDGMENT

STATE OF Wisconsin)
) ss.
Dodge County)

Personally, came before me on _____
the above-named John Guinn, Mayor of City of Mayville

to me known to be the person(s) who executed the foregoing
instrument and acknowledged the same.

*

Notary Public, State of Wisconsin
My commission (is permanent) (expires:)

THIS INSTRUMENT DRAFTED BY:
Attorney Thomas Schuessler / rsl

(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATION TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

QUIT CLAIM DEED

2003 STATE BAR OF WISCONSIN

FORM NO. 3-2003

*Type name below signatures.

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OWNER'S AFFIDAVIT AS TO LIENS AND POSSESSION

STATE OF WISCONSIN
COUNTY OF DODGE



Title Company File/Commitment No.: 2023-28246-10

- 1. We are / I am the Owner of the property 1010 River Knoll Drive, Mayville, WI 53050 (the Property) covered by the above-referenced commitment number.
2. Construction work. (check one box)
XX Repair or construction work has not been done on the Property in the past six months.
[] Repair or construction work has been done on the Property in the past six months. The total dollar amount of the work is approximately \$_____ and (choose one) is / is not paid in full. All of the people who supplied labor or material are listed below. All lien waivers we/I collected from these people are stapled to this affidavit.

Table with 4 columns: Type of Work, Contractor Name, Dollar amount of Work, Date completed

- 3. Tenants. The following tenants and renters occupy the Property: (check one box)
XX There are no tenants.
[] There are tenants, but all have left the Property or will leave as of closing.
[] One or more tenants will stay after this sale is closed. Their names are listed on the reverse.
4. Other than the loans listed in the commitment, we/I have obtained the following loans within the past 12 months: (if none, state "none") NONE.
5. All improvements (including structures, fences, and driveways) on the Property are located entirely within the boundaries and none of the neighbors' improvements overlap the Property, except: (if none, state "none")
6. We/I are/am not involved in any court actions, except: (if none, state "none") NONE.
7. There are no unpaid special assessments, charges for water or sewer hookup or service, or other tax liens on the Property, except: (if none, state "none") NONE.
8. There are no association dues owed to our/my condominium or homeowner's association, except: (if none, state "none") NONE.
9. We are / I am not the subject of a pending bankruptcy or a pending assignment for the benefit of creditors.
10. Easements: I am not aware of any rights or claims of others to travel, by ground or air, across my land to reach a location or for another specified purpose, other than those shown on Schedule B in the above referenced commitment except (describe the use or write NONE)

We/I give this affidavit to persuade Guaranty Closing and Title Services, Inc., and First American Title Insurance Company to issue its policy or policies of title insurance. We/I agree to indemnify the companies against loss caused by inaccuracies or omissions in the above information of which we/I are/am aware.

City of Mayville

By: John Guinn, Mayor



Subscribed and sworn to before me this _____ day of April, 2023.

Notary Public, State of Wisconsin

My commission expires



GAP AFFIDAVIT AND INDEMNITY AGREEMENT

Guaranty Closing & Title Services, Inc.

Order Number: 2023-28246-10

WHEREAS, Guaranty Closing and Title Services, Inc., (the Company) is about to issue its title insurance policy or policies (the Policies) to proposed insured(s) for property described in the above referenced commitment, insuring against loss by reason of defects in the title to said property (the Land);

AND, WHEREAS, the Company has made exception for defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching between the effective date of the title insurance Commitments and the date of recording of the deed and/or mortgage to be insured ;

AND, WHEREAS, the Company has been asked to issue the Policies, and may hereafter in the ordinary course of its business issue title insurance policies or commitments in respect to the Land, or some part or interest in it (the Future Policies), removing or insuring against loss by reason of the Gap Defect(s);

NOW, THEREFORE, in consideration of the issuance of the Policies or Future Policies, the undersigned covenant(s) and agree(s) with the Company forever to protect, defend and save the Company harmless from and against Defect(s) created, suffered or agreed to by the undersigned and except as disclosed in writing to the Company, and any right, interest or defect growing out of the same, including all loss, costs, damages, and attorneys' fees and expenses which it may incur by reason thereof, including loss, costs, damages, fees and expenses incurred in actions brought to enforce this agreement; to defend at undersigned's own cost any and every suit, action or proceeding in which the Gap Defect(s) was created, suffered or agreed to by the undersigned and, except as disclosed in writing to the Company, is or are asserted against the real estate; to satisfy or remove such Gap Defect(s) on written demand within thirty days; and that each and every provision herein shall extend to and be in force concerning Future Policies.

DATED _____

City of Mayville



By: _____
John Guinn, Mayor

SUBSCRIBED AND SWORN TO before me
on _____

Notary Signature

Notary Public, _____ County, Wisconsin
My commission (expires) is) _____

PLEASE EXECUTE AT CLOSING.
This must be signed in the presence of a notary

DEVELOPMENT AGREEMENT

**BETWEEN
CITY OF MAYVILLE
AND
HOCKERS INVESTMENTS LLC**



COPY

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into by City of Mayville, a Wisconsin municipal corporation (“**City**”) and Hockers Investments LLC, d/b/a Mayville Cardinal Storage (“**Developer**”).

RECITALS

Developer desires to enter into a contract to purchase a portion, and enter into an option to purchase a portion, of Lot 4 of CSM No. 7638 (such combined portion of Lot 4, the “**Property**”), which is further described and depicted on **Exhibit A**, located in the River Knoll Industrial Park, and currently owned by City.

Developer intends to construct storage units on the purchased portion of the Property.

City operates a land purchase program under which qualified companies may purchase land from City for below market value in exchange for developing the land in accordance with City policies and approved development agreements.

City finds that the sale and development of the Property and fulfillment of the terms and conditions of this Agreement are in the best interests of its residents, by creating commercial opportunities, by expanding tax base, and providing necessary services within the City of Mayville.

City and Developer desire to enter into this Agreement to establish the terms and conditions under which the City will transfer the Property to Developer and Developer will develop the Property.

AGREEMENT

In consideration of the above recitals, which are incorporated by reference, the terms and conditions contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

RETURN TO:

Atty. Jared Walker Smith
Boardman & Clark LLP
PO Box 927
Madison, WI 53701-0927

P.I.N.

See Exhibit B

**ARTICLE 1
DEFINITIONS**



The following capitalized terms used in this Agreement, whether used in the singular or plural, shall have the following meanings, unless the context clearly indicates otherwise.

- 1.1 Lot 4 means Lot 4 of CSM No. 7638 recorded on January 2022, as document no. 1320786 in the Dodge County Register of Deeds office.
- 1.2 Option to Purchase means that option to purchase the Phase 2 Property provided for in Section 3.3 and set out in form in **Exhibit C**.
- 1.3 Parties mean City and Developer.
- 1.4 Party means one of the Parties.
- 1.5 Phase 1 Property means the portion of Lot 4 as approximately highlighted in yellow in **Exhibit A**. If the final legal description for the Phase 1 Property is unknown at the time this Agreement is executed, the legal description of the Phase 1 Property shall be added to **Exhibit B** at the closing described in Section 3.2 and before this Agreement is recorded.
- 1.6 Phase 2 Property means the portion of Lot 4 as approximately highlighted in blue in **Exhibit A**. If the final legal description for the Phase 2 Property is unknown at the time this Agreement is executed, the legal description of the Phase 2 Property shall be added to **Exhibit B** at the closing on the Phase 1 Property described in Section 3.2 and before this Agreement is recorded.
- 1.7 Project and Project phases Phase 1 and Phase 2 are described in Section 4.1, below.
- 1.8 Property means either the Phase 1 Property or the Phase 2 Property.
- 1.9 Substantial Completion means all improvements associated with the applicable phase of the Project have been fully completed according to the approved plans and specifications other than minor punchlist items that do not substantially interfere with the use of the improvements.

**ARTICLE 2
OBLIGATIONS AND CONDITIONS PRECEDENT**

- 2.1 City Obligations. City shall:
 - a. Sell the Phase 1 Property to Developer as provided in Section 3.2.
 - b. Grant Developer a temporary construction easement over the Phase 2 Property as provided in Section 4.4.

- c. Grant Developer an option to purchase to acquire the Phase 2 Property as provided in Section 3.3.
- d. Cooperate with Developer throughout the implementation of the Project and promptly review and process all submissions and applications in accordance with applicable City ordinances.

2.1.2 Developer Obligations. Developer shall:

- a. Purchase the Phase 1 Property from City as provided in Section 3.2.
- b. Construct the Project as provided in ARTICLE 4 at Developer's sole expense, subject to the terms of this Agreement.
- c. Timely pay all real estate taxes, special assessments, and special charges levied against the Phase 1 Property and, if acquired, the Phase 2 Property.
- d. Comply with all other terms and provisions of this Agreement.

2.2 Conditions Precedent. All of the following must occur before either Party's obligations under this Agreement become effective:

- a. Developer and City have approved and executed this Agreement.
- b. A replat creating the Phase 1 Property and Phase 2 Property has been approved and recorded.
- c. Developer has delivered to City a final fully executed commitment letter from Developer's lender establishing that Developer has access to sufficient funds through equity and debt financing sources for completion of Phase 1 of the Project contemplated by this Agreement.

**ARTICLE 3
PROPERTY MATTERS**



3.1 Subdivision of Lot 4. Subject to this Section 3.1, City shall cause Lot 4 to be subdivided into at least three parcels, two of which must approximately comprise the boundaries of the Phase 1 Property and Phase 2 Property as shown on Exhibit A.

3.1.1 *Replat Required*. Developer acknowledges that due to prior land divisions of Lot 10 of the River Knoll Industrial Park Plat (in this Section 3.1, "**Lot 10**"), the parent lot to Lot 4, City must subdivide Lot 4 via a replat of Lot 10 pursuant to Wis. Stat. ch. 236 and City ordinance, and cannot subdivide Lot 4 via a Certified Survey Map.

- 3.1.2 *No Vested Rights to Replat.*** City does not warrant that City is entitled to any municipal or governmental approvals required for the replat and subdivision of Lot 10.
- 3.1.3 *Appending Legal Descriptions.*** Upon the recording of the final replat of Lot 10, the Parties shall append as **Exhibit B** the legal descriptions for the Phase 1 Property and the Phase 2 Property.
- 3.2 *Sale of Phase 1 Property.*** City shall sell to Developer and Developer shall purchase from City the land comprising the Phase 1 Property for \$1 per surveyed acre. Closing shall occur within five (5) business days of the satisfaction of the last of the conditions precedent in Section 2.2.
- 3.2.1 *As-Is Sale.*** The Phase 1 Property shall be conveyed by quit claim deed, AS-IS, without warranty. City's sole obligation at closing shall be to deliver the deed in recordable form to Developer conveying merchantable title to Developer. All costs of the sale, including but not limited to recording and closing costs, shall be paid by Developer. Should Developer or its lender desire to obtain title insurance in connection with the conveyance, such insurance shall be at Developer's sole expense.
- 3.2.2 *No Representations or Warranties; Waiver.*** Developer acknowledges and agrees that Developer has had sufficient opportunity to inspect the Phase 1 Property prior to closing and that City is conveying and Developer is accepting the Phase 1 Property on an AS-IS, WHERE IS, WITH ALL FAULTS basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City or its agents as to any matters concerning the Phase 1 Property. City hereby disclaims any duty to make any representation or warranty to Developer, whether at common law, under Wis. Stat. Ch. 709, under Wis. Stat. § 100.18, or otherwise. Developer hereby waives its right to receive a vacant land disclosure report under Wis. Stat. Ch. 709. As a part of its agreement to accept the Phase 1 Property in such condition, Developer, for itself and its successors, assigns, agents, employees, contractors, and invitees, hereby waives, discharges, and releases City from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with or related to the physical, geological, or environmental condition of the Phase 1 Property, including without limitation, any past or present condition of or action on or about the Phase 1 Property.
- 3.2.3 *Other Closing Documents.*** To the extent necessary, City will sign other customary closing documents, including, without limitation, a FIRPTA, an owner's affidavit, a GAP undertaking, and a settlement statement.
- 3.3 *Option to Purchase of Phase 2 Property.*** Upon commencement of construction of Phase 1 of the Project, City and Developer shall execute and record that Option to

Purchase, attached in form as **Exhibit C**, setting forth the terms and conditions under which City grants to Developer an option to purchase the Phase 2 Property. At a minimum, City's sale of the Phase 2 Property to Developer shall be on the terms and conditions set out in Section 3.2 above, but as applied to Phase 2 of the Project. If Developer fails to achieve Substantial Completion of Phase 1 of the Project by November 30, 2023, or if Developer fails to exercise the option by March 1, 2026, then the Option to Purchase shall be null and void.

- 3.4 **Costs.** Each Party shall bear its own costs for the subdivision of Lot 4 and the transfer of the Phase 1 Property and Phase 2 Property, except that City shall only be responsible for brokerage, sale commission, and survey fees up to \$7,000, with Developer responsible for the remainder. If costs exceed \$7,000, then City shall issue one or more invoices to Developer including documentation showing the charges for which payment is sought. Within thirty (30) days of an invoice date, Developer shall pay the billed costs to City. Every invoice submitted by City which remains unpaid in full or in part for more than thirty (30) days after the invoice date shall bear interest at the rate of twelve percent (12%) per annum on the unpaid balance from the date the invoice becomes due.

**ARTICLE 4
PROJECT DEVELOPMENT**



- 4.1 **Project Description.** The Project consists of the following two phases:

- 4.1.1 **Phase 1.** Phase 1 of the Project consists of:

- a. Construction of two "self-storage" buildings (#1 and #2) on the Phase 1 Property at the approximate location and of the approximate size depicted on **Exhibit A** and described below:
 - i. Building #1 being 40' x 240', and containing 46 10'x20' units, 5 8'x10' units, and 4 10'x10' units; and
 - ii. Building #2 being 40' x 210', and containing 40 10'x20' units, 5 8'x10' units, and 4 10'x10' units.
- b. Construction of a storm water retention pond at the approximate location depicted on **Exhibit A**, in accordance with all applicable local, state and federal laws, statutes, rules, regulations, and ordinances, to provide on-site storm water management and retention for the Phase 1 Property, and if acquired by Developer, the Phase 2 Property.

- 4.1.2 **Phase 2.** Phase 2 of the Project consists of:

- a. Purchase of the Phase 2 Property pursuant to the Option to Purchase; and

- b. Construction of three "self-storage" buildings (#3 to #5) on the Phase 2 Property at the approximate location and of the approximate size depicted on Exhibit A and described below:
- i. Building #3 being 40' x 240', and containing 46 10'x20' units, 5 8'x10' units, and 4 10'x10' units;
 - ii. Building #4 being 40' x 255', and containing 48 10'x20' units, 5 8'x10' units, and 4 10'x10' units; and
 - iii. Building #5 being 40' x 300', and containing 58 10'x20' units, 5 8'x10' units, and 4 10'x10' units.



4.2 Timing of Project Phases.

- 4.2.1 *Phase 1.* Within ninety (90) days of conveyance of the Phase 1 Property, Developer shall commence work on Phase 1 of the Project, diligently continue construction until completion, and achieve Substantial Completion of Phase 1 by November 30, 2023.
- 4.2.2 *Phase 2.* Developer shall commence work on Phase 2 of the Project by May 1, 2026, and obtain Substantial Completion of Building #3 by November 30, 2026. Additionally, conveyance of the Phase 2 Property by City to Developer is conditioned on the Parties entering into an amendment to this Agreement setting forth the commencement and Substantial Completion dates for Buildings #4 and #5 under Phase 2, with such Substantial Completion dates on Buildings #4 and #5 no later than four years after Substantial Completion of Building #3. If the Parties are unable to reach agreement on an amendment within forty-five (45) days of Developer's notice of its exercise of its option, then the Option to Purchase shall be null and void.

4.3 Terms of Development.

- 4.3.1 *Plan Submittals.* Developer shall submit plans for each phase of the Project, including building plans (with details as to materials used) and landscape plans, for City review and approval, and shall construct and maintain each phase of the Project in accordance with the final approved plans and specifications. The plans submitted by Developer shall be consistent with Section 4.1 and Exhibit A in all material respects.
- 4.3.2 *Compliance with Laws.* Developer shall obtain all necessary permits and approvals for each phase of the Project and comply with all applicable laws, codes, ordinances, rules, and regulations in the construction and operation of the Project and pay all required permit, connection, and other fees.
- 4.3.3 *Quality of Work.* All work to be performed by Developer in and on the Phase 1 Property and Phase 2 Property shall be performed in a good and workmanlike

manner and consistent with the prevailing industry standards for high quality construction in the City of Mayville.

4.3.4 *Conditions Precedent to Land Disturbing Activity.* Developer shall not commence any land disturbance activities on the Property in connection with either phase of the Project unless and until:

- a. For the Phase 1 Property, the closing described in Section 3.2 is complete;
- b. For the Phase 2 Property, a closing as described in the Option to Purchase is complete;
- c. All plans and specifications for the applicable phase have been reviewed and acknowledged with no objection from the Building Inspector and City Engineer as applicable;
- d. All necessary approvals, licenses, certificates, and permits for the applicable phase have been granted by City or other necessary state or local agency;
- e. Developer has provided a final fully executed commitment letter from Developer's lender establishing Developer's ability to finance construction of the applicable phase, in form and substance acceptable to City; and
- f. All other requirements in this Agreement, under the ordinances of City, and otherwise as required by law are fully satisfied by Developer.

4.4 Temporary Construction Easement. Upon conveyance of the Phase 1 Property and terminating on the Substantial Completion of Phase 1 or November 30, 2023, whichever is earlier, City grants to Developer a temporary construction easement over the Phase 2 Property for the purpose of construction access to the Phase 1 Property and the barrow and removal of dirt from the Phase 2 Property for use for property leveling on the Phase 1 Property. Developer's use of the construction easement shall be done in accordance with all applicable construction site storm water permits and shall not exacerbate any runoff onto adjacent properties from the Phase 2 Property. By termination of the temporary construction easement Developer shall remove any materials deposited on the Phase 2 Property and if restoration work is unable to commence due to weather conditions, then within a reasonable time after Substantial Completion but not to exceed nine months from Substantial Completion, Developer shall ensure any excavations are sloped and restored to prevent risks of injury to users of the Phase 2 Property, and shall cause the Phase 2 Property to be revegetated so as to stabilize any disturbed land. Developer shall warrant such revegetation for one year after completing the restoration work. If Developer does not fulfill its obligations under this Section 4.4 within the times set forth in this Section, then City may restore the Phase 2 Property and impose the costs of restoration on Developer as a special charge against the Phase 1 Property.



4.5 Option to Repurchase.

4.5.1 ***Phase 1 Property.*** If Developer fails to commence construction of Phase 1 by April 30, 2023, City shall have an option to repurchase the Phase 1 Property and any improvements thereon from Developer on the following terms:

- a. The purchase price shall be \$1.00 per acre or portion thereof.
- b. The parcels shall be conveyed by general warranty deed. All costs of re-conveyance shall be the responsibility of Developer.
- c. The parcels shall be free and clear of any liens and encumbrances other than the liens and encumbrances that existed on the date of the conveyance of the parcels from City to Developer.
- d. Developer shall provide City with a policy of title insurance at Developer's cost in the amount of the purchase price. City may increase the policy amount to the fair market value of the parcels at City's expense.
- e. Developer shall pay to City at closing all special assessments, special charges, and a pro-rata share of property taxes attributable to the year of closing accruing after title was conveyed to Developer. If the property taxes attributable to the year of closing are unknown on the date of closing, the proration shall be based on the current assessment multiplied by the current mill rate as of the date of closing.
- f. Closing shall occur within 30 days of City providing written notice to Buyer that it is exercising its option to repurchase the parcel under this Section 4.5.
- g. The City's option to repurchase the Phase 1 Property shall expire August 31, 2023.

4.5.2 ***Phase 2 Property.*** If Developer exercises its Option to Purchase on the Phase 2 Property and fails to commence construction of Phase 2 by May 1, 2026, then City shall have an option to repurchase the Phase 2 Property and any improvements thereon from Developer on the terms and conditions set out in Paragraphs 4.5.1a to 4.5.1g above. The City's option to repurchase the Phase 2 Property shall expire August 1, 2026.

4.5.3 ***City Discretion.*** Whether to exercise the options to repurchase under this Section 4.5 shall be at City's sole discretion.

**ARTICLE 5
ADDITIONAL DEVELOPER PROVISIONS**

5.1 **Developer's Representations and Warranties.** Developer and its signatory to this Agreement covenant, warrant, represent, and agree as follows:

- a. Developer is a Wisconsin limited liability company, duly organized, validly existing, and in good standing under the laws of the state of Wisconsin.
- b. The execution, delivery, and performance by Developer of this Agreement and the other transactions contemplated in connection with this Agreement:
 - i. Are within the legal powers and authority of the Developer;
 - ii. Do not and will not require the consent, approval, or authorization of, or notice to, any federal or state governmental authority or regulatory body; and
 - iii. Do not and will not conflict with, result in any violation of, or constitute a default under, any provision of law, or of the charter or bylaws of the Developer, or of any agreement to which Developer is a party or by which it is bound.
- c. There is no litigation, arbitration, or governmental proceeding pending or threatened against Developer which would, if adversely determine, adversely and materially affect the financial condition or continued operations of Developer.
- d. Developer has access to sufficient funds through equity and debt financing sources for completion of the Project contemplated by this Agreement.

5.2 Financial Guarantees.

5.2.1 *Purpose.* The purpose of this Section 5.2 is to guarantee a minimum assessed value of the Phase 1 Property and the Phase 2 Property to provide guaranteed tax revenue in exchange for sale of the Property pursuant to the City's land purchase program in reliance upon Developer's promises to construct and maintain the Project and generate the minimum assessed value guarantee of this Section.

5.2.2 *Minimum Assessed Value Guarantees.* Developer guarantees that the assessed value of the improvements on the Phase 1 Property and, if purchased, the Phase 2 Property shall equal or exceed the following minimum assessed values as of the following dates:

	Date	Minimum Assessed Value
Phase 1 Property	January 1, 2024	\$225,000 / acre
Phase 2 Property	January 1, 2031	\$365,000 / acre

5.2.3 *Shortfall Payments.* In the event the assessed value of the Phase 1 Property or Phase 2 Property is less than the amounts warranted by Developer in Subsection 5.2.2 above during any of the twenty (20) taxable years subsequent to the respective date listed in Subsection 5.2.2 above (the "Guarantee Period"), then Developer shall pay

to City the difference between the tax increment which the City would have collected if the assessed value had equaled or exceeded the amounts guaranteed in Subsection 5.2.2 above, and the actual tax increment collected by City based upon the assessed value of the respective Property during any tax year. Past due amounts shall accrue interest at the lesser of eight percent per annum or the maximum rate permissible by law.

- 5.2.4 *Special Assessments; Waiver of Statutory Requirements.* Any obligation owing to City under the terms of this Section 5.2 will constitute a special assessment against the respective Property. Developer hereby consents to the imposition of such special assessments and waives, pursuant to Wis. Stat. § 66.0703(7)(b), and any other applicable provision, any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of such special assessments including, but not limited to, the notice and hearing requirements of Wis. Stat. § 66.0703 and the notice requirements of Wis. Stat. § 66.0715(3) and agrees that City may proceed to levy such special assessments in accordance with this Section 5.2.
- 5.2.5 *No Impact on Actual Assessment.* In no event shall this Section 5.2 be interpreted to permit Developer to pay less than the annual property tax levied against a Property, which may be in excess of what would be due for the minimum assessed value for that year, nor shall Developer be relieved of its responsibility to pay such taxes levied after termination of this Agreement.
- 5.2.6 *Preservation of Taxable Status.* Upon acquisition of a Property and continuing during the respective Guarantee Period for the Property under Subsection 5.2.3 above, Developer shall:
- a. Not use the Property for any purposes that would render the Property exempt from property taxation or sell, transfer, or convey all or any portion of the Property to any party that would render the Property exempt from property taxation.
 - b. Pay all real estate taxes against the Property prior to delinquency.
 - c. Not cause a reduction in the real property taxes paid with respect to the Property through willful destruction of any improvements or portions thereof.
 - d. Not seek, through the exercise of legal or administrative remedies, a reduction in the assessed value of the Property or the improvements below the assessed value after completion of construction, nor shall Developer object to any increase in the assessed value unless that increase exceeds 5% per year in the aggregate following the date of this Agreement.
 - e. Not apply for any deferral of property taxes on the Property.



- 5.3 **Maintenance and Repair.** Developer shall at all times keep and maintain, or cause to be kept and maintained, the Project (including all water, sewer, and storm water improvements on the Property) in good condition and repair, in a safe, clean, and attractive condition, and free of all trash, litter, refuse, and waste, subject only to demolition and construction activities contemplated by this Agreement.
- 5.4 **Indemnity.** Developer, and its successors and assigns, shall indemnify, hold harmless, and defend City and its officers, employees, and agents from any and all suits, actions, claims, demands, losses, costs, damages, judgments, penalties, fines, and expenses or liabilities of every kind and description, including attorney's fees, for claims of any character including liability and expenses in connection with the loss of life, personal injury, or damage to property, or any of them, brought because of any injuries or damages received or sustained by any persons or property occasioned wholly or in part by any act or omission on Developer's part or on the part of its agents, contractors, subcontractors, invitees, or employees, in connection with their activities conducted pursuant to this Agreement or in connection with the development of the Project or the Property, except as are a result of the reckless or willful misconduct of any officer, agent, or employee of City. City shall be entitled to appear in any proceedings to defend itself against such claims, and all costs, expenses, and reasonable attorney's fees incurred by City in connection with such defense shall be paid by Developer to City. The foregoing indemnity provisions shall survive the cancellation or termination of this Agreement as to all matters arising or accruing prior to such cancellation or termination and the foregoing indemnity shall survive in the event City elects to exercise any of the remedies as provided under this Agreement following default under this Agreement.

ARTICLE 6 NOTICES

- 6.1 **Notice.** The Parties shall give all communications required or permitted under this Agreement in writing. Communications will be deemed to have been validly and properly given if delivered by certified mail, return receipt requested, postage prepaid, addressed to the Party or Parties to receive the same, at the respective address or addresses set forth below.

If to City:

City of Mayville
c/o City Clerk
15 S. School St.
Mayville, WI 53050

If to Developer:

Hockers Investments LLC
c/o Ty Hockers

- 6.2 Change in Notice Address. Any Party may, by notice given pursuant to this ARTICLE 6, designate any further or different addresses to which notices or communications are to be sent.

ARTICLE 7 TERMINATION AND DEFAULT

- 7.1 Termination by Mutual Agreement. This Agreement may be terminated by the written agreement of all Parties.
- 7.2 Default. A default is defined in this Agreement as a Party's breach of, or failure to comply with, the terms of this Agreement and the failure to cure such breach within thirty (30) days after the date of written notice from the non-defaulting Party.
- 7.3 Remedies upon Default. In addition to the specific remedies in this Section 7.3, the Parties reserve all remedies at law or in equity necessary to cure any default or remedy any damages or losses under this Agreement. Rights and remedies are cumulative, and the exercise of one or more rights or remedies, including those specifically set forth in Sections 3.3 and 4.5, shall not preclude the exercise of other rights or remedies.

ARTICLE 8 ADDITIONAL TERMS

- 8.1 Recitals. The Parties confirm and ratify the statements contained in the Recitals. The Recitals are incorporated and made a part of this Agreement.
- 8.2 Recording.
- 8.2.1 Against Phase 1 Property. This Agreement shall be recorded with the Dodge County Register of Deeds on record title to the Phase 1 Property, at Developer's expense, immediately after the recording of the deed conveying the Phase 1 Property to Developer and before the recording of any other document affecting the Phase 1 Property.
- 8.2.2 Against Phase 2 Property. If Developer exercises the Option to Purchase, then this Agreement shall be recorded with the Dodge County Register of Deeds on record title to the Phase 2 Property, at Developer's expense, immediately after the recording of the deed conveying the Phase 2 Property to Developer and before the recording of any other document affecting the Phase 2 Property.
- 8.3 Fee Reimbursement. Upon request of City, Developer shall reimburse City for all legal and other fees and expenses incurred in the preparation of this Agreement

and, to the extent pursuant to City's standard practices, in connection with any review or approval conducted by or for City necessitated by the development of the Property or the construction of the Project. Notwithstanding the previous sentence, Developer's obligation to reimburse City's legal fees incurred in the preparation of this Agreement is capped at \$5,000, and Developer's duty to reimburse City excludes legal fees incurred in connection with the replat under Section 3.1.

- 8.4 **No Joint Venture.** This Agreement does not create any partnership or joint venture between City and Developer. Under no circumstances shall City be liable for any of the obligations of Developer under this Agreement or otherwise. There are no third-party beneficiaries of this Agreement.
- 8.5 **No Vested Rights.** Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this Project shall inure to Developer.
- 8.6 **Approvals.** Nothing in this Agreement shall be construed to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses, and permits from City in accordance with its ordinances and usual practices and procedures, nor limit or affect in any way the right or authority of City to approve or reasonably disapprove any plans or specifications or to impose reasonable limitations, restrictions, and requirements on the Property or the Project as a condition of any such approval, license, or permit. City will act diligently and in good faith to review all necessary approvals, licenses, and permits requested by Developer.
- 8.7 **Time is of the Essence; Force Majeure.** Time is of the essence with respect to all dates set out in this Agreement. With respect to the construction deadlines in Subsections 4.2 and 4.2.2, a reasonable extension shall be granted if Developer's performance is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, legally required environmental remedial actions, extreme weather conditions, labor unavailability, construction material unavailability, shipping delays, or pandemic, provided that Developer seeking the extension due to delay shall first have notified City thereof and requested an extension under this Section 8.7.
- 8.8 **Assignment; Binding Effect.** The benefits of this Agreement to Developer are personal and shall not be assigned without the express written approval of City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. In the case of a request for approval, any proposed transferee shall have all of the qualifications and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations of Developer and, if the proposed transfer relates to a portion of the Property on which the Project is underway, such obligations to the extent that they relate to such property. Any proposed transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to a portion

of the Property, such obligations, conditions, and restrictions to the extent that they relate to such portion). There is no prohibition on the right of City to assign its rights under this Agreement. Notwithstanding the foregoing, the burdens of this Agreement run with the land and shall be binding on the heirs, successors, and assigns of Developer, including the owner of any part of the Property from time to time.

- 8.9 Priority over Subsequent Liens. This Agreement shall have precedence and shall take priority over any mortgage, lien, or other encumbrance that may be recorded against the Property or any portion thereof.
- 8.10 Subsequent Conveyance by Developer. Developer may convey all or any portion of the Property to a third party, subject to the provisions of this Agreement provided Developer at all times shall remain jointly and severally liable with the owner of any part of the Property for all obligations of Developer under this Agreement.
- 8.11 Severability. If any provision of this Agreement is held to be invalid or unenforceable by reason of any statute, rule of law, or public policy, all other terms and conditions of this Agreement nevertheless will remain in full force and effect as if this Agreement had been executed with the invalid or unenforceable portion eliminated. To the extent any provision of this Agreement is deemed unenforceable by virtue of its scope but may be made enforceable by limitation on its scope, the provision will be enforceable to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought.
- 8.12 No Waiver or Release.
- a. Nothing contained in this Agreement is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including but not limited to those contained within Wis. Stat. §§ 893.80, 895.52, and 345.06.
 - b. Nothing contained in this Agreement is intended to be a waiver or release of any obligations imposed on Developer by any federal, state, or local statute, ordinance, rule, or regulation.
 - c. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by the City and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by Developer.
- 8.13 No Personal Liability. Developer acknowledges and agrees 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 the City's officers, agents, employees, or representatives, it being understood and agreed that in such matters they act as agents and representatives of the City.

- 8.14 **Governing Law and Venue.** The laws of the State of Wisconsin shall govern this Agreement. Venue for any disputes shall be in Dodge County Circuit Court.
- 8.15 **Attorneys' Fees.** In any action at law or in equity to enforce any provisions or rights under this Agreement, the unsuccessful party of such litigation, as determined by the court in a final judgment or decree, shall pay to the successful party or parties all costs, expenses, and reasonable attorneys' and accountants' fees incurred by the successful party (including without limitation such costs, expenses, and fees on any appeals), and if the successful party recovers judgment in any such action or proceeding, such costs, expenses, and fees shall be included as part of that judgment, as determined by the court.
- 8.16 **Neutral Construction.** This Agreement is the result of a negotiated agreement by the Parties and that prior to the execution of this Agreement each Party had sufficient opportunity to have review of the document by legal counsel. Nothing in this Agreement will be construed more strictly for or against either Party because that Party's attorney drafted this Agreement, or any portion of or attachment to this Agreement.
- 8.17 **Amendment.** This Agreement may be amended at any time only by written amendment entered into by all of the Parties.
- 8.18 **Entire Agreement.** This Agreement, all other documents expressly referred to in this Agreement, and the attachments to this Agreement, contain the entire agreement between the Parties with respect to the matters set forth in this Agreement.
- 8.19 **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 8.20 **Exhibits.** All exhibits and other documents attached to this Agreement or referenced herein are incorporated into and shall become a part of this Agreement.
- 8.21 **Survival and Nonmerger.** Any provision of this Agreement which has not been fully performed or option which has not been exercised prior to transfer of possession of the Property 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 or exercised.
- 8.22 **Effective Date.** This Agreement shall be effective as of the date of the last signature of the Parties below.



8.23 Originals and Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective corporate names and attested by their duly authorized officers, as of the date indicated.

Signature pages follow.

DRAFTED BY:
Attorney Jared Walker Smith
Boardman & Clark LLP



**EXHIBIT A
PROPERTY DESCRIPTION**

[Exhibit A to be inserted on subsequent pages]



**EXHIBIT B
PROPERTY LEGAL DESCRIPTIONS**

[This Exhibit B to be replaced with a finalized Exhibit B upon recording of the replat and finalization of the legal descriptions for the Phase 1 Property and Phase 2 Property]

Phase 1 Property Legal Description



Phase 1 Property PIN:

Phase 2 Property Legal Description

Phase 2 Property PIN:

**EXHIBIT C
FORM OF OPTION TO PURCHASE**

OPTION TO PURCHASE

The City of Mayville ("**City**") hereby grants to **Hockers Investments LLC** (together with its assigns, "**Developer**") an option to purchase the Phase 2 Property (defined below) on the following terms and conditions. For \$1 and other good and valuable consideration, City and Developer agree as follows.



COPY

1. **Development Agreement.** Reference is hereby made to a Development Agreement dated as of _____, 2022, between City and Developer (as amended from time to time, the "**Development Agreement**").
2. **Property.** The term "**Phase 2 Property**" means the vacant real property legally described as _____
_____ consisting of approximately _____ acres of real property, and associated with Dodge County Tax Parcel ID Number _____.

RETURN TO:
Atty. Jared Walker Smith
Boardman & Clark LLP
PO Box 927
Madison, WI 53701-0927

P.I.N.

3. **Other Definitions.** "**Agreement**" means this Option to Purchase. "**Project**," "**Phase 1**," "**Phase 2**" and "**Substantial Completion**" have those meanings as set forth in the Development Agreement.
4. **Option to Purchase.** City gives Developer the option to purchase the Phase 2 Property pursuant to the terms and conditions set forth in this Agreement.
 - a. **Notice.** Developer must give City written notice of Developer's intent to exercise the option at least sixty (60) days before closing.
 - b. **Purchase Price.** The purchase price will be \$1.00 per acre or portion thereof.
 - c. **Closing.** Closing shall occur as set forth in the Development Agreement.
 - d. **As-Is Sale.** The Phase 2 Property shall be conveyed by quit claim deed, AS-IS, without warranty. City's sole obligation at closing shall be to deliver the deed in recordable form to Developer conveying merchantable title to Developer. All costs of the sale, including but not limited to recording and closing costs, shall be paid by Developer. Should Developer or its lender desire to obtain

title insurance in connection with the conveyance, such insurance shall be at Developer's sole expense.

- e. **No Representations or Warranties.** Developer acknowledges and agrees that Developer has had sufficient opportunity to inspect the Phase 2 Property prior to closing and that City is conveying and Developer is accepting the Phase 2 Property on an AS-IS, WHERE IS, WITH ALL FAULTS basis and that Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from the City or its agents as to any matters concerning the Phase 2 Property. City hereby disclaims any duty to make any representation or warranty to Developer, whether at common law, under Wis. Stat. Ch. 709, under Wis. Stat. § 100.18, or otherwise. Developer hereby waives its right to receive a vacant land disclosure report under Wis. Stat. Ch. 709. As a part of its agreement to accept the Phase 2 Property in such condition, Developer, for itself and its successors, assigns, agents, employees, contractors, and invitees, hereby waives, discharges, and releases City from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with or related to the physical, geological, or environmental condition of the Phase 2 Property, including without limitation, any past or present condition of or action on or about the Phase 2 Property.

- f. **Other Closing Documents.** To the extent necessary, City will sign other customary closing documents, including, without limitation, a FIRPTA, an owner's affidavit, a GAP undertaking, and a settlement statement.

- g. **When Developer's Option to Purchase Terminates.** Developer's option shall be null and void upon the occurrence of any of the following events (each a "*Termination Event*"):
 - i. Developer fails to achieve Substantial Completion of Phase 1 of the Project by November 30, 2023;

 - ii. Developer fails to exercise the option by March 1, 2026;

 - iii. Upon Developer's notice of its intent to exercise the option, City and Developer fail to reach an agreement on an amendment to the Development Agreement setting forth the deadlines for completion of Phase 2 of the Project, within forty-five (45) days of Developer's notice of intent to exercise the option; or

iv. The Development Agreement is terminated due to default of Developer.

h. **Recording of Certificate of Termination.** On the occurrence of any Termination Event in paragraph f above, City may record with the Dodge County Register of Deeds on record title to the Phase 2 Property, a "Termination of Option to Purchase Certificate" signed by the Mayor and attested by the City Clerk certifying the occurrence of a Termination Event and that the Option to Purchase is null and void.

5. MISCELLANEOUS

- a. **Parties Bound.** The term "*party*" means City, Developer, or both of them, as the context reasonably requires. This Agreement will be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.
- b. **Assignment.** This Agreement shall not be assigned without the express written approval of City, which may be withheld in City's sole discretion and without explanation. Any unapproved assignment is void. In the case of a request for approval, any proposed transferee shall have all of the qualifications and legal and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations of Developer for Phase 2 of the Project under the Development Agreement. Any proposed transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, assume all of the obligations of Developer for Phase 2 of the Project under the Development Agreement and obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject under the Development Agreement and this Agreement. There is no prohibition on the right of City to assign its rights under this Agreement.
- c. **Binding Effect.** This Agreement shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, legal representatives, successors and permitted assigns.
- d. **Headings.** The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.
- e. **Invalidity & Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement will be deemed valid and operative. And, to the greatest extent legally possible, effect will be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the



other any term or provision of this Agreement will not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

- f. **Governing Law.** This Agreement will, in all respects, be governed, construed, applied, and enforced in accordance with Wisconsin law.
- g. **Entirety & Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the purchase of the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.
- h. **Notices.** All notices required or permitted hereunder will be in writing and will be served on the parties at the addresses set forth in the Development Agreement. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address will be effective until actual receipt of such notice.
- i. **Calculation of Time Periods.** In computing time periods under this Agreement, if the last day falls on a Saturday, Sunday or legal holiday for national banks in Madison, Wisconsin, then the period will run until the end of the next day that is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein will be deemed to end at 12 midnight, Madison, Wisconsin, time. Time is of the essence in the performance of this Agreement.
- j. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of such counterparts will constitute one agreement.

Effective as of _____.

[Signature pages follow]

DRAFTED BY:
Attorney Jared Walker Smith
Boardman & Clark LLP



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