

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

PARK EAST CORRIDOR DEVELOPMENT OF BLOCK 26

THIS AMENDED AND RESTATED AGREEMENT is made as of the ____ day of _____, 2016, by and between MILWAUKEE COUNTY (the "County") and PARK EAST TWO, LLC, a Wisconsin limited liability company (hereinafter "Developer"). County and Developer are collectively the "parties".

RECITALS

Pursuant to that Development Agreement dated August 6, 2012 (the "Original Agreement"), the Developer acquired Phase 1 ("Phase 1") of certain property in the City of Milwaukee, Milwaukee County, Wisconsin and plans to acquire Phase 2 ("Phase 2") of the property as more fully and legally described on **Exhibit A-1 and depicted on Exhibit A-2** from the current owner, Park East Square LLC ("Seller"). The Developer now plans to acquire Phase 3 ("Phase 3") of certain property in the City of Milwaukee, Milwaukee County, Wisconsin as more fully and legally described on **Exhibit A-1 and depicted on Exhibit A-2** attached hereto (Phase 1, Phase 2 and Phase 3 are herein collectively defined as the "Property") from the Seller to be developed in conjunction with Phase 2. The parties now desire to enter into this Amended and Restated Development Agreement as a means to incorporate Phase 3 into the Original Agreement.

AMENDED AND RESTATED AGREEMENT

In consideration of the mutual covenants and agreements contained herein and in the Original Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms used herein shall have the following meanings:

(a) "Building" means the applicable Phase 1, Phase 2 and/or Phase 3 improvements to be initially constructed by the Developer on the Property in conformity with plans and specifications approved by the County and the City of Milwaukee, all as more particularly described on **Exhibit B**.

(b) "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), fees and expenses of defense of any claim and of any settlement or judgment, including without limitation attorneys' fees and consultants' fees, any of which are incurred at any time as a result of the

existence of Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property, including without limitation: (i) damages for personal injury, or injury to property or natural resources occurring upon or off the Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, interest and penalties, including, but not limited to, claims brought on behalf of employees of the Developer or the County; (ii) diminution in the value of the Property, and damages for the loss of or restriction on the use of or adverse impact on the marketing of rentable or usable space or of any amenity of the Property; (iii) fees incurred for the services of attorneys, consultants, contractor, experts, laboratories and all other fees incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remedial, removal, containment, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property or otherwise expended in connection with such conditions; (iv) liability to any third person or governmental agency to indemnify such person or agency for fees expended in connection with the items referenced in this subparagraph.

(c) "Environmental Requirements" means all applicable past, present and future laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, the State of Wisconsin and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment from Hazardous Materials (as defined herein), including, without limitation: (i) all requirements, including, but not limited to, those pertaining to, best management practices, reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Material and (ii) all requirements pertaining to the protection of the health and safety of employees or the public from Hazardous Materials.

(d) "Hazardous Material" means any substance: (i) the presence of which requires investigation or remediation under any federal, state or local environmental statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation or ordinance or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.); and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission,

board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenols (PCBs), asbestos or urea formaldehyde foam insulation.

(e) "Project" means the applicable Phase 1, Phase 2 and/or Phase 3 Building, roads, driveways, parking areas, signs, walkways, loading areas, fences and walls, sewer, electrical, gas, water and other utility distribution systems, landscaping, drainage and other improvements to be initially constructed on the Property by or for the Developer in conformity with the approved plans and specifications, all as more particularly described on **Exhibit B**.

(f) "Park East Redevelopment Compact" means Milwaukee County Board Resolution File No. 04-492 attached hereto as **Exhibit C**

(g) "Redevelopment Plan" means the redevelopment plan adopted by the City of Milwaukee Common Council on June 15, 2004, and any amendments thereto. The Redevelopment Plan consists of the following three documents: (i) the Renewal Plan that contains language that satisfies the State statutes in order to carry out the renewal activities within the Park East Redevelopment Project boundaries, (ii) the Master Plan that links the Redevelopment Plan to the Milwaukee Downtown Plan and (iii) the Development Code that defines land use and design standards.

(h) "Material Alteration of the Project" shall mean with respect to the applicable Phase 1 or Phase 2 of the Project (i) a 10% (ten percent) variance in the square footage of the project or any material alteration to: (ii) the exterior materials, (iii) the general appearance, (iv), the scope and use of the project, or (v) the stated intentions of the Project -- each of the above as reflected in the most current submitted plans as reflected in **Exhibit B** and **Exhibit D**; "Material Alteration of the Project" with respect to the applicable Phase 1, Phase 2 or Phase 3 of the Project shall also mean (vi) any change to the DBE Participation Goals as developed pursuant to and described in Section 2.6 hereof and (vii) any alteration in Developer's compliance with the Park East Redevelopment (PERC) Compact Compliance Plan approved by the Milwaukee County Community Business Development Partners ("CBDP"). Regarding Material Alterations (vi) and (vii), Developer may not proceed with such Material Alterations without first obtaining the advance written consent of the Milwaukee County Board [unless otherwise permitted by the Economic Development Committee in section 2.1]. Notwithstanding the foregoing, the parties acknowledge that County has recently acquired two new software systems meant to simplify the requisite reporting set forth in the PERC Compliance Plan. County and Developer will sign a letter agreement to require the use of these systems, B2GNow and LCPTracker, and to remove the provision relating to use of a third party consultant to coordinate reporting. Nothing in the letter agreement will change the goals and requirements of the PERC.

2. Development of the Project.

2.1 Construction by the Developer. The Developer shall, at its own cost and expense, cause the construction of the Project on the Property in a good and workmanlike manner and in compliance with all then applicable building codes and ordinances, and the Redevelopment Plan and Request for Proposal for the Property. The Developer represents that the total projected cost of acquiring the Property and constructing the Project thereon shall be as specified on **Exhibit E**. Construction of the Project on the Property shall be completed substantially in conformity with the plans, specifications, landscape plan, signage plan, drainage plan and parking plan as submitted by the Developer and approved by County Board Resolutions 12-474 and 16-____, which are attached hereto as **Exhibit F**, and as approved by the City of Milwaukee (the "Approved Plans") the cover page of which is attached hereto as **Exhibit D**.

The Approved Plans may be modified from time to time during the course of construction and shall not require the consent of the County except the advance written consent of the County shall be required in the following instances to the extent that such modifications are a "Material Alteration of the Project" as defined herein. In the event that County approval is required, the Developer shall not institute such modification until receiving written approval from the County's Director of Economic Development. If approval of the County is required, the County shall respond in writing within ten (10) business days of its having been notified of the need for approval. If the County does not notify the Developer on or before said 10th business day of its approval or disapproval, approval shall be deemed to be granted. To the extent necessary to approve or disapprove a Material Alteration of the Project, the County shall be allowed – upon notice to the Developer – a reasonable amount of time beyond 10 business days (which additional time may include the time needed to seek approval by the Milwaukee County Board) to provide its approval or disapproval. The foregoing notwithstanding, those Material Alterations relating to DBE and Park East Redevelopment Compact Compliance Plan requirements, referenced in Section 1h(vi) and (vii), shall automatically come back to the Milwaukee County Board for review and determination as to whether such Material Alteration shall require County Board approval and it is expressly understood that any Milwaukee County Board approvals cannot be accomplished in 10 business days. Thus, if Milwaukee County Board approval is necessary, such additional time as needed shall be permitted to seek Milwaukee County Board approval or disapproval, which approval shall be requested at the next regularly scheduled meeting of the Milwaukee County Board or one of its subcommittees, as applicable

The Developer agrees to:

- (i) Commence construction of Phase 1, which shall mean commencement of excavation of Phase 1 of the Project on the

Property by the date provided for on **Exhibit G** (the "Construction Schedule"), commence construction of Phase 2, which shall mean commencement of excavation of Phase 2 of the Project on the Property by the date specified in the Construction Schedule, and commence construction of Phase 3, which shall mean commencement of excavation of Phase 3 of the Project on the Property by the date specified in the Construction Schedule (for the applicable Phase 1, Phase 2 and Phase 3, the "Project Commencement Date").

- (ii) Achieve completion of excavation of the location for the Building and commencement of construction of the foundation for Phase 1 of the Project on the Property by the date specified in the Construction Schedule; achieve completion of excavation of the location for the Building and commencement of construction of the foundation for Phase 2 of the Project on the Property by the date specified in the Construction Schedule, and achieve completion of excavation of the location for the Building and commencement of construction of the foundation for Phase 3 of the Project on the Property by the date specified in the Construction Schedule (for the applicable Phase 1, Phase 2 and Phase 3, the "Excavation Completion Date").
- (iii) Diligently prosecute completion and achieve such completion of the entire Project by the date provided for in the Construction Schedule for Phase 1, diligently prosecute completion and achieve substantial completion of the entire Project by the date provided for in the Construction Schedule for Phase 2, and diligently prosecute completion and achieve substantial completion of the entire Project by the date provided for in the Construction Schedule for Phase 3 (for the applicable Phase 1, Phase 2 and Phase 3, the "Project Completion Date").

The Project Commencement Date and Project Completion Date (as defined on **Exhibit G**) shall be confirmed by the Developer's Project architect delivering certificates to the County stating that excavation on the Property has been completed and construction of the foundation has commenced or with respect to substantial completion, that the applicable Phase 1, Phase 2 or Phase 3 of entire Project, has been substantially completed. In the event that the Developer ceases construction of the applicable Phase 1,

Phase 2 or Phase 3 of Project on the Property for 60 consecutive days, such event shall be deemed a "Construction Stoppage."

Developer shall upon the execution of this Agreement and Closing deliver to the County a Performance Deposit (the "Deposit") Performance Bond (the "Bond") in the amount of \$50,000. The Deposit/Bond shall serve as a security on deposit for the full and complete performance of all of the obligations, agreements and covenants outlined in Article 2 of this Agreement, the Developer's proposal approved by the Milwaukee County Board of Supervisors and County Executive, and as a guaranty for the completion of the Project approved by the City of Milwaukee, which obligations shall be performed in compliance with the other terms and conditions of this Agreement. The Deposit/Bond shall be in a form approved in advance in writing by the County.

2.2 Condition of Property; Construction of Infrastructure. Developer acknowledges that the County delivered possession of the Property to the Seller "AS-IS" (as to physical condition). The County shall not be responsible for performing any grading or compaction work with respect to the Property. The Property was part of the former Park East Freeway Corridor and contained above and below grade freeway structures. The demolition of the elevated freeway structures included the partial or complete removal of the below-grade freeway support elements and related infrastructure (except piles). The City of Milwaukee, Department of Public Works managed the demolition of the elevated freeway structures as well as the removal of the below-grade freeway support elements and related infrastructure. Prior to the existence of the freeway, the subject property contained various buildings and/or structures as more particularly described in the Request for Proposal. Therefore, the property may contain foundations, building materials, and/or various debris from the previous demolition and any remaining freeway support elements or related infrastructure. The Developer is solely responsible for and must make adequate allowance for all excavation and disposal costs necessary for the Project. The Request for Proposal delivered to Seller provides additional information regarding the condition of the Property. The Developer shall be solely responsible for all property development costs, including, but not limited to, extension of water and sewer laterals to the Property and the replacement of sidewalks and curb cuts. Developer hereby releases and disclaims any claim, damage, loss, injury or obligation whatsoever of the County in any way relating to, arising out of, the physical condition of the Property, any matters described in this Section 2.2, and/or any material, substance, or contaminant located in, under, upon, migrating to or from the Property, regardless of the source, such disclaimer and release shall include any action at law or in equity, whether arising out of contract or tort law.

2.3 General Requirements. The Developer agrees that during construction it shall use reasonable efforts to (a) cause its contractors working on the Project to remove all waste products and rubbish from the Property and the infrastructure areas related to their work in a manner and time consistent with industry standards, and if

any such waste products and rubbish are left on site, it shall be responsible for removing the same, and (b) use reasonable efforts to keep the Property and areas of access thereto in a neat and presentable state.

2.4 Labor Standards. The construction of the Project on the Property shall be subject to the following labor standards: (a) overtime at prevailing overtime rates for work on Saturday, Sunday and legal holidays and for more than 40 hours per week or 8 hours in any calendar day, (b) minimum hourly base wage rates and minimum hourly fringe benefits as specified in the Wisconsin Department of Workforce Development's most recently published Final Determination of annual prevailing wages in Milwaukee County and (c) and comply with the Prevailing Wages and Employment Data sections of the Park East Redevelopment Compact. These labor standards shall be included in each contract and subcontract in connection with development of the Project. The Developer shall maintain records of compliance and require each contractor and subcontractor to maintain records of compliance for verification as reasonably requested by the County.

2.5 Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment (and the Developer shall use reasonable efforts to eliminate any such discrimination by its contractors) based on ancestry, arrest record, conviction record, creed, genetic testing, honesty testing, marital status, membership in the national guard, state defense force or any reserve component of the military forces in the United States or the State of Wisconsin, pregnancy or child birth, sexual orientation, race, color, national origin, age, sex or disability which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Developer will post in conspicuous places, available for employment, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will strive to implement the principles of equal employment opportunities through an affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicap persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer shall cause its contractors and subcontractors and any assignee to comply with this Section 2.5 and Section 2.6 with respect to construction of the Project.

2.6 DBE Participation Goals. The Developer and its contractors shall commit to Disadvantaged Business Enterprise participation goals for its development of the Project as being used by Milwaukee County for construction and related professional services at the time of the date of this Agreement, and the Developer shall submit to the County a specific plan for approval to meet such goals. In approving such plan and specific mandatory contractual provisions to be inserted in Developer's construction

contract(s) for the Project, along with applicable mandatory County reporting forms, which is made part of the PERC Compliance Plan, copies of which are attached hereto as **Exhibit H**, the County shall use the standards, policies and procedures of the CBDP Section of Milwaukee County. The County shall use reasonable efforts to obtain the services of the Division of CBDP Section of Milwaukee County to assist the Developer as requested in preparing the specific plans required by this Section. The Developer and its contractors shall also comply with the Disadvantaged Business Enterprise section of the Park East Redevelopment Compact.

3. Defaults and Remedies.

3.1 Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) a Construction Stoppage (as defined in Section 2.1 hereof) by the Developer, subject to extension for Force Majeure Delays; (b) the Developer fails to commence construction of the applicable Phase 1, Phase 2 or Phase 3 of the Project by the applicable Phase 1, Phase 2 or Phase 3 Project Commencement Date, or complete excavation by the Excavation Completion Date applicable to Phase 1, Phase 2 or Phase 3, subject to extension for Force Majeure Delays; (c) the Developer falls materially behind in the Construction Schedule for the applicable Phase 1, Phase 2 or Phase 3, subject to Force Majeure Delays; (d) the Developer fails to substantially complete construction of the applicable Phase 1, Phase 2 or Phase 3 of the Project by the applicable Project Completion Date, subject to extension for Force Majeure Delays, or (e) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer, subject to extension for Force Majeure Delays. In the event an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the default in detail, and the Developer shall have 30 days after receipt of the Default Notice to cure such Event of Default. In the event that the Developer does not cure such Event of Default within such 30-day period (or such other reasonable time as necessary if such default cannot be cured within 30 days and the Developer, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance, collect actual damages for the Developer's failure to perform (including, without limitation, the damages, if any, related to, or arising out of, the infrastructure related to the Property and the cost of financing used to construct such infrastructure, and any guaranty thereof, any costs associated with overtime or additional labor forces in order to timely construct the Project, and other outside fees, including reasonable attorneys' fees). In addition to the other remedies provided for herein, Developer agrees to pay the County an additional payment of \$2,000 per day for each day which Developer is late in achieving the required milestone dates

described in section 3.1(b), (c) and (d) (the "Late Payments"). These Late Payments shall be made immediately upon demand by the County.

The Developer agrees that damages will not be an adequate remedy at law and that the County shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Development Agreement and its incorporation of the Redevelopment Plan, Disadvantaged Business Enterprise and Prevailing Wages and Employment Data sections of the Park East Redevelopment Compact, the City of Milwaukee zoning code, the County ordinances or any other State or Federal law. Venue for such action shall be Wisconsin State Court with venue in Milwaukee County. The County shall be entitled to its reasonable attorneys' fees in any action – in which it prevails - to enforce such provisions, including the actual costs of Milwaukee County Corporation Counsel's office if it is the attorney for the County or reasonable attorney fees for other attorneys that may be hired by the County.

In the case of an Event of Default under Section 3.1(b) hereof, which is not cured by the Developer within 30 days after receipt of a Default Notice (or such other reasonable time as necessary if such default cannot be cured within thirty (30) days and the Developer, upon receipt of such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), the County may exercise an option to repurchase the applicable Phase 1, Phase 2 or Phase 3 of the Property at a purchase price equal to 85% of the purchase price paid by the Developer to Seller for such Property by giving the Developer notice thereof within thirty (30) days of Developer's failure to correct such Event of Default by the time required. In the event that the County exercises its option to repurchase, then the Developer shall reconvey the applicable Phase 1, Phase 2 or Phase 3 of the Property to the County within 30 days of receipt of such notice by general warranty deed, free and clear of all liens and encumbrances except those liens and encumbrances described in the warranty deed delivered by the County to the Seller in the Seller's acquisition of the applicable Phase 1, Phase 2 or Phase 3 of the Property plus monetary encumbrances which do not materially affect the value or use of the Property, utility and other easements granted by the Developer as part of the development process, and real estate taxes for the year of repurchase, if any, with a customary proration credit to the County for real estate taxes for such year. The Developer shall also execute the applicable Wisconsin Real Estate Transfer Return, pay all transfer taxes in connection with the transfer and execute a certificate of nonforeign status and other reasonably requested documentation as is customary for similar transfers.

3.2 Events of Default by the County. If the County shall fail to perform any other term, condition or covenant to be performed or observed by the County for more than 30 days after receipt by the County of written notice from the Developer specifying in detail the nature of such failure (or such other reasonable time as is necessary if such default cannot be cured within 30 days and the County, upon receipt of

such notice, promptly commences the process of curing such default and diligently and continuously pursues such cure to completion), then the Developer may pursue any available remedy against the County at law or in equity including, without limitation, the right to pursue specific performance or injunctive relief and collect actual damages for the County's breach of failure to perform (including reasonable attorneys' fees).

3.3 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

3.4 Costs and Attorneys' Fees. In the event any legal or equitable action or proceeding shall be instituted to enforce any provision or agreement contained herein, the party prevailing in such action shall be entitled to recover from the losing party all of its costs including court costs and reasonable attorneys' fees, including the fees of in-house/corporate counsel. The prevailing party shall be such party that substantially obtains the relief sought with or without the commencement of litigation.

4. General Provisions.

4.1 Conveyance of the Property. Prior to substantial completion of construction of each Phase of the Project, the Developer shall not, except as permitted by this Agreement, convey any interest in such Phase or Developer without the prior written approval of the County, which approval shall not be unreasonably withheld or delayed. This prohibition shall not be deemed to prohibit or restrict leasing to tenants for occupancy, conveyances to equity investors in the Project, conveyances to an affiliate of Developer, conveying condominium units for occupancy and/or granting any other right to occupy and use any portion or portions of a Building. Further, notwithstanding the foregoing, the Developer may assign its interest in this Agreement to an affiliate of the Developer, an entity of which the Developer or some or all of the members or shareholders of the Developer are members or shareholders or a lender or lenders as collateral for the construction loan related to construction of a given Phase. As used in this Section 4.1, "affiliate" means any corporation, limited liability company, limited liability partnership or other entity, which directly or indirectly controls or is controlled or is under common control the Developer. Nothing herein shall be deemed to prohibit, restrict or otherwise limit the Developer from selling, leasing or otherwise transferring a Phase or an interest in the Developer or partial interest therein after substantial completion of construction of such Phase notwithstanding the lack of substantial completion of other Phases of the Project.

Notwithstanding anything to the contrary contained in this Agreement, the Developer reserves the right, at its sole discretion at any time during the term of this

Agreement, to join and associate with other individuals or entities in joint ventures, partnerships or otherwise for the purpose of developing the Project subject, however, to the following conditions:

(a) The Developer shall promptly notify the County in writing of the identity of any such additional parties;

(b) The Developer and Wangard Partners, Inc. ("WPI") shall remain fully responsible to the County as provided in this Agreement, shall not be released from its obligations hereunder and a WPI affiliate shall remain the Developer's managing member or manager;

(c) Such additional parties shall be deemed approved unless rejected in writing by the County within twenty days after written notice thereof to the County by the Developer. In connection with the County's determination hereunder, the County shall only take into consideration the reputation of any such additional parties, and the County shall not withhold approval unreasonably. Any notice from the County disapproving such additional parties shall specify the reasons therefore.

Notwithstanding any other provision contained herein, nothing herein shall limit, restrict or prohibit the Developer from entering into any mortgage, deed of trust, sale and lease-back or any other form of conveyance or any form of equity or income participation, including but not limited to a partnership or joint venture, required by a lending institution for the purpose of securing a loan to be used for financing the acquisition of the Property, the construction of the Project thereon and any other expenditures necessary and appropriate to develop the Property. The words "mortgage" and "deed of trust" as used herein includes all other appropriate modes of financing real estate acquisition, construction and land development.

4.2 Liens. Until the Project is substantially completed in compliance with the requirements contained herein, the Developer shall take all commercially reasonable steps to prohibit any construction liens to be filed against the Property or the Project thereon.

4.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project (including the Project Commencement Date, Construction Stoppage or the Project Completion Date) or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to causes which were beyond its reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, embargoes or shortages of material from all

reasonable sources, which shall not in any event include any economic hardship or delay due to the condition of the economy or real estate market ("Force Majeure Delay"). In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party shall, within 15 business days after the occurrence of the event causing the Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay (with appropriate back-up documentation) shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay.

4.4 Notices. All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, postage prepaid, and addressed:

To the County: James Tarantino
Economic Development Director
633 W. Wisconsin Avenue, Suite 933
Milwaukee, WI 53203

with a copy to: Paul Bargren
Corporation Counsel
Milwaukee County
901 North Ninth Street, Suite 303
Milwaukee, WI 53233

To the Developer: Wayne Wiertzema
Park East Two, LLC
1200 North Mayfair Road, Suite 310
Milwaukee, WI 53226

with copies to: Pamela Opyd
Gateway Advisors, LLC
225 W. Washington Ave., Suite 1300
Chicago, IL 60606

Either party may, upon prior notice to the other, specify a different address for the giving of notice. Notices shall be deemed given upon receipt or refusal to accept delivery.

4.5 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(d) The laws of the State of Wisconsin shall govern this Agreement.

(e) Since both parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

4.6 Waivers. Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

4.7 Severability. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

4.8 Entire Agreement and Amendments. This Agreement, including exhibits, and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer and recorded in the office of the Register of Deeds for Milwaukee County. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party.

4.9 Duration of Covenants. The County and the Developer agree that, upon the Developer's request, within 30 days after satisfaction of the applicable Developer's obligations under Article 2 herein, the County shall either concur with such request as evidenced by a recordable Certificate (in which case such unapplied portion of the Bond shall be returned to Developer), indicating that all such applicable obligations have been satisfied hereunder and that those provisions of this Agreement have been satisfied, or reject such request and state which applicable obligations have not yet been completed.

4.10 Authority. The Developer and WPI hereby acknowledge and agree that they are a validly formed and existing limited liability company and corporation, respectively, formed in the State of Wisconsin. The undersigned signatories have the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Each shall deliver copies of its corporate resolution or other authorizing documentation demonstrating that it has the power and authority to enter into this Agreement.

4.11 Successors. Upon Developer acquiring fee ownership of Phase 1, Phase 2 and/or Phase 3 of the Property, this Agreement shall automatically become binding upon Developer with respect to such Phase 1, Phase 2 and/or Phase 3 of the Project. Except as otherwise expressly provided herein, all of the covenants, agreements, terms and conditions of this Agreement shall run with the Property and inure to the benefit of and be binding upon the County and the Developer and their respective successors and assigns and any party obtaining any interest in the Property after the date hereof, including, without limitation, any condominium unit owner, occupants and/or tenants of the Property. Notwithstanding anything to the contrary contained herein, the right of enforcement of the terms, conditions or covenants of this Agreement to be performed or observed by the Developer is solely vested in the County or any successor entity to the County.

4.12 Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors and assigns and the Developer or its successors and assigns. In entering into this Agreement, and in acting in compliance herewith, the Developer is at all times acting and performing as an independent contractor duly authorized to perform acts required of it hereunder. The Development Agreement does not create the relationship of principal, an agent or of partnership or joint venture or any other association between the County and the Developer, the sole relationship between the County and the Developer being that of a seller and purchaser of land, with certain obligations, covenants and responsibilities described herein.

4.13 Records and Audits. Once a year, upon commercially reasonable notice by the County, the Developer shall allow the County, the Milwaukee County Department of Audit, or any other party the County may name, when and as they demand, to audit, examine and make copies of, excerpts or transcripts from any records or other information directly relating to matters under this Development Agreement. The Developer shall maintain and make available to the County the above-described audit information for no less than three years after conclusion of the obligations and responsibilities of the Developer described herein and required by this Development Agreement.

4.14 Environmental Indemnification.

(a) Conveyance of the Property to Seller was "AS-IS" and without warranty or representation as to soil, subsoil, Hazardous Material and other environmental conditions. Moreover, Developer hereby agrees to indemnify, hold harmless, and defend County from and against any and all liabilities, claims, penalties, forfeitures, and suits, and all reasonable costs and expenses, including the cost of defense, settlement, and reasonable attorney's fees and/or any other Environmental Damages related to, or arising out of, soil, subsoil and environmental conditions arising out of, or in any way connected with the presence of any Hazardous Material on, in, under or migrating to or from the Property, including but not limited to, liability arising out of or in any way connected with the investigation, monitoring or cleanup under any federal, state or local law or regulation or ordinance Environmental Requirements or any Hazardous Material on, in or under or migrating to or from the Property.

(b) Developer shall be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Property or surrounding areas by the Developer, its employees, contractors, agents or guests, and/or Hazardous Materials whose presence pre-exists the inception of Developer's possession, located in and on the Property, regardless of whether they are discovered or disturbed as a result of Developer's construction activities on, at or near the Property. Developer shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) related to, or arising out of, such Developer's obligations, or failure to perform such obligations described above, and any claim, action or damages asserted against the County by any party or governmental agency related to, or arising out of an Environmental Regulation or Hazardous Material at, in, under, or migrating to or from the Property.

The parties acknowledge and agree that environmental conditions and risks were factored into entering into this Agreement and the purchase price of the Property and that Developer's environmental indemnities benefiting County shall be as broadly and liberally construed as possible so as to provide the maximum protection possible to the County from liability, and the Developer hereby further waives any right to argue that for any reason this indemnification section is ambiguous or confusing or that it should in any way be construed against County.

(c) Notwithstanding anything else to the contrary herein, Developer shall be released from its obligations under section 4.14 if (i) County exercises its option to repurchase pursuant to section 3.1 but only regarding such contamination that existed prior to the Closing or (ii) there is migration of Hazardous Materials from any County owned property to the Property, and such migration of Hazardous Materials is actively caused by the County, but only regarding such contamination actively caused by the County.

- 4.15 WPI hereby guarantees the performance of all of Developer's obligations hereunder and by the date of execution of this Agreement, shall execute a guaranty in a form approved in writing by the County, and attached hereto as **Exhibit I**.
- 4.16 Developer shall for itself, and cause Seller to, execute and record an original of the Memorandum of Amended and Restated Development Agreement, at the Milwaukee County Register of Deeds Office, against the Property, immediately after executing this Agreement in the form attached hereto as **Exhibit J**, (and prior to any other encumbrance or document), and provide a recorded original to the County promptly thereafter.
- 4.17 This Amended and Restated Development Agreement amends and restates in its entirety the Original Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

[Execution Pages Follow]

\

DEVELOPMENT AGREEMENT
MILWAUKEE COUNTY
EXECUTION PAGE

MILWAUKEE COUNTY

By: _____
Name: Chris Abele
Its: County Executive

Attest:
By: _____
Name: Joseph J. Czarnezki
Its: County Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2016 by Chris Abele as County Executive of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2016 by Joseph J. Czarnezki, as County Clerk of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

Approved for Execution by Corporation Counsel

By: _____

DEVELOPMENT AGREEMENT
DEVELOPER
EXECUTION PAGE

Park East Two, LLC, a _____ limited
liability company
By: _____, a _____
limited liability company, managing
member

By: _____
Name: _____
Its: Chief Executive Officer

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016 by
_____ as Chief Executive Officer of _____, LLC, a _____ limited liability company.

(_____)
Notary Public, State of Wisconsin
My Commission _____

EXHIBIT A-1

Legal Description

CERTIFIED SURVEY MAP NO. 853

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

ZONING RED-REDEVELOPMENT ZONING DISTRICT TAX KEY #S 360-1771-000, 360-1772-000, 360-1773-000

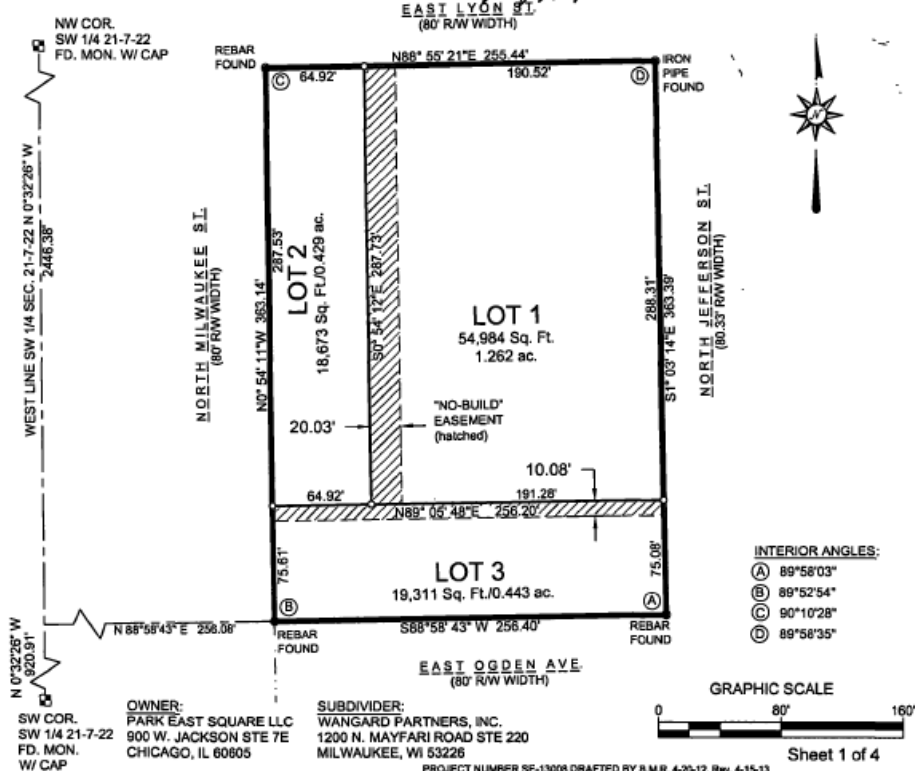
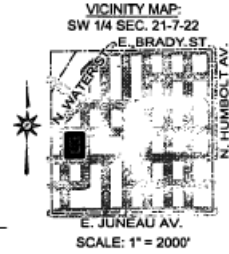
LEGEND & NOTES:

● INDICATES FOUND MONUMENTATION, AS NOTED ON DRAWING.

○ INDICATES SET 3/4" DIAM. REBAR, 18" LONG WEIGHING 1.50 LBS/LIN. FT.

COORDINATES & BEARINGS REFERENCED THE WISCONSIN STATE PLANE COORDINATE SYSTEM WITH THE WEST LINE OF THE SW 1/4 OF SEC. 21-7-22, ASSUMED TO BEAR N 0°32'26" W, AS PUBLISHED BY SEWRPC, NAD 1927, DEC. 2005 REVISION.

DISTANCES MEASURED TO THE NEAREST 0.01'. ANGLES MEASURED TO THE NEAREST 01'.



INFRASTRUCTURE SERVICES DIVISION
 Marcia Cornell 4/26/13
 CENTRAL DRAFTING & RECORDS MANAGER
 Zy Timothy J. Thun 4/26/13
 ENGR. IN CHARGE ENVIRON. ENGR.
 CORRECT
 CITY ENGINEER 4/2/13
 APPROVED

DEPARTMENT OF CITY DEVELOPMENT
 CITY OF MILWAUKEE
 AUG 15 2012
 STAFF APPROVED

DOC.# 10297166
 Recd: 8217
 RECORDED 09/25/2013 10:02AM
 JOHN LA FAVE
 REGISTER OF DEEDS
 Milwaukee County, WI
 AMOUNT: 30.00
 FEE EXEMPT #:

CERTIFIED SURVEY MAP NO. 853

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE
STATE OF WISCONSIN)

MILWAUKEE COUNTY) ;SS

I, BAIBA M. ROZITE, Registered Land Surveyor, hereby certify:

THAT I have surveyed, divided and mapped all of Parcels 1, 2 and 3 of Certified Survey Map No. 8032 located in the Southwest 1/4 of the Southwest 1/4 of Section 21, Town 7 North, Range 22 East in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said Southwest 1/4 Section; Thence North 0°32'26" West, 920.91 feet along the West line of said quarter section to the North line of East Ogden Avenue, extended Westerly; Thence North 88°58'43" East, 256.08 feet along said North line to the Point of Beginning of this description said point being on the East line of North Milwaukee Street; Thence North 0°54'11" West, 363.14 feet along said East line to the South line of East Lyon Street; Thence North 88°55'21" East, 255.44 feet along said South line to the West line of North Jefferson Street; Thence South 1°03'14" East, 363.39 feet along said West line to the North line of East Ogden Avenue; Thence South 88°58'43" West, 256.40 feet along said North line to the Point of Beginning. Said parcel contains 92,969 square feet or 2.134 acres of land, more or less.;

THAT I have made the survey, land division, and map by the direction of Park East Square, LLC, an Illinois limited liability company, owner of said land.

THAT the map is a correct representation of all exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with s. 236.34 of the Wisconsin Statutes and Chapter 119 of the Milwaukee Code of Ordinances in surveying, dividing and mapping the same.


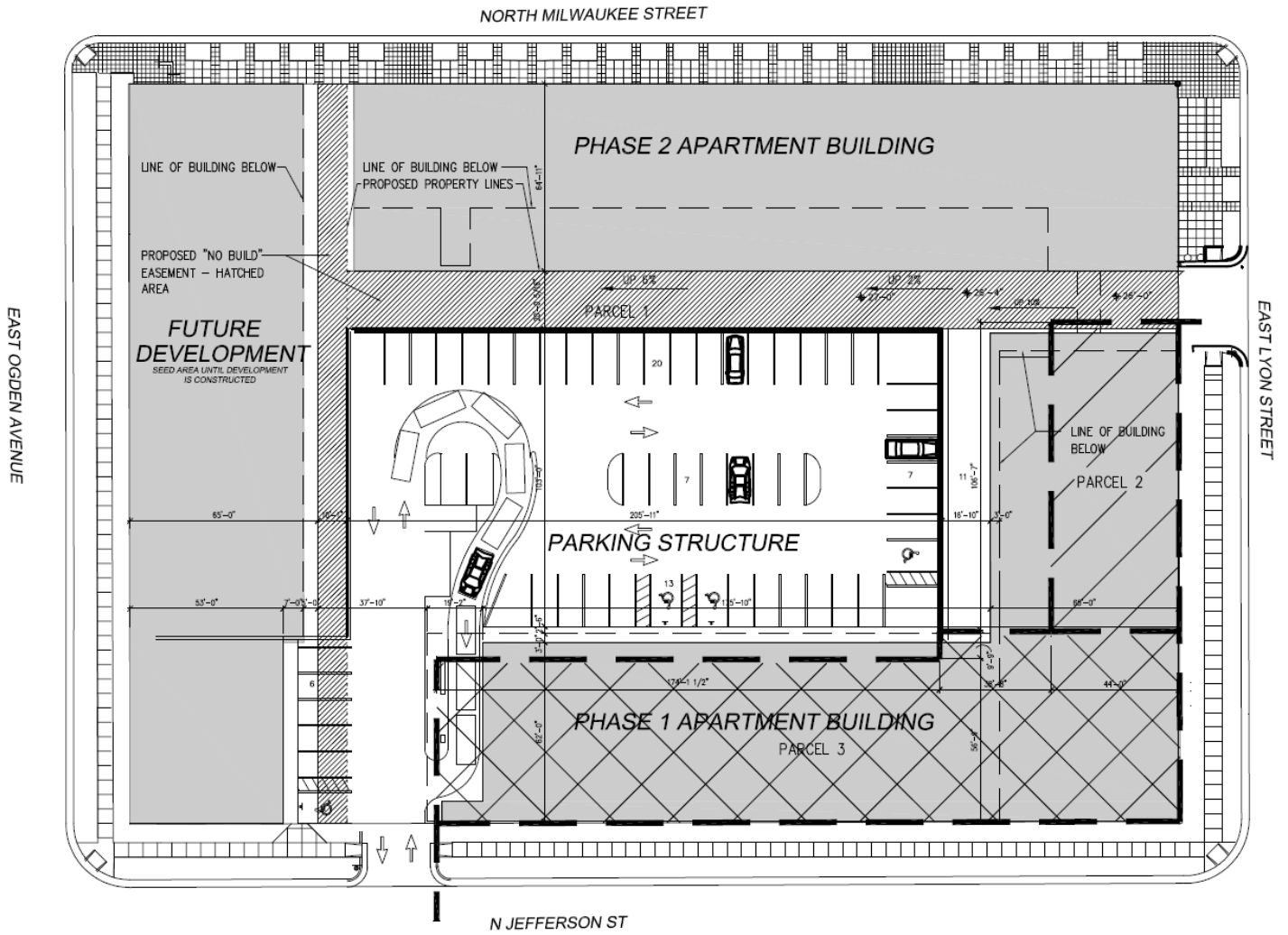
 9-05-12 (SEAL)
Baiba M. Rozite, RLS



EXHIBIT A-2

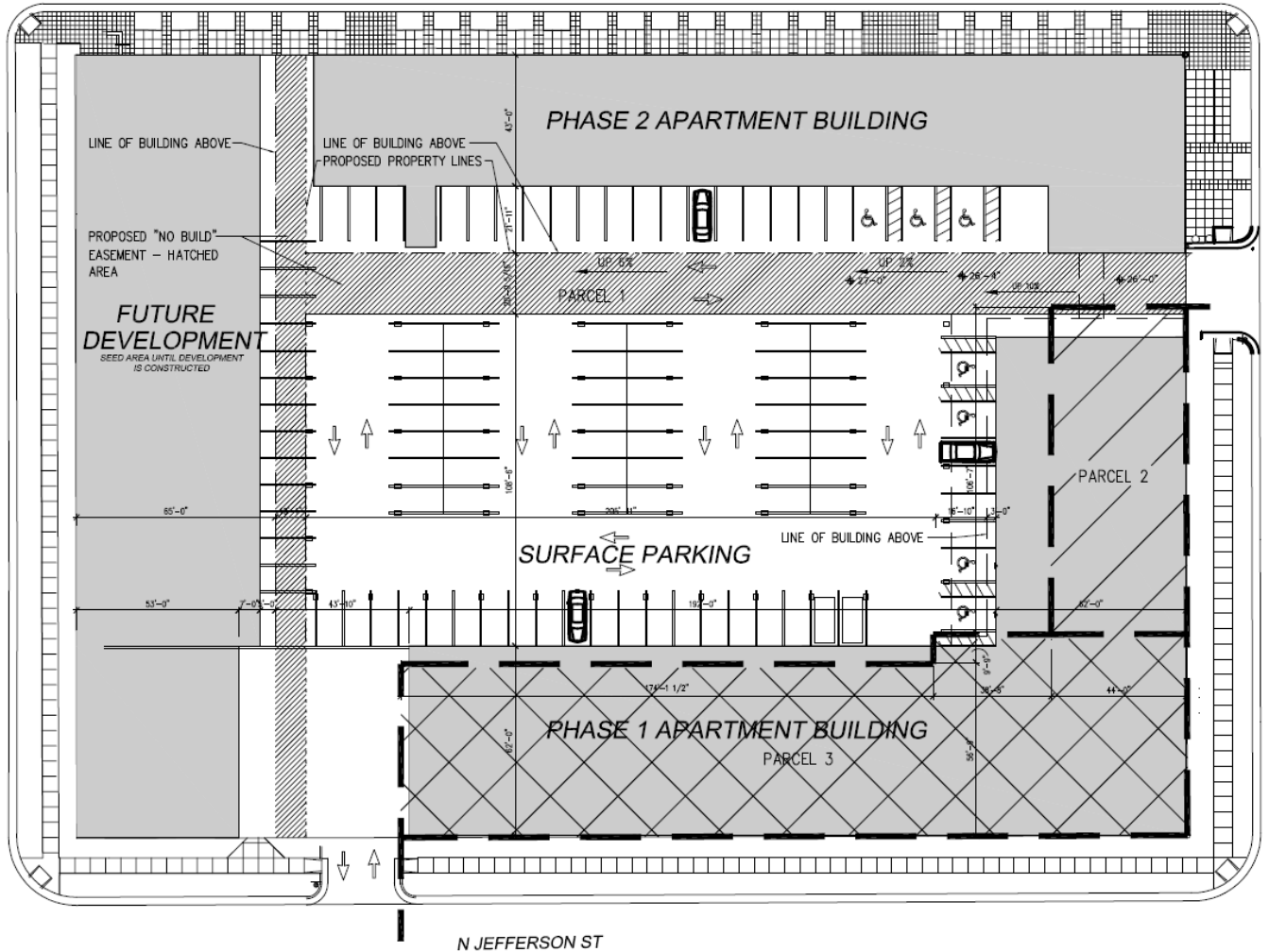
Preliminary Parcel Plan



PROPOSED PARCEL PLAN - UPPER LEVEL
1" = 40'-0"



NORTH MILWAUKEE STREET



EAST OGDEN AVENUE

EAST LYON STREET

N JEFFERSON ST

PROPOSED PARCEL PLAN - LOWER LEVEL
1" = 40'-0"



EXHIBIT B

Project Description

The Avenir (formerly named Park East Square) is a mixed use development which includes three phases on this 2.1 acre premier site in downtown Milwaukee.

Phase 1: 104 unit market rate rental residential with 14,640 square feet of retail space and 192 parking spaces.

Phase 1 is located along Lyon and Jefferson. The Phase 1 building is designed as a five story building along Jefferson with 14,640 square feet in the first level directly across the street from the Point East Commons retail center, and a four story building along Lyon. Parking for the residents is located within the building at its two lowest levels. Parking for the public and retail users is planned on the southwest side of the building with access from Lyon for the lower level and access from Jefferson for the upper level.

Phase 2: 82 unit market rate rental residential building located on Milwaukee Street and attached to the Phase 1, 104 unit building.

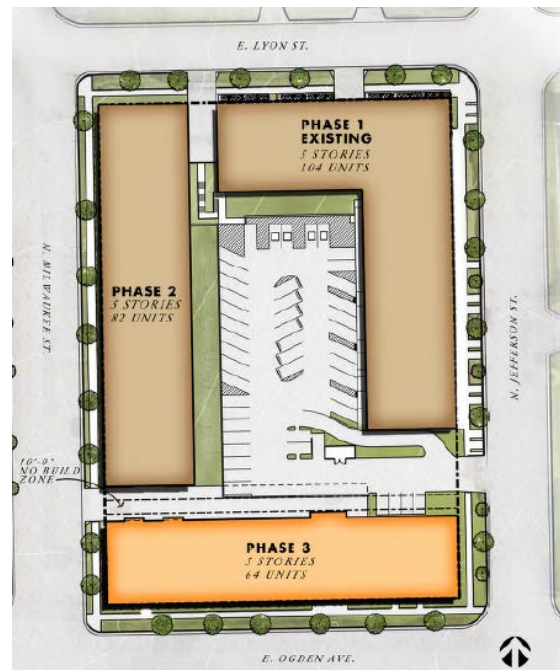
Phase 2 is located along Milwaukee Street and will be a five story building similar in design to Phase 1. The primary access is planned to be on Milwaukee Street.

Phase 3: 64 unit market rate rental residential building located on Lyon Street, with 4,700 square feet of retail space. Phase 3 will be a five-story building similar in design to Phases 1 and 2.

OVERALL UNIT & PARKING COUNT

PHASE	UNIT COUNT	PARKING COUNT
PHASE 1	104	192
PHASE 2	82	43
PHASE 3	64	63*
TOTAL	250	298
RATIO		1.18 / UNIT

* INCLUDES OPTIONAL, COMPROMISED, PARKING CONFIGURATION FORCING TWO WAY TRAFFIC THROUGH SINGLE GARAGE DOOR





MATERIAL LEGEND:

STONE - ARCHITECTURAL CORDOBA STONE 4' AND 8' HEIGHTS
 RUNNING BOND OLDCASTLE-MATCH EXISTING

BRICK - MONARCH SIZE CONCRETE BRICK
 COLOR- DARK WOOD MORTAR-GREY
 OLD CASTLE BRICK

FIBER CEMENT PANEL - COBBLE STONE OR MONTEREY TAUPE



EXHIBIT C

CB Resolution 04-492

COUNTY BOARD RESOLUTION
FILE NO. 04-492

EXHIBIT "C"
Page 1 of 5



COUNTY CLERK

Milwaukee County

MARK RYAN • County Clerk

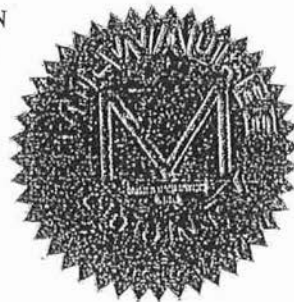
STATE OF WISCONSIN)
)SS
COUNTY OF MILWAUKEE)

I, Mark Ryan, County Clerk in and for the County of Milwaukee, State of Wisconsin, do hereby certify that the attached copy of File No. 04-492 is a true and correct copy of the original resolution duly adopted by the Milwaukee County Board of Supervisors at a meeting held on December 16, 2004.

Given under my hand and official seal, at the Milwaukee County Courthouse, in the City of Milwaukee, this 14th day of February, 2005.

A handwritten signature in cursive script that reads "Mark Ryan".

MARK RYAN
County Clerk



IEC 16 2004

Ab. pted

15-4

2-3-05

Voted
by the
Co. Exec.

Veto
overrudden

15-4

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By Supervisors Johnson, Coggs-Jones, Broderick, Dimitrijevic, Clark, West, White,
Holloway, Weishan, Quindel, DeBruin



EXHIBIT "C"
Page 2 of 5

DEC 16 2004

A RESOLUTION FILE NO. 04-492

To create the Community and Economic Development (CED) Fund and adopt the Park East
Redevelopment Compact (PERC) in order to provide additional sustainable community
benefits for the development of the County Park East land.

WHEREAS, Milwaukee County will seek the sale of significant real estate assets,
including approximately 16 acres of land in the Park East freeway corridor and these
lands represent tremendous assets held in trust by Milwaukee County for the benefit of
the citizens of this County. This revenue has been used in various ways, but often it has
been used to offset basic operating expense or tax levy; and

WHEREAS, while offsetting tax levy to fund operating expense is a tool that is
sometimes necessary, such major sales should provide a longer-term and sustainable
benefit to the community. True stewardship of these major public resources requires that
their sale provide a benefit for the citizens; and

WHEREAS, the redevelopment of the Park East land, by itself, using private
development, will not take advantage of unique opportunities to provide sustainable
community benefits especially to those in most need of jobs; and

WHEREAS, adoption of the Park East Redevelopment Compact (PERC), as
provided in this resolution, will provide the best opportunity to provide increased jobs
and tax base not only on this land, but also for the entire community; and

WHEREAS, this resolution also provides for the creation of a Community and
Economic Development (CED) Fund. The CED (pronounced 'seed') Fund would be
comprised of a series of programs designed to address 'gap' needs in the marketplace and
it is not intended to reproduce resources that are available either in the commercial
marketplace or through other public resources; and

WHEREAS, the CED Fund recognizes that there are areas where the market does
not make available the resources required for sustainable development and by providing
those resources, the Fund seeks to be a catalyst that will enable businesses to develop
and grow, communities to prosper, and the lives of all of our citizens to be enriched; and

WHEREAS, this Fund would be endowed with all net revenue generated by the
sale of land in the Park East Corridor and be used to carry out this resolution for the Park
East Redevelopment Compact (PERC); and

APPROVED AS TO FORM

39 WHEREAS, in the future, with the exception of revenue allocated to other
40 purposes by statute, ordinance, resolution, or budget action, revenue produced by the
41 sale of real estate assets (except park land sales) may be allocated to the CED Fund by the
42 County Board at the time of each sale; and

43 The following are some possible uses of the CED Fund:

44

- 45 • Minority Business Working Capital
- 46 • Small & Minority Business Contract Financing
- 47 • Housing Development
- 48 • Neighborhood Business Development
- 49 • Economic Development
- 50 • Environmental Mitigation/Brownfields
- 51 • Carry out Park East Redevelopment Compact (PERC); now therefore,

52

53 BE IT RESOLVED that this resolution adopts the principle and creation of the
54 Community Economic Development (CED) Fund and adopts the Park East
55 Redevelopment Compact (PERC) with the specifics of the policies and procedures to
56 implement this resolution to be adopted separately by the County Board; and

57 BE IT FURTHER RESOLVED, that the following Park East Redevelopment Compact
58 (PERC) establishes the policies for the sale of the County's Park East land to achieve the
59 goal of providing additional sustainable community benefits for the development of this
60 land:

61 1. Competitive Development Agreements

62 Each parcel of Park East land will be sold through a competitive Request for Proposals
63 (RFP) which shall be reviewed and approved by the County Board. Milwaukee
64 County should not just sell the land for the highest price offered but rather should
65 seek development proposals which will provide the greatest future benefit in jobs, tax
66 base and image for the community, as well as, a fair price. The policies to carry out
67 the PERC will be contained in the RFP and the final legal requirements will be
68 included in each development contract. These contracts will be for 27 years or until
69 the Tax Incremental District (TID) is terminated. (A parcel may be all or part of one or
70 more blocks as contained in the each RFP.)

71

72 2. Cooperation with Existing Organizations

73 Milwaukee County will cooperate with and use existing governmental and private
74 organizations, programs and funding sources whenever possible to carry out these
75 PERC policies.

76

77 3. Community and Economic Development Fund (CED)

78 The County CED fund may be used to carry out these PERC policies whenever other
79 funding is not available. The CED fund is described in other parts of this resolution.

- 81
82 4. Disadvantaged Business Enterprise (DBE)
83 Milwaukee County will include their current DBE policies, as they apply to county
84 construction contracts, in all RFP's and development contracts. The Office of
85 Community Business Development Partners shall assist in administering this
86 provision.
87
- 88 5. Enhanced Apprenticeship and Training
89 All RFP's and development contracts shall contain additional apprenticeship and
90 training requirements, using existing agencies whenever possible. Participation in
91 County sponsored training shall meet county established income and residency
92 requirements.
93
- 94 6. Local Employment and Coordination
95 Milwaukee County will hire one or more non-profit community economic
96 development agencies to assist in coordinating the DBE, training and local
97 employment requirements. All employment vacancies for developers, contractors,
98 trainees, owners and tenants, who will work on the County Park East land, will be
99 required to be provided to the County and the County's designated coordinating
100 agencies, so that they may assist local applicants to apply for these vacancies. This
101 requirement will end with the TID.
102
- 103 Milwaukee County and many in the community have as a goal that the workforce on
104 the Park East property reflect the racial diversity of Milwaukee County. The
105 Milwaukee County Board and the community asks and expects businesses and
106 contractors to make a good faith effort to employ racial minorities consistent with
107 their numbers in the County's workforce. (The 2000 county census population (over
108 age 18) was 68.7% White, 20.4% Black, 7.2% Hispanic and 3.7% other). Reports
109 will be required to determine whether this goal is being achieved.
110
- 111 7. Prevailing Wages and Employment Data
112 All RFP's and development agreements will require the payment of prevailing wages
113 for construction employees as is now required for most public works projects.
114 Developers, owners and tenants will be required to provide an annual report to
115 Milwaukee County with the number of non-construction full and part time employees
116 working on the Park East project. Milwaukee County will develop the required report
117 which will include the wage ranges and whether employees have health or retirement
118 benefits. This report will be designed to help measure the job impact of the PERC.
119 This requirement will end with the TID.
120
- 121 8. Affordable Housing
122 Milwaukee County will sponsor the construction of new affordable housing of not less
123 than 20% of the total housing units built on the County's Park East lands but they may
124 be built on other infill sites in the city of Milwaukee. The County, in each RFP for any

125 given parcel, may require a different percentage of affordable housing or have no
126 requirement at all. The County may use funds from existing housing programs along
127 with County funds to meet this requirement.

128

129 9. Green Space and Green Design

130 Milwaukee County will require that green space and green design be specifically
131 included in all proposals submitted in response to an RFP. The County will consider
132 this information when evaluating and selecting a final developer for each parcel.

133

134 10. Community Advisory Committee and Administration

135 A Community Advisory Committee will be appointed by the Chairman of the County
136 Board, after the adoption of the PERC, which shall advise the County Board on
137 implementing the PERC policies. This committee shall continue until the Tax
138 Incremental District is completed for the PERC area. The Director of Economic and
139 Community Development shall assist this committee in preparing an annual report to
140 the County Board on the effects of the PERC policies. The Director of Economic and
141 Community Development shall administer the PERC agreements with the primary
142 goal to achieve the desired community benefits.

143

144 BE IT FURTHER RESOLVED, that Milwaukee County should seek the input of
145 business and community leaders to assist in carrying out the PERC and CED Fund policies.

146

147

148 10/28/04

149 I:\My Documents\PARK EAST REDEVELOPMENT\Resolution.doc

150 GB/ld

151

EXHIBIT D

Approved City "Project" Plans



Department of City Development

City Plan Commission
Historic Preservation Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

May 30, 2012

Mr. Craig C. Dillman
Manager of Real Estate Services
Milwaukee County, Department of Administrative Services
2711 W. Wells Street, Room 102
Milwaukee, WI 53208-3531

Dear Mr. Dillman:

Subject: Park East, Block 26

The purpose of this letter is to advise you that the preliminary design for Park East, Block 26 appears to meet the development code requirements. On February 29, 2012, Department of City Development Planning staff met with Wangard Partnership and Legat Architects regarding the proposed mixed-use residential, with first floor commercial, building in the block bounded by East Ogden Street, North Jefferson Street, East Lyon Street and North Milwaukee Street.

We noted a few details that need additional development, such as the glazing treatment at the north wall of the parking garage and the landscaping/edge treatment at the parking entrance at Jefferson Street. With some minor refinements, the code requirements should be met. We also discussed revising the Certified Survey Map to adjust the new parcel line, as well as an interim landscape strategy for the southwest portion of the block. If you have any further questions, please contact Ms. Vanessa Koster, Planning Manager, directly at 286-5716. We look forward to our continued cooperative approach to redeveloping the Park East and moving this proposal forward.

Sincerely,

A handwritten signature in cursive script that reads "Rocky Marcoux".

Rocky Marcoux
Commissioner

c: Robert Dennik, VJS Construction

EXHIBIT E

Project Costs

Phase 1 Project Cost

Land Acquisition	\$ 1,825,000
Hard Costs:	\$13,375,000
Soft Costs:	<u>\$ 5,085,000</u>
TOTAL	\$20,285,000

Phase 2 Project Cost

Land Acquisition	\$ 1,000,000
Hard Costs:	\$12,300,000
Soft Costs:	<u>\$ 3,200,000</u>
TOTAL	\$16,500,000

Phase 3 Project Cost

Land Acquisition	\$ 1,350,000
Hard Costs:	\$10,400,000
Soft Costs:	<u>\$ 2,900,000</u>
TOTAL	\$14,650,000

EXHIBIT F

County “Project” Approval – Board Resolutions 12-474 and 16-____

EXHIBIT G

Construction Schedule

Phase 1

Project Commencement Date
- Commencement of Excavation: 09/30/2013
Excavation Completion Date
- Completion of Excavation & Commencement of Construction:
11/30/2013
Project Completion Date
- Completion of Construction: 03/30/2015
(16 mths)

Phase 2

Project Commencement Date
- Commencement of Excavation: 09/01/2016
Excavation Completion Date
- Completion of Excavation & Commencement of Construction:
11/01/2016
Project Completion Date
- Completion of Construction: 03/01/2018
(16 mths)

Phase 3

Project Commencement Date
- Commencement of Excavation: 01/01/2017
Excavation Completion Date
- Completion of Excavation & Commencement of Construction:
03/01/2017
Project Completion Date
- Completion of Construction: 07/01/2018
(16 mths)

EXHIBIT H

Approved PERC Compliance Plan

EXHIBIT H

Community Business Development Partners



MILWAUKEE COUNTY

MARINA DIMITRIJEVIC • Chairwoman, Milwaukee County Board of Supervisors
FREIDA WEBB • Director, Community Business Development Partners

DATE: May 25, 2012

TO: Steve Wangard, Principal
Wangard Partners Inc. and
Pamela Opyd, Gateway Advisors

FROM: Freida Webb, Director
Community Business Development Partners (CBDP),
Disadvantaged Business Enterprise Program (DBE)
Milwaukee County
Milwaukee, WI 53208

RE: Wangard Partners Park East Corridor Redevelopment Project
Park East Square Block, Park East Two, LLC
Project Participation Plan 2012 per
Milwaukee County Park East Redevelopment Compact (PERC)

Upon our meetings and review of the above Plan as of May 25, 2012, Milwaukee County CBDP Department has determined it includes and reflects the goals and intent of the Milwaukee County Park East Redevelopment Compact goals.

All parties have committed to continue to work together for the life of the Project to maintain and monitor compliance regarding the Milwaukee County PERC/DBE goals and our mutual interest as well as overall project success.

Feel free to contact me if anyone has questions and or concerns at 414-278-4803.

Freida Webb, Director
Community Business Development Partners (CBDP)

EXHIBIT H

**Park East Two, LLC.
Park East Redevelopment Compact (PERC)
Project Participation Plan**

Park East Corridor Redevelopment Project

**Park East Square — Block 1
Park East Two, LLC.
Project Participation Plan 2012**

**Park East Two, LLC.
Park East Redevelopment Compact (PERC)**

EXHIBIT H

Park East Two, LLC.
Park East Redevelopment Compact (PERC)
Project Participation Plan

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Park East Two, LLC.
Park East Redevelopment Compact (PERC)

EXHIBIT H

Park East Two, LLC.
Park East Redevelopment Compact (PERC)
Project Participation Plan

SECTION 1: Introduction/Executive Summary

Park East Two, LLC. Redevelopment Compact Plan Overview

Park East Two, LLC., proposes to enter into an agreement with Milwaukee County to meet the Milwaukee County Park East Redevelopment Compact (PERC) requirements for: 1) Disadvantaged Business Enterprise (DBE) participation in construction, professional services and other services, 2) Prevailing wages, 3) Job creation for Milwaukee County residents and underrepresented racial minorities.

It is the intent of Park East Two, LLC. to successfully establish relationships with certified DBE construction contractors and professional service providers to participate on construction projects awarded for the Park East Corridor Redevelopment Project Blocks. It is the intent of Park East, Two LLC. to provide employment opportunities for Milwaukee County residents and to adhere to labor standards related to prevailing wages on its construction projects.

Park East Two, LLC. understands the necessity of timely payments and is committed to assisting DBE construction contractors and professional service providers to ensure all subcontractors are treated fairly and each subcontractor is provided with ample assistance, guidance and time to ensure correct and complete pay application documentation is submitted according to payment schedules and timely payments are consistently made.

Development Location

The property is comprised of Lots 1 and 2, Block 26 and the alley located between Lots 1 and 2, Block 26 in the City of Milwaukee Park East Redevelopment Plat and also identified as Block 1 of the Park East Development Plat, east of the Milwaukee River. This 2.1 acre premier site in downtown Milwaukee is bounded by East Lyon Street on the north, North Jefferson on the east, East Ogden Avenue on the south and North Milwaukee Street on the west. Phase 1 of the project, which is located along Jefferson and Lyon Streets, across the street from the East Pointe Crossing shopping center.

Development Scope

Park East Two, LLC. plan is to provide both a vibrant development and economic stimulant to the City and County of Milwaukee and the Park East Corridor. The plan includes a total project size of approximately 175,000 square feet comprised of approximately 86 luxury rental units as well as 14,640 square feet of retail space and 246 parking spaces.

Park East Redevelopment Compact Requirements (PERC)

The Park East Two, LLC., Project Participation Plan has been designed to guide building contractors, professional service providers and major vendors with coordination, execution and reporting metrics of DBE construction and professional services participation and achievement of other PERC requirements. PERC guidelines and reporting requirements:

25% DBE construction participation Including Architect and Engineer
17% DBE participation in professional services (excluding A&E)
Prevailing wage labor standard
Construction jobs created, 25% underrepresented racial minorities

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Resource connections are established and maintained with the assistance of the Park East Two, LLC. PERC coordinator to engage DBE firms for project inclusion and to connect Milwaukee County residents with employment opportunities. The Park East Two, LLC., Coordinator (TRG / Business Partners Network LLC.) will collaborate with the Community Business Development Partners (CBDP) office and the Park East Two, LLC. Construction Manager in DBE community outreach, capacity building (DBE firms), employment partnerships and joint ventures, and acute engagement with underrepresented racial minorities residing in Milwaukee County to assure workforce compliance.

Copies of all required reporting forms are provided in this document. Access to electronic versions of these forms are available upon request.

SECTION 2: **Participation Plan Definitions**

DEFINITIONS

In addition to those definitions set forth elsewhere in this document, when used in this Participation Program, the following terms (whether used in singular or plural tense) shall have the meanings identified below:

- A. **"Broker"** is defined as a provider of materials or supplies, who is not authorized as a bona fide, factory authorized wholesaler. A Broker may inventory "like or similar" parts but does not hold a valid "wholesalers" agreement with the manufacturer of the goods they resell. A Broker may serve a useful business function, but Participation Credit is limited.
- B. **"Certified"** applies to a business or person that meets the requirements of certification for Disadvantaged Business Enterprise.
- C. **"Certifying Agency"** shall apply to Milwaukee County Community Business Development Partners (CBDP) and any **Wisconsin Unified Certification Program (WIUCP) partner** for granting "Certified" status to businesses that seek and obtain the designation as Disadvantaged Business Enterprise.
- D. **"Community Business Development Partners"** refers to the Milwaukee County office designated to oversee the DBE requirements on the Park East Corridor projects.
- E. **"Construction Services"** means providing any service directly related to or pertaining to the construction on Park East Two, LLC. projects and any other functionally related or auxiliary facilities or structures. This definition excludes professional services such as Construction Management, Program Participation Coordination and Monitoring, Legal, Design, Architectural and Engineering Services, Accounting, Public Relations, Media, Travel, Promotions, Insurance, etc. and applies to traditional on site trade construction and repetitive hauling activities.
- F. **"Contracting Threshold"** is an accumulative calculated value of first tier Contractor's annual contract awards, which exceeded in any sliding twelve month period, will automatically require the Contractor to begin obtaining Participation on each additional dollar award, above this value, at the levels herein noted. It is the responsibility of the Contractor to keep track of the accumulated value of their contracts and to begin obtaining participation when the "Contract Threshold" is exceeded.
- G. **"Contractor"** for this document shall apply to each firm providing Construction or Professional Services, under direct contract with Park East Two, LLC. or its Construction Manager. This definition includes Certified DBE firms operating at "First Tier" level.

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- H. “**DBE**” or “**Disadvantaged Business Enterprise**” is a for-profit business concern that is at least 51% owned, operated, and controlled by one or more individuals and certified by Milwaukee County under CFR 49 Part 26 and any Wisconsin Unified Certification Program (WIUCP) partner.
- I. “**Exempt**” shall apply to written and specific items for which the CBDP office has granted a “Waiver” from meeting a specific Participation requirement. The CBDP shall have the right to “Exempt” specific Park East Redevelopment expenditures from the Participation Plan for cause. (See “Certificate of Good Faith Efforts” document)
- J. “**First Tier Contractor**” – See Contractor
- K. “**Good Faith Efforts**” is a term that applies to a Contractor’s efforts to solicit and utilize DBE firms to meet the DBE participation requirements of the contract award guided by CFR 49 Part 26 and Chapter 42 of the Milwaukee County Ordinances, which requires good faith effort (GFE) to achieve participation of certified Disadvantaged Business Enterprise firms on contracts.
- L. “**Joint Venture**” means an association of two or more businesses to carry out the work of a single business enterprise, for which purpose they combine their property, capital, efforts, skills, and/or knowledge as defined in 49 CFR.
- M. “**Manufacturer**” or **fabricator** is a firm that substantially alters raw materials, adding value through this process and subsequently provides the altered product(s) to projects without providing installation services.
- N. “**Milwaukee County Resident**” – for the purposes of this document shall mean a person who maintains his or her place of permanent abode within Milwaukee County. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in Milwaukee County. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where a person votes, pays personal income taxes, or obtains a driver’s license.
- O. “**Park East Redevelopment Corridor**” refers to the Milwaukee County Park East land in the Park East freeway corridor.
- P. “**Park East Redevelopment Compact (PERC)**” refers to the section of the Milwaukee County Board resolution adopted in order to provide additional sustainable community benefits from the development of the County Park East land.
- Q. “**Park East Redevelopment Compact Coordinator**” applies to the team led by TRG / Business Partners Network LLC.– a firm retained by Park East Two, LLC. (developer) to coordinate the execution of PERC requirements and assure DBE firms and Milwaukee County residents are given every opportunity to participate on Park East Two, LLC. development projects in the Park East Corridor. ALL Park East Two, LLC. Service Providers are required to respond to and provide requested documentation when requested to do so, by the PERC Coordinator, in a timely manner. The PERC Coordination Project Manager is John Rodell of TRG / Business Partners Network LLC., Phone 262.391.0592. Email JERodell@wi.rr.com.
- R. “**Participation Credit**” when referring to expenditures shall mean the amount of money spent with DBE firms (construction, professional services and other services) and allowed to count towards meeting the Participation Level requirements on the Park East Projects. When referring to the workforce, the term shall mean the number of FTE construction jobs and permanent jobs created for persons who qualify as Milwaukee County residents and allowed to count towards job creation from the Park East Two, LLC. Park East Projects.
- S. “**Participation Level**” shall dually mean (1) the percentage of planned participation by DBE firms and/or Persons to be achieved by each individual Contractor or Park East Projects as a whole, when addressed in the Aggregate – and

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(2) the required number of jobs provided for Milwaukee County residents and/or Persons – as established in Section II of this Participation Program.

- T. **“Prevailing Wages”** refers to the minimum wage rates required to be paid for construction employees as determined by the State of Wisconsin Department of Workforce Development.
- U. **“Prime Contractor”** shall mean any Contractor receiving its contract directly from Park East Two, LLC. or its Construction Manager (CM) for work on any Park East Two, LLC. Park East Project.
- V. **“Professional Services & Other Services”** The definition specifically includes, but is not limited to: Construction Program/project Management, Program/project Coordination, Legal, Architectural and Engineering Services, Accounting, Public Relations, Media, Travel, Promotions, Insurance and related services. Other services includes, but not limited to, janitorial, security.
- W. **“Remedial Plan”** applies to any corrective action plan required by and /or provided by the Contractor to CDBP and Park East Two, LLC. and its PERC Coordinator to meet Participation Plan and contractual requirements.
- X. **“Sanctions & Sanctions Policy”** **Sanctions** are monetary and/or other actions that may be taken by Park East Two, LLC. and/or its designee with Contractors who fail to meet any of the Park East Two, LLC. PERC requirements or other Contractor contractual obligations.

Sanctions Policy is the procedure Park East Two, LLC. has developed to administer the application of sanctions.
- Y. **“Sole Source”** shall apply to a product, service or building specifications issued by a Professional Service Provider where it creates a market condition whereby only a limited number of Service Providers (Contractors, Manufacturers, or Suppliers etc.) can reasonably provide the specified product or service being specified for a project or scope of work. The practice limits competition and creates a situation where Participation by DBE firms may not be possible. Service Providers should refrain from establishing such specifications unless approved by the CDBP office.
- Z. **“Wholesaler”** or Distributor shall mean a for-profit business concern that maintains an inventory of like or related products and ships from stock the same or similar products to be sold onto the MILWAUKEE COUNTY CDBP projects. The firm must have a bona fide long-term contractual agreement to resale product(s) with the manufacture of the goods to be sold. To qualify as a “Wholesaler” the business must not be limited to selling its product(s) to a narrow clientele or geographic base.

SECTION 3: **Participation Requirements**

A. DISADVANTAGED BUSINESS ENTERPRISE (DBE) FIRMS

Milwaukee County Office of Community Business Development Partners (CDBP), consistent with the requirements of the Milwaukee County Park East Redevelopment Compact (PERC), has established the following provisions for economic participation of Disadvantaged Business Enterprises (DBE). In executing these Participation requirements, the CDBP seeks to increase substantive participation of DBE Firms, working to eliminate barriers that deny them equal opportunity to perform on projects.

1. Eligibility

For Milwaukee County Park East Redevelopment projects DBE firms are for-profit organizations **certified** as Disadvantaged Business Enterprises at the time of bid.

2. DBE Utilization Requirements

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The Office of Community Business Development Partners (CBDP) administers the provision of the Park East Redevelopment Compact that ensures compliance with CFR 49 Part 26 and Chapter 42 of the Milwaukee County Ordinances, which requires good faith effort (GFE) to achieve participation of certified Disadvantaged Business Enterprise (DBE) firms.

CBDP reserves the right to adjust more or less participation to DBE categories, as it deems necessary to meet the PERC program requirements, based upon knowledge of the available DBE firms to perform on specific project work.

Unless otherwise specified, Contractors are required to achieve the following:

- o **25% DBE Construction Participation and Architect Engineer**
- o **17% DBE Professional Services and Other Services Participation (excluding A&E)**

Prime Contractors must submit with its bid forms **DBE-02, and DBE-14; "Commitment to Contract with DBE Firms"**

Listing a DBE on the "Commitment to Subcontract with DBE Firms" form shall constitute a written representation and commitment that the Prime Contractor has communicated and negotiated directly with the DBE firm(s) listed **prior to the bid due date**, and that it will use the listed firm(s). If awarded the contract, the Prime Contractor will enter into a subcontract agreement with the DBE firm(s) for the work and price set forth on the commitment form. Subcontractor agreements must be submitted with the first payment application.

B. PREVAILING WAGES

All Park East development agreements require adherence to payment of prevailing wages for construction employees. Park East Two, LLC. is required to provide a report to Milwaukee County CBDP office with wage and employment data on all hires identified by race and indicating wages, full/part time status and benefits. The report requirement is intended to help measure the job impact of the PERC providing evidence of "additional sustainable community benefits from the development of the County Park East land."

Each month, the Contractor shall prepare and submit accurate and timely prevailing wages documentation attached to payment application.

Failure to submit the required documentation and reports may result in disqualification of future bids, delay of payments, or other appropriate actions as identified in Section 9: Compliance, Remedies and Sanctions.

C. LOCAL EMPLOYMENT AND COORDINATION

Construction Jobs Created

The Milwaukee County Board and the community asks and expects businesses and contractors to make a good faith effort (GFE) to employ Milwaukee County residents providing increased jobs and tax base on the land development. The PERC requires Contractors to make a good faith effort to employ racial minorities consistent with their percentages within the County's working age population as of the most recent decennial US Census.

Park East Corridor developers shall strive for a project workforce that is at least 25% racial minorities. All contracting entities on the project site will be asked to provide a listing of construction job vacancies to Park East Two, LLC. PERC Coordinator so that local applicants can be notified and assisted in applying for the vacancies.

All individuals employed through this project must be confirmed as Milwaukee County residents before their employment can be counted for Participation Credit.

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SECTION 4: Calculation of Participation Levels

1. Commitment.

As a condition of receiving a contract on the Project, each Contractor shall agree not to discriminate against any person or business on the basis of sex, race, color, national origin, sexual orientation, religious belief, age or disability. Contractors further shall agree to take affirmative action to ensure that DBE Firms have the maximum opportunity to compete for and substantively perform on the Project. Accordingly, each Contractor shall commit to achieve the Participation requirements established in the preceding sections.

All construction bidders further commit by submitting their bids that they will not require DBE firms to engage in *exclusive relationships* with them (other than Joint Venture relationships) as a condition to their participation in the Construction Services being bid. Bidders, who engage in such restraint of trade or attempts to monopolize utilization of DBE firms, may have their bids rejected.

2. DBE Participation Credit

The DBE participation credited towards the contract goals for both DBE and non-DBE Prime Contractors is calculated on the following criteria:

- a. One hundred percent (100%) participation credit will be allowed for all work self performed where the Prime Contractor is a DBE firm. DBE firms at the first tier are encouraged to subcontract with other DBE firms.
- b. One hundred percent (100%) participation credit will be granted for all contracts awarded to certified DBE firms if all of the identified scope of work has a commercially useful function in the actual work of the contract and is performed directly by the listed certified DBE firm with its own workforce. CBDP shall determine and evaluate whether or not the firm is performing a commercially useful function on the project.
- c. One hundred percent (100%) participation credit granted for contracts held with lower tier DBE subcontractors. Credit is granted at 100% for all material purchased and installed by a DBE subcontractor.
- d. One hundred percent (100%) participation credit will be granted for contracts held with lower tier DBE subcontractors who subcontract with other DBE firms. If DBE further subcontracts a portion of its work to another firm, the value of the subcontracted work will be counted towards DBE goals only if the work is performed by another DBE firm.
- e. One hundred percent (100%) participation credit will be granted for the cost of all material and supplies purchased and installed by the DBE for the work of the project. Credit shall also be given for the cost of leasing equipment provided the DBE subcontractor does not lease the equipment from the Prime Contractor or Construction Manager or its affiliates.
- f. One hundred percent (100%) participation credit for all purchases for materials or supplies from DBE Manufacturers or fabricators. This includes concrete "manufacturers." A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises goods from raw materials or substantially alters the materials or supplies obtained by the contractor.

CERTIFICATION ALONE IS NOT ACCEPTABLE. Contractors should submit a copy of the official and legal wholesale distributor agreement(s) between the supplier and the manufacturer for all brands to be supplied by the wholesaler. If legal agreements are not provided, products supplied by the wholesaler may not be counted for Participation Credit, or at best - credit towards participation will be limited to the amount of profit actually realized by the supplier.

- g. Sixty percent (60%) participation credit will be granted on expenditures for materials or supplies purchased from a certified DBE "Regular Dealer." A Regular Dealer is a firm that owns, operates, or maintains a store,

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warehouse, or other establishment in which the materials or supplies are kept in stock, and regularly sold to the public in the usual course of business. A Regular Dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns and operates distribution equipment.

- h. Brokers, packagers and manufacturers' representatives or other persons who arrange or expedite transactions are not regarded as regular dealers within the meaning of 49 CFR 26.55.

DBE firms may be utilized to assist in the procurement of materials and supplies, BUT credit will be allowed **only** for the amount of fees or commissions realized by the DBE firm and not the full price of the merchandise provided under any circumstance. DBE Contractors or lower tier DBE subcontractors who provide substantial material and/or supplies for the Project for which they do not participate in its install, shall be considered Brokers and Participation Credit will be limited to the commission or fee paid to the contractor or supplier for the material supplied.

- i. One hundred percent (100%) participation credit will be granted for the fees or transportation charges for the delivery of materials or supplies by a DBE to a job site provided the Park East Two, LLC. project team determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the material and supplies transported under this provision will not be considered towards DBE participation unless the materials or supplies are from DBE manufacturers as covered elsewhere in this document.
- j. One hundred percent (100%) participation credit will be granted for transportation expenditures with DBE trucking firms provided the DBE firm is responsible for the management and supervision of the entire trucking operation for which it has contracted. The DBE must also use trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator, however, the DBE who leases trucks from a non-DBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. (Concrete ready mix operators may not get credit for leased concrete delivery trucks from non-DBE firms.)

- k. DBE participation credit will be affected proportionately by approved change orders. On change orders, Contractor shall be expected to achieve the level of participation for the change order segment of work in the contract documents, i.e., if a scope of work is contracted at 25% DBE, then change orders for that scope of work should also have at least the 25% DBE participation. Change Orders at 17% for all Professional Services excluding Architect and Engineer will apply.
- l. 100% Participation Credit will be granted for contracts where the Contractors are Certified DBE operating as a Joint Venture for all work self performed by the Joint Venture. However, when evaluating a Contractor's bid documents, Certified DBE firm Joint Ventures at the first tier shall be expected to make a substantial Good faith effort to achieve all of the subcontracting Participation Level requirements of any other first tier Contractor.
- m. Prorated Participation Credit will be granted on the aggregate dollar value of contracts where the Contractor is a legal Joint Venture, approved by the CBDP, where the participation by the Certified DBE(s) in the Joint Venture is less than or equal to 50%. The prorated percentage will be equal to the percentage of substantive participation by the DBE entities in the Joint Venture, as determined by the CBDP office.

In order to have this Participation Credit option considered, an "Affidavit of Joint Venture must be fully completed and on file with attachments prior to the bid due date.

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SECTION 5: Participation and Certification Concerns

1. Certification

- a. CERTIFIED DBE - All DBE Firms, including DBE Joint Ventures (where the DBE participants in the JV represents the majority ownership), must be certified prior to providing Construction or Professional Services to the project. Participation Credit may be disallowed for any expenditure made prior to a firm obtaining proper Certification.
- b. CERTIFICATION AGENCY – A DBE firm must be certified by one of the members of the Unified Certification Program Partners (“UCP”): The Wisconsin Department of Transportation, City of Madison, Dane County and Milwaukee County have joined to establish the UCP. The UCP applies only to DBE certification granted under federal USDOT regulation (49 CFR Part 26). Firms that do not have current certification must contact the following: <http://www.county.milwaukee.gov/CertificationService12282.htm>
- c. MAINTAINING CERTIFICATION – All DBE’s participating on the Park East Two, LLC project must maintain DBE certification during the entire term of their contract.

Should the DBE lose its certification during the performance of any contract, the PERC Coordinator shall be immediately notified in order for expedient efforts to be made to meet all requirements for reinstatement.

- d. CERTIFICATION ASSISTANCE – The PERC Coordinator will work with firms to assist in obtaining DBE certification in collaboration with the Milwaukee County Community Business Development Partners. For questions on DBE certification requirements, forms, or timing, please contact the CBDP office at 414.278.4747 or John Rodell of TRG / Business Partners Network LLC., Phone 262.391.0592. Email JERodell@wi.rr.com.

2. Commercially Useful Function/Independence

CBDP reserves the right to deny or limit Participation Level credit to the Contractor where any DBE Firm is found to be engaged in substantial subcontracting or pass-through activities with others. DBE Firms must be independent businesses.

In this regard, a Contractor may count toward its Participation Levels only expenditures to firms that perform a commercially useful function. To determine whether a firm is performing a commercially useful function, the CBDP may evaluate the amount of work subcontracted, reasonable and customary industry practices, and other relevant factors. The Participation Credit allowed shall be based upon an analysis by the CBDP of the specific duties that will be performed by the DBE Firm(s). Each DBE Firm shall be expected to actually manage and supervise the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment and shall perform that portion of the actual work which is reasonable and customary within their industry.

3. Joint Ventures

Credit for the participation of DBE Firms as Joint Venture (JV) partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the DBE Firms as specified by the Joint Venture’s executed JV Agreement as approved by CBDP. The CBDP reserves the right to deny or limit DBE Firm Participation Level credit to the Contractor where any DBE Firm JV partner is found to have duties, responsibilities, risks or loss and management control over the JV that are not commensurate with or in proportion to its JV ownership percentage.

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4. Confirmation

DBE Notification:

All DBE firms selected for a project must be notified at least five (5) working days before the start of their subcontract work.

No credit for Participation will be granted until proper certification of DBE firms is received and confirmed. Additionally, Participation Credit may be withheld for all previous expenditures.

The inclusion of any DBE Firm as certified in a Contractor's Utilization Plan, shall not conclusively establish the Contractor's right to full Participation credit for that intended participation in the contract. The Park East Two, LLC. PERC Coordinator shall review bid submittals and/or proposals and may contact named DBE Firms to verify proper certification and utilization of DBE Firms.

Contracts: Prime Contractors shall provide Park East Two, LLC.'s Construction Manager with copies of all contract agreements with DBE subcontractors, including third and fourth tier subs. Contract verification will be forwarded to the Park East Two, LLC. PERC Coordinator and the CBDP office. Such verification must be provided at least 7 days prior to the DBE subcontractor beginning work on the project. Applications for payment will not be processed if DBE subcontractor agreements are not submitted as requested.

The CBDP may request, and a proposer or Contractor shall promptly furnish, additional information to assist in the making of Participation Credit determinations, including, without limitation, (1) specific information concerning any supplier's broker fees, mark-up and/or commissions; (2) intended suppliers or other sources of labor, equipment, materials and/or services; (3) specific financial or other risks to be assumed by the DBE Firm; and (4) identification of employees and supervisory personnel assigned to perform the Project.

5. DBE Replacement

No DBE subcontractor shall be replaced without written approval from CBDP. Requests for substitution must be in writing and include the reason for the request along with job performance logs. Any issues experienced should be brought to the attention of the Park East Square, LLC. PERC Coordinator and CBDP office.

6. Participation and Performance Logs

Construction Manager (CM) must maintain DBE participation and performance logs. If a DBE firm cannot perform, or the CM or Prime Contractor has a problem meeting the DBE goal, or any problem relative to the PERC requirements, CM shall immediately contact the PERC Coordinator. CBDP must approve changes and or substitutions.

7. Compliance Reviews and Sanctions

Prime Contractors and subcontractors shall be subject to periodic compliance reviews by Milwaukee County CBDP, and/or the Park East Two, LLC. PERC Coordinator, and shall provide documentation when requested. In case of noncompliance with any provision of the Park East Two, LLC. PERC Plan sanction policies and procedures will be executed.

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8. Waiver/Exemption of Participation Levels/Goal Reduction

All bidders are required to achieve the Participation Levels of the Park East Two, LLC. Park East Redevelopment Compact. Requests for waivers prior to bidding must be submitted in writing to Park East Two, LLC. PERC Coordinator and the CBDP office with documented justification for waiver request. In the event evidence suggests a need to adjust the percent requirement on a particular contract, an addendum will be issued prior to bid opening.

When a Contractor believes, after the award of a contract, that there are conditions that make it difficult to fulfill the Participation Levels established in their original Contract, they must immediately notify the PERC Coordinator in writing.

The CBDP is designated to make the determination that Contractor has made good faith efforts (GFE) to achieve the Participation Level after review of Contractor's GFE certificate.

9. Prompt Payment to Subcontractors

Project subcontractors under a prime contract must be paid, upon satisfactory performance of its subcontract, no later than seven (7) calendar days from the receipt of each payment the prime contractor receives.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written notice to Park East Two, LLC. PERC Coordinator or other Park East Two, LLC. designee.

In instances where a contractor delays or postpones payment due to a dispute, the Contractor must notify the Subcontractor and the Park East Two, LLC. PERC Coordinator or designee in writing, within seven (7) calendar days of receipt of payment, that Subcontractor payment is being withheld. The written notification must indicate the reasons and grounds for withholding the payment. Any amount not in dispute must be paid to the Subcontractor within the seven (7) calendar day timeframe as identified above.

If Park East Two, LLC. or its designee determines that the Contractor does not have good cause for delaying or withholding payment, the Contractor must pay the Subcontractor within five (5) calendar days of the written decision.

Contractors must agree to return any retainage payment to Subcontractors within seven (7) calendar days after receipt of its retainage payment.

All Contractors are required to ensure that all Subcontractors will include this prompt payment and retainage provisions in all subcontracts at all levels or tiers of subcontracting.

This provision applies to both DBE and non-DBE subcontractors.

10. Change Orders

Change orders will be reviewed by the Park East Two, LLC. PERC Coordinator or designee for compliance with the spirit of this Participation Plan. It is expected that the dollar amount of change orders, or any other contract modifications that increase or decrease the scope of work committed to DBE firms and persons will commensurately add or subtract from the total contract amount used to compute the Participation Levels.

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SECTION 6: Document Submittal Requirements (Bidding & Contract Award)

1. COMMITMENT TO CONTRACT WITH DBE FIRMS

Prime contract bidders must represent that in the calculation of their bid, they have secured actual DBE pricing for subcontracting work in fulfillment of PERC obligations in anticipation of bid award. Commitment to Subcontract with DBE Firms form (DBE - 02 and DBE - 14) must be submitted with bid.

This form should list all DBE firms to be utilized by the contractor including contact and scope information. Award of contract is conditioned upon submission of a completed DBE-14 form and is considered an element of responsibility. Failure to submit will be considered a failure of responsibility.

Contractors are responsible for showing amounts to be contracted and the planned participation levels as a percentage of their total base proposal or contract sum and indicating this on the DBE-14 forms.

Only DBE's that have been certified prior to the bid due date may be listed on the "Commitment to Subcontract with DBE Firms" form and counted towards the DBE requirements. Attach DBE certification letter or certificate with bid.

Note: In order to identify any certified DBE firms, and prevent any delay or disqualifications of your bid, refer to the *State of Wisconsin UCP Directory of Certified DBEs*. *The directory can be viewed at www.milwaukeecounty.org, click on the link to the State of Wisconsin UCP Directory of Certified DBEs. Click on "UCP Directory is available", check the box marked "all regions", and click on "submit" to obtain the list* or go to <http://www.triconsultants.com/wisdot> If you need additional assistance, contact the Park East Two, LLC. PERC Coordinator's office at 262-391-0592.

2. SUBCONTRACT AGREEMENT

After the execution of the Contract, Prime Contractor must submit copies of "Subcontract Agreement (s)" between the Prime Contractor and DBE firm(s) listed on form DBE -14 for Construction, Professional Services and other. Agreements must be attached to the first payment application. **APPLICATION FOR PAYMENT WILL NOT BE PROCESSED IF AGREEMENTS ARE NOT SUBMITTED AS REQUESTED.**

Prime Contractor shall notify its DBEs at least five (5) working days before start of their subcontract work.

Subcontract agreements with DBE firms must be submitted within ten (10) days from receipt of notice to proceed.

SECTION 7: Report Requirements and Procedures (forms, timeline, submission/distribution – monthly and final)

1. DBE UTILIZATION REPORT

DBE utilization reports (DBE - 16) must be submitted with each Payment Application. These reports cover the period from the start of the project to the end of each period covered by the payment applications being submitted until the end of the project when the last payment application is submitted. In addition, when submitting Payment Applications (AIA Form or similar), the Prime Contractor should list separately the DBE participation contract value (usually by placing "DBE" behind the work item).

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2. DBE PARTICIPATION AND PERFORMANCE LOGS

Prime Contractors should maintain DBE participation and performance logs. If the DBE firm(s) cannot perform, or if the Prime Contractor has a problem in meeting the DBE requirement, or any other problem relative to the DBE, the Prime Contractor shall contact the Park East Two, LLC. PERC Coordinator office at 262.391.0592. If needed, Prime Contractor should submit a written request for substitution, including the reason for the request along with job performance logs. All substitutions must be approved.

3. FINAL PAYMENT CERTIFICATION

The Prime Contractor must submit the "DBE Subcontractor Payment Certification" form(s) (DBE - 18) and the final DBE Utilization Report along with their Final Payment Application. Final Payment Application will not be processed if these reports are not submitted.

4. PREVAILING WAGE REPORT (certified payroll)

All contractors must complete and submit a certified Payroll Report form (2035-R2) reflecting persons employed in construction work and paid prevailing wage rates as determined by the State of Wisconsin Department of Workforce Development for specific trade or occupation.

5. GOOD FAITH EFFORT CERTIFICATE

The Milwaukee County Community Business Development Partners (CBDP) is designated to ensure that DBEs have an opportunity to participate on Park East Corridor projects. Contractors who believe they are unable to achieve the PERC DBE requirements for their scope of work must submit, with bid, the "Certificate of Good Faith Efforts" form (DBE- 01) and all relevant documentation for a GFE (Good Faith Effort) determination by the CBDP. In the event the CBDP Office determines that the Contractor has failed to meet the GFE requirements, Contractor is entitled to appeal the determination. (see guidance concerning Good Faith Efforts)

SECTION 8: **Meeting & Maintaining Participation Levels
(procedures, resources, meetings, trade contractor assistance)**

1. BIDDING SCHEDULE & PRE-BID CONFERENCE/INFORMATION SESSION

Prior to bidding, solicitation information on bid packages will be distributed so that all known firms interested in a specific bid package will be made aware of potential opportunities. Following the distribution of the solicitation information, a pre-bid meeting may be held to explain the respective bid package and answer questions from interested firms and individuals. Notice of pre-bid meetings will be provided inviting all interested firms including DBE firms.

**Park East Two, LLC.
Park East Redevelopment Compact (PERC)**

EXHIBIT H

Park East Two, LLC.
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Project Participation Plan

After pre-bid meetings it is expected that DBE firms are provided opportunity to participate through any or all of the following:

- a. Qualified DBE's bid directly on the bid package
- b. DBE contacts other firms about participation in that firm's bid submittal
- c. Non-DBE firms contact DBE's about subcontracting

2. PROJECT CONSTRUCTION MEETING

The Contractor will attend construction meetings as required by Park East Two, LLC. and its Construction Manager, at which time Participation Levels and other matters may be discussed. The Contractor will be responsible for informing subcontractors of all Participation Program procedures and enforcing them as necessary for the Contractor to achieve compliance with Participation Levels under its contract. The Park East Two, LLC. PERC Coordinator may present Participation Program issues for discussion at these construction meetings. In many instances, Subcontractors should be required to attend progress meetings when they are active on the project.

3. INFORMATION MANAGEMENT

The PERC Coordinator will establish and maintain a database of potential DBE firms in addition to the CBDP directory and a directory of Milwaukee County residents with interest in employment on the project. Upon request, proposers for all Contractor positions will be provided information from the Database to assist in preparation of proposals and for access to available residents for hire.

4. CERTIFICATION INFORMATION

The PERC Coordinator will provide information regarding certification requirements to DBE firms and to potential Contractors in addition to referrals to CBDP for certification.

5. INFORMATION DISSEMINATION

Park East Two, LLC., its Construction Manager, PERC Coordinator and in some cases, CBDP contacts will meet with Contractors, potential subcontractors and community groups for the purpose of informing potential project participants – including DBE firms and individuals about the participation program and project opportunities.

6. TRADE CONTRACTOR ASSISTANCE

- a. DBE firms are encouraged to contact the PERC Coordinator whenever assistance is needed to clarify bid requirements, determine potential prime bidders, seek information about bid schedules or answer questions in general.
- b. Locating DBE'S – Should first tier bidders experience difficulty in locating DBE firms, the PERC Coordination team will provide assistance when requested. NOTE: It is still the bidder's responsibility to meet the stated requirements.

It is the contractor's responsibility to assure that the DBE firms they solicit bids from and contract with are qualified and capable of performing the work or providing the services for which they are being contracted. The

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Park East Two, LLC. project team is not liable or responsible for first or sub tier contractors, vendors or material supplier performance or payment obligations.

- c. DBE Technical Assistance – Should a first-tier contractor, vendor or material supplier solicit bids from or contract with a DBE who requires assistance in estimating, planning, scheduling, accounting or other efforts, the Park East Two, LLC. team encourages the first-tier party to mentor and assist them to the extent necessary to assure successful completion of their work on the project. Such needs should also be referred to the Park East Two, LLC. Construction Manager for support and referral.

Should outside assistance for DBE firms become necessary, the Park East Two, LLC. PERC Coordinator, Construction Manager and the CBDP office will assist in locating appropriate services: NOTE: The Park East Two, LLC. project team or CBDP office shall not be responsible for any costs for outside services and assistance provided, or liable in any manner for the competency, completeness or accuracy of any services or assistance provided through referral.

SECTION 9: COMPLIANCE REMEDIES AND SANCTIONS

A. COMPLIANCE AGREEMENT

The contractor agrees, as a condition of receiving a contract with Park East Two, LLC. projects, (in connection with the Park East Corridor development), that if it is found in violation of the PERC provisions during the performance of the Project, Park East Two, LLC. shall be entitled to enforce such remedies, as it may deem appropriate.

B. COMPLIANCE REVIEWS

During the performance of a contract for the Project, the Park East Two, LLC. PERC Coordinator reserves the right to conduct compliance reviews as needed. If the Contractor is not in compliance with the Park East Two, LLC. PERC Plan, the PERC Coordinator will notify the Contractor in writing of the corrective action that will bring the Contractor into compliance.

C. NON COMPLIANCE REMEDIES AND MISREPRESENTATION SANCTIONS

If any document or forms submitted by a Contractor contains false, misleading or fraudulent information; or if a Contractor fails to submit required documentation and reports as requested, such actions or inaction shall be considered an act of non-compliance.

If any Contractor or subcontractor is found to be not in compliance with the PERC requirements of the Participation Plan, including submission of documents containing false, misleading, or fraudulent information in connection with obtaining, maintaining or connected with any Park East Two, LLC. contract, the Park East Two, LLC. PERC Coordinator may recommend that one or more of the following actions be taken on the offending Contractor, subcontractor, bidder or individual:

- a. Withholding payments.
- b. Termination, suspension, or cancellation of the contract in whole or in part.
- c. Denial to participate in any further contracts awarded by Park East Two, LLC. for a specified period of time.
- d. Any other remedy available to Park East Two, LLC.

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D. SANCTION PROCESS

By entering into a Contract with Park East Two, LLC. or its Construction Manager, the Service Provider agrees to meet the Park East Two, LLC. PERC requirements of its contract. The Service Provider agrees that absent specific contract language to the contrary, the Participation Plan language, contained herein, shall apply to its contract without exception.

1. The Park East Two, LLC. PERC Coordinator will oversee the Service Provider's DBE Utilization plan (25% DBE construction including Architect and Engineer and 17% professional services (excluding Architect & Engineer)), verify payment of prevailing wage rate, verify employment data (construction jobs created and permanent jobs created – post construction) and report any non-compliance matters to Park East Two, LLC.
2. Service Providers not meeting their Participation projections, as measured monthly, will be required to provide a Remedial Plan to Park East Two, LLC. PERC Coordinator within ten (10) working days of written notice from Park East Two, LLC. PERC Coordinator that such a plan is required.
3. After submitting the Remedial Plan, the Service Provider shall have one (1) additional month to come into compliance.
4. If the Service Provider is still out of compliance after applying the Remedial Plan for one (1) month, appropriate Sanctions will be applied at the time of the next pay request.
5. As the Project progresses Penalties and Sanctions may be applied to pay requests. Penalties and/or sanctions may affect future contracting opportunities.

SECTION 10: AUDIT AND INSPECTION (CBDP, PERC Coordinator)

A. PERC COORDINATOR RIGHT TO AUDIT

Park East Two, LLC. and its PERC Coordinator reserve the right to audit the records and inspect the facilities of the Contractor and any of its subcontractors for the purpose of verifying DBE Firm participation. The Contractor and subcontractors will permit access to their records upon the request of Park East Two, LLC. or PERC Coordinator. The PERC Coordinator shall be entitled to examine, on three (3) working days notice, the Contractor's books and records including, without limitation, payroll records, tax returns and records, and books of account, to determine whether the Contractor is in compliance with its participation levels commitment and the status of any DBE firm on any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

B. OTHER AUDIT RIGHTS

Notice is hereby given that Park East Two, LLC. and the Milwaukee County CBDP Office may initiate or cooperate with the PERC Coordinator in auditing and inspecting such records.

The PERC Coordinator may require additional information from any contractor on Park East Two, LLC. projects. Typically, additional information requested is used solely for the coordination and monitoring of the PERC requirements. No information will be shared with anyone who is not authorized to view confidential information. Once the information is used and reported, it will be kept on record up to seven years and then destroyed.

Park East Two, LLC.
Park East Redevelopment Compact (PERC)

EXHIBIT H

Park East Two, LLC.
Park East **Redevelopment** Compact (PERC)
Project Participation **Plan**

If any contractor has questions regarding the information within this document they should contact the PERC Coordinator:

John Rodell
PERC Coordinator
TRG / Business Partners Network LLC.
262.391.0592.
JERodell@wi.rr.com

Park East Two, LLC.
Park East Redevelopment Compact (PERC)

EXHIBIT I

Guaranty of Amended and Restated Development Agreement

This Guaranty of Amended and Restated Development Agreement (the "Guaranty"), dated as of _____, 2016 is made by Wangard Partners, Inc., a Wisconsin corporation ("Guarantor"), an affiliate of the managing member or manager of Developer (defined below).

For value received, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce Milwaukee County (the "County") to enter into that certain Amended and Restated Development Agreement dated _____, 2016 (the "Development Agreement") with Park East Two, LLC ("Developer"), Guarantor hereby covenants and agrees with the County as follows:

1. Guarantor unconditionally guarantees payment of and promises to pay or perform or cause to be paid to or performed for the benefit of the County, the Obligations (as hereinafter defined), whether or not the Obligations are valid and enforceable against Developer, whenever the payment or performance of the Obligations shall become due under said Development Agreement, or at the time the Developer shall default thereunder or become the subject of any bankruptcy or insolvency proceeding. As used herein, the term "Obligations" shall mean all liabilities and obligations, whether existing now or in the future arising under and in accordance with the Development Agreement including, without limitation, all construction obligations and charges or sums payable under the Development Agreement (including interest thereon), and all costs, expenses and reasonable attorneys' fees paid or incurred by the County any time in attempting to collect any of the foregoing, to realize on any collateral securing any of the foregoing and to enforce this Guaranty and/or the Development Agreement, including, without limitation, any payments made to the County or another on behalf of Developer which are required to be paid to a trustee, receiver, creditor or other party pursuant to applicable federal or state law, and the full and complete performance of all of the use restrictions, development and construction requirements and/or any other terms or conditions described in the Development Agreement. Guarantor covenants and agrees that it has an economic interest in the Developer and in the making of the Development Agreement.

2. Guarantor hereby agrees that its liability under this Guaranty shall not be affected or reduced by any of the following (any or all of which may be done or omitted by the County without notice to Guarantor or any other person and regardless of whether the Obligations or any collateral or security therefor be increased or decreased thereby):

(i) The County's acceptance, release or impairment of any security or collateral, if any, securing the Obligations;

(ii) The County's compromise, settlement, surrender, release, discharge, renewal, extension, modification, amendment, alteration, subordination, or indulgence with respect to or failure, neglect or omission to collect or enforce, or to record, file, perfect, enforce or exercise any liens or rights with respect to the Obligations or any security or collateral therefor or any claims against Developer;

(iii) The assignment of the Development Agreement, any portion thereof or right thereunder by Developer with or without the consent of the County, or any reorganization, merger, consolidation or sale of all or substantially all of the assets of Developer; or

(iv) The County's action or failure to act at any time with respect to any other matter whatsoever, other than the County's express written release or cancellation of the Guaranty as to Guarantor.

3. Guarantor hereby expressly waives diligence in collection or prosecution, presentment, demand or protest in giving notice to anyone of protest, dishonor, default, nonperformance or nonpayment or of the creation or existence of any Obligation or any security or collateral therefor or of the acceptance of this Guaranty or of deferrals of payments due under the Development Agreement, and/or any amendments or modifications to the Development Agreement, or of any matters described in Section 2 above or any other matters or things whatsoever relating to the Obligations or any security or collateral therefor or to this Guaranty.

4. Guarantor hereby makes the following waiver: unless and until all Obligations have been paid and performed in full, Guarantor shall not take, by assignment, subrogation or otherwise, any claim or collateral which the County might have or obtain against or from Developer, and Guarantor irrevocably waives and releases, in addition to such claims, any claim for unjust enrichment, indemnification, contribution or reimbursement and any and all other claims against Developer, whether by statute or contract, by law or in equity, whether actual or contingent and whether now or hereafter arising.

5. Guarantor will provide, from time to time upon written request of the County, a current audited annual financial statement of Guarantor's financial condition.

6. Guarantor hereby agrees that the County shall have the right to determine how, when and what, if any, application of payments and credits, whether received from Developer, Guarantor, or any other party, shall be applied to any of the Obligations.

7. Guarantor hereby warrants and represents that:

(i) Guarantor is sufficiently knowledgeable and experienced in financial and business matters to evaluate and understand the risks assumed in connection with the execution of this Guaranty;

(ii) Guarantor has had the opportunity to examine the records, reports, financial statements, and other information relating to the financial condition of Developer;

(iii) Guarantor has relied solely upon investigations of Developer's financial condition conducted by such Guarantor or such Guarantor's authorized representative in deciding to execute this Guaranty; and

(iv) Guarantor or its authorized representative may continue independently to review, monitor and investigate the financial condition of Developer while this Guaranty is in effect.

Guarantor specifically relieves the County of any duty, obligation, requirement or responsibility of any nature whatsoever to advise such Guarantor of any change in Developer's financial condition or of any default or other matter arising under or in connection with the Development Agreement.

8. This Guaranty shall not be revoked by death of any of Guarantor's members, dissolution, merger, bankruptcy or insolvency of Guarantor.

9. This Guaranty shall inure to the benefit of the County, its successors and assigns and shall be binding on the representatives, successors and assigns of Guarantor. Unless and until expressly

released from this Guaranty in writing by the County or its successors or assigns, Guarantor, its representatives, successors and assigns shall remain fully liable under the Development Agreement and this Guaranty, regardless of any merger, corporate reorganization or restructuring involving Developer and regardless of the resulting organization, structure or ownership of Developer. The County may, without notice, assign this Guaranty in whole or in part. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such Guarantors shall not release any other of such Guarantors.

10. The obligations of Guarantor hereunder are independent of the obligations of Developer. A separate action or actions may, at the County's option, be brought and prosecuted against Guarantor, whether or not any action is first or subsequently brought against Developer, or whether or not Developer is joined in any such action, and Guarantor may be joined in any action or proceeding commenced by the County against Developer arising out of, in connection with or based upon the Development Agreement. Guarantor waives any right to require the County to proceed against Developer or pursue any other remedy in the County's power whatsoever, any right to complain of delay in the enforcement of the County's rights under the Development Agreement, and any demand by the County and/or prior action by the County of any nature whatsoever against Developer, or otherwise.

11. This Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of under the Development Agreement. Guarantor hereby waives notices of any of the foregoing, and agrees that the liability of Guarantor hereunder shall be based upon the obligations of Developer set forth in the Development Agreement as the same may be altered, renewed, extended, modified, amended or assigned.

12. Guarantor's obligations hereunder shall remain fully binding although the County may have waived one or more defaults by Developer, extended the time of performance by Developer. However, Guarantor's obligations under this Guaranty are not enforceable to the extent the County has released Developer from the performance of its obligations under the Development Agreement.

13. This Guaranty shall remain in full force and effect notwithstanding the institution by or against Developer, of bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or the disaffirmance of the Development Agreement in any such proceedings or otherwise.

14. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time any whole or partial payment or performance of any obligation under the Development Agreement is rescinded or must otherwise be restored or returned by the County upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Developer, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for Developer or any substantial part of its property, or otherwise, all as though such payments and performance had not been made.

15. Neither this Guaranty nor the obligations of Guarantor hereunder shall be affected by:

- (i) Any course of dealing between the County and Developer, except under Section 12 above;
- (ii) The assignment, assumption or rejection of all or any part of the interest of Developer in and to the Development Agreement, whether or not such assignment, assumption or rejection is pursuant to a bankruptcy proceeding; or

(iii) The modification, release or discharge of Developer in any creditor's action, receivership, bankruptcy or other proceedings, or by operation of any present or future provision of the United States Bankruptcy Code or other statute, or decision or any court or any disability or other defense of Developer.

16. Until all of Developer's obligations under the Development Agreement are fully performed, Guarantor subordinates any liability or indebtedness of Developer held by the Guarantor to the obligations of Developer to the County under the Development Agreement.

17. This Guaranty may not be changed, modified, discharged, or terminated orally or in any manner other than by an agreement in writing signed by the Guarantor and the County.

18. Guarantor covenants and agrees that:

(i) Guarantor will be bound by all of the provisions, terms, conditions, restrictions, and limitations contained in the Development Agreement, the same as though Guarantor was named therein in lieu of Developer; and

(ii) This Guaranty shall be absolute and unconditional and shall remain and continue in full force and effect as to any renewal, extension, amendment, addition, assignment, transfer or other modification of the Development Agreement, whether or not Guarantor shall have any knowledge or have been notified of or agreed or consented to any such renewal, extension, amendment, addition, assignment, transfer or other modification of said Development Agreement, and Guarantor agrees to be bound by any and all modifications to the Development Agreement.

Further, Guarantor hereby covenants and agrees to assume said Development Agreement and to perform all of the terms and conditions thereunder for the balance of the original term should said Development Agreement be disaffirmed by any trustee in bankruptcy for Developer.

19. To the extent that any provision in or obligation under this Guaranty is invalid, illegal or unenforceable, that finding shall not affect the validity, legality, and enforceability of any other provision or obligation in this Guaranty, which shall continue in full force and effect.

20. This Guaranty shall be governed by the internal laws of the State of Wisconsin, and shall in all respects be governed by and construed, applied and enforced in accordance with such laws and no defense given or allowed by the laws of any other jurisdiction shall be interposed in any action hereon, unless such defense is also given or allowed by the internal laws of the State of Wisconsin.

21. Upon twenty (20) days of the County's prior written request to Guarantor, Guarantor shall certify, if such is the case, (by written instrument, duly executed, acknowledged and delivered to the County and to any third person designated by the County in such request) that this Guaranty remains in full force and effect as to all obligations of Developer under the Development Agreement. Failure to deliver such certificate to the County (and any such designated third party) within such twenty (20) day period shall constitute acknowledgment by Guarantor that this Guaranty remains in full force and effect as to all obligations of Developer under the Development Agreement.

22. The execution of this Guaranty prior to execution of the Development Agreement shall not invalidate this Guaranty or lessen the obligations of Guarantor hereunder.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed as of the date of this Guaranty.

Wangard Partners, Inc.

(Address)

By _____
Its _____

_____)
_____) SS.
_____)

This instrument was acknowledged before me this ____ day of _____, 2016, by _____, to me known to be the _____ of Wangard Partners, Inc.

Notary Public, _____
My commission _____

[Seal]

EXHIBIT J

Memorandum of Amended and Restated Development Agreement

MEMORANDUM OF AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

Document Number

THIS MEMORANDUM OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT is made of the ____ day of _____, 2016, by and among PARK EAST TWO, LLC and PARK EAST SQUARE, LLC (collectively, "Developer") and MILWAUKEE COUNTY (the "County").

RECITALS

A. The County and PARK EAST TWO, LLC entered into a certain Agreement to Implement Development of Park East Corridor Block 26, and Development Agreement on August 6, 2012 (collectively, the "2012 Development Agreement"). The County and PARK EAST TWO, LLC on _____ entered into an Agreement to Implement Development of Phase 3 of Park East Corridor Block 26 and an Amended and Restated Development Agreement (collectively, the "Phase 3 Development Agreement"). The County and PARK EAST SQUARE, LLC entered into a certain Development Agreement - Park East Corridor Development of Block 26 on December 21, 2007, that certain Amendment to Development Agreement - Park East Corridor Development of Block 26 on May 7, 2009, and that certain Second Amendment to Development Agreement - Park East Corridor Development of Block 26 dated February 10, 2010, that certain Third Amendment to Development Agreement - Park East Corridor Development of Block 26 dated July 14, 2010, that certain Fourth Amendment to Development Agreement - Park East Corridor Development of Block 26 dated October 20, 2010, that certain Fifth Amendment to Development Agreement - Park East Corridor Development of Block 26 dated March 25, 2011, and that certain Sixth Amendment to Development Agreement - Park East Corridor Development of Block 26 dated October 25, 2011 (collectively, the "Initial Development Agreement"). The Phase 3 Development Agreement, 2012 Development Agreement, and Initial Development Agreement, as applicable, shall hereinafter be collectively defined as the "Development Agreement." All of the terms and conditions of the Development Agreement govern the development and use of the real property described on Exhibit A, attached hereto (the "Property").

B. The Developer and the County desire to put all parties on notice of the Development Agreement and the fact that it runs with the land and is binding on any party obtaining an interested in the Property.

AGREEMENTS

IN CONSIDERATION of the Recitals and other mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. All parties obtaining any interest in the Property are hereby notified that the Development Agreement runs with the land, and any such interest shall be subject to all of the terms and conditions of the Development Agreement and the Development Agreement shall be binding upon such successor obtaining any interest in the Property all to the extent set forth in the Development Agreement.
2. A copy of the Development Agreement is on file with the County Economic Development Director, Department of Administrative Services, Economic Development Division at 633 W. Wisconsin Avenue, Suite 903, Milwaukee, Wisconsin 53203.

SIGNATURES ON FOLLOWING PAGES

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

Recording Area

Name and Return Address

Milwaukee County Economic Development
633 W. Wisconsin Ave., Suite 903
Milwaukee, WI 53203

360-1771-000, 360-1772-000, 360-1773-000

Parcel Identification Number (PIN)

MILWAUKEE COUNTY
EXECUTION PAGE

MILWAUKEE COUNTY

By: _____
Name: Chris Abele
Its: County Executive

Attest:

By: _____
Name: Joseph Czarnezki
Its: County Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2016 by Chris Abele as County Executive of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on _____, 2016 by Joseph Czarnezki as County Clerk of Milwaukee County.

(_____)
Notary Public, State of Wisconsin
My Commission _____

Approved for Execution by Corporation Counsel

By: _____

DEVELOPER
EXECUTION PAGE

PARK EAST TWO, LLC
a Wisconsin limited liability company
By: WPPE, a Wisconsin limited liability company,
managing member

By: _____
Name: Wayne A. Wiertzema
Its: Member

STATE OF WISCONSIN)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016 by Wayne A. Wiertzema as a member of WPPE, LLC, a Wisconsin limited liability company.

(_____)
Notary Public, State of Wisconsin
My Commission _____

DEVELOPER
EXECUTION PAGE

PARK EAST SQUARE, LLC
an Illinois limited liability company
By: Gateway Advisors, LLC, its manager

By: _____
Name: Pamela L. Opyd
Its: Manager

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016 by Pamela L. Opyd as Manager of Park East Square, LLC, an Illinois limited liability company.

(_____)
Notary Public, State of _____
My Commission _____

CERTIFIED SURVEY MAP NO. 8553

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

ZONING RED-REDEVELOPMENT ZONING DISTRICT TAX KEY #S 360-1771-000, 360-1772-000, 360-1773-000

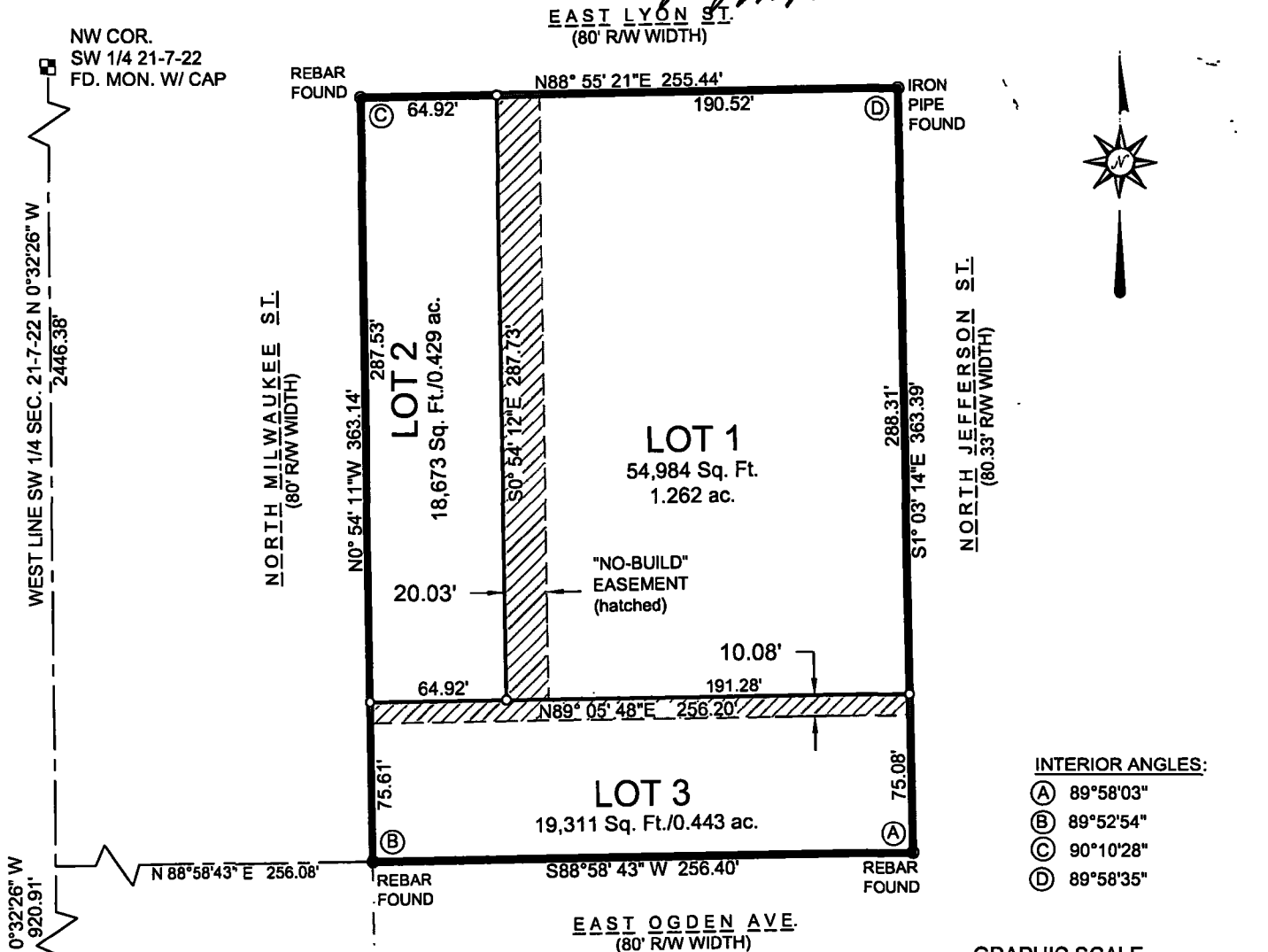
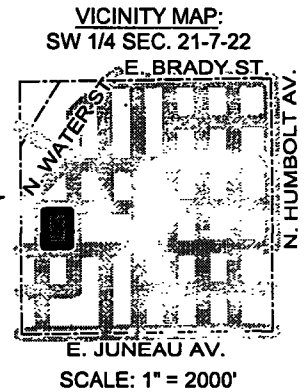
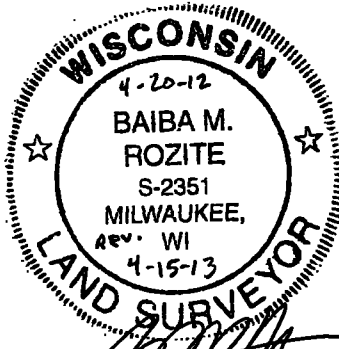
LEGEND & NOTES:

● INDICATES FOUND MONUMENTATION, AS NOTED ON DRAWING.

○ INDICATES SET 3/4" DIAM. REBAR, 18" LONG WEIGHING 1.50 LBS/LIN. FT.

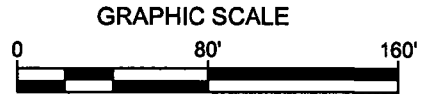
COORDINATES & BEARINGS REFERENCED THE WISCONSIN STATE PLANE COORDINATE SYSTEM WITH THE WEST LINE OF THE SW 1/4 OF SEC. 21-7-22, ASSUMED TO BEAR N 0°32'26" W, AS PUBLISHED BY SEWRPC, NAD 1927, DEC. 2005 REVISION.

DISTANCES MEASURED TO THE NEAREST 0.01'. ANGLES MEASURED TO THE NEAREST 01".



OWNER:
PARK EAST SQUARE LLC
900 W. JACKSON STE 7E
CHICAGO, IL 60605

SUBDIVIDER:
WANGARD PARTNERS, INC.
1200 N. MAYFARI ROAD STE 220
MILWAUKEE, WI 53226



Sheet 1 of 4

PROJECT NUMBER SE-13008 DRAFTED BY B.M.R. 4-20-12, Rev. 4-15-13

INFRASTRUCTURE SERVICES DIVISION

Marcia Cornell 4/26/13
CENTRAL DRAFTING & RECORDS MANAGER

Zy Timothy J. Thun 4/26/13
ENGR. IN CHARGE ENVIRON. ENGR.

[Signature] 4/28/13
CITY ENGINEER

APPROVED

DEPARTMENT OF CITY DEVELOPMENT
CITY OF MILWAUKEE

AUG 15 2012

[Signature]
STAFF APPROVED

DOC.# 10297166

Reel: 8217

RECORDED 09/25/2013 10:02AM

JOHN LA FAVE
REGISTER OF DEEDS
Milwaukee County, WI
AMOUNT: 30.00
FEE EXEMPT #:

CERTIFIED SURVEY MAP NO. 853

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

SURVEYOR'S CERTIFICATE
STATE OF WISCONSIN)

);SS

MILWAUKEE COUNTY)

I, BAIBA M. ROZITE, Registered Land Surveyor, hereby certify:


THAT I have surveyed, divided and mapped all of Parcels 1, 2 and 3 of Certified Survey Map No. 8032 located in the Southwest 1/4 of the Southwest 1/4 of Section 21, Town 7 North, Range 22 East in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

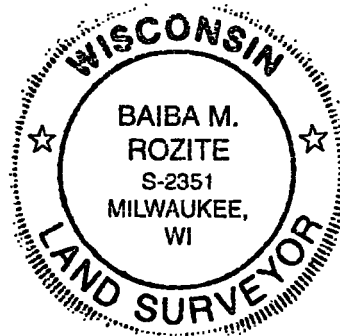
Commencing at the Southwest corner of said Southwest 1/4 Section; Thence North 0°32'26" West, 920.91 feet along the West line of said quarter section to the North line of East Ogden Avenue, extended Westerly; Thence North 88°58'43" East, 256.08 feet along said North line to the Point of Beginning of this description said point being on the East line of North Milwaukee Street; Thence North 0°54'11" West, 363.14 feet along said East line to the South line of East Lyon Street; Thence North 88°55'21" East, 255.44 feet along said South line to the West line of North Jefferson Street; Thence South 1°03'14" East, 363.39 feet along said West line to the North line of East Ogden Avenue; Thence South 88°58'43" West, 256.40 feet along said North line to the Point of Beginning. Said parcel contains 92,969 square feet or 2.134 acres of land, more or less.;

THAT I have made the survey, land division, and map by the direction of Park East Square, LLC, an Illinois limited liability company, owner of said land.

THAT the map is a correct representation of all exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with s. 236.34 of the Wisconsin Statutes and Chapter 119 of the Milwaukee Code of Ordinances in surveying, dividing and mapping the same.

 9-05-12 (SEAL)
Baiba M. Rozite, RLS



CERTIFIED SURVEY MAP NO. 8553

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

OWNER'S CERTIFICATE OF DEDICATION

Park East Square, LLC, an Illinois limited liability company, a limited liability company duly organized and existing under and by virtue of the laws of the State of Illinois, as owner, certifies that said owner caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of Chapter 119 of the Milwaukee Code of Ordinances.

In consideration of the approval of the map by the Common Council and in accordance with Chapter 119 of the Milwaukee Code, the undersigned agrees:

That all utility lines to provide electric power and telephone services and cable television or communications systems lines or cables to all lots in the certified survey map shall be installed underground in easements provided therefor, where feasible.

This agreement shall be binding on the undersigned and assigns.

In witness whereof, Park East Square, LLC, an Illinois limited liability company, has caused these presents to be signed by

Gateway Advisors, LLC, its Manager BY: PLMO, LLC

PAMELA L. OPYD, its MANAGER,

at Milwaukee, WI, this 6th day of September, 2012.
(DATE)

Park East Square, LLC, an Illinois limited liability company

BY: Pamela L. Opyd
(Signature) PAMELA L. OPYD

IN THE PRESENCE OF:

Suzanne C. Spear
(Witness signature)

STATE OF Wisconsin)
Milwaukee COUNTY) SS

Personally came before me this 6 day of September, 2012, PAMELA L. OPYD, to me known to

be the person who executed the foregoing instrument, and to me known to be the MANAGER of Park East Square, LLC, an Illinois limited liability company and acknowledged that they executed the foregoing instrument.

Suzanne C. Spear
NOTARY PUBLIC, STATE OF Wisconsin
SUZANNE C. SPEAR
PRINTED NAME
MY COMMISSION EXPIRES 3/10/13

BAIBA M. ROZITE
S-2351
MILWAUKEE, WI
LAND SURVEYOR
9-05-12

CERTIFIED SURVEY MAP NO. 8553

ALL OF PARCELS 1, 2 AND 3 OF CERTIFIED SURVEY MAP NO. 8032 LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

CERTIFICATE OF CITY TREASURER
STATE OF WISCONSIN)

)SS
MILWAUKEE COUNTY)

I, SPENCER COGGS, BEING THE DULY ELECTED, QUALIFIED, AND ACTING TREASURER OF THE CITY OF MILWAUKEE, DO HEREBY CERTIFY THAT IN ACCORDANCE WITH THE RECORDS IN THE OFFICE OF THE CITY TREASURER OF THE CITY OF MILWAUKEE, THERE ARE NO UNPAID TAXES OR UNPAID SPECIAL ASSESSMENTS ON THE LAND INCLUDED IN THIS CERTIFIED SURVEY MAP.

James F. Keijser
Deputy City Treasurer
for SPENCER COGGS, James F. Keijser
DEPUTY
CITY OF MILWAUKEE TREASURER

09/03/2013
DATE

CITY OF MILWAUKEE COMMON COUNCIL CERTIFICATE OF APPROVAL

I CERTIFY THAT THIS CERTIFIED SURVEY MAP WAS APPROVED UNDER RESOLUTION FILE NO. 130683

ADOPTED BY THE COMMON COUNCIL OF THE CITY OF MILWAUKEE ON September 24, 2013

James R. Owczarski
JAMES R. OWCZARSKI, CLERK, CITY OF MILWAUKEE

Tom Barrett
TOM BARRETT, MAYOR, CITY OF MILWAUKEE



[Handwritten signature]
9-05-12