



TO: The Honorable Mayor and the City Council

FROM: Ty Livingston, Director of Planning & Community Development

DATE: July 28, 2020

SUBJECT: Riverfront Midrise Apartment Development Agreement

BACKGROUND:

In January 2019, the City issued an RFP for a number of City-owned parcels seeking interested developers for mixed-use projects. One of the respondents to this RFP was the Teekona Group, represented by Darrell Dunbar.

Over the past year and a half, City Attorney, Dennis Triggs, and myself have met with Darrell regarding a mixed-use development on the riverfront next to the former Granite City location (commonly referred to as Lot 2). To that end, we present the attached development agreement to partner with the Teekona group in the development of approximately 142 market-rate apartments along with other amenities complementary to the development and its residents. This agreement assures a quality development and the terms under which it can move forward and be completed by no later than October 31, 2022. The investment made by the developer will not be less than \$13M. The City will offer the land to the project along with a performance-based incentive utilizing only TIF-generated funds from the project.

RECOMMENDATION: Approval, as presented.

RESOLUTION NO. 2021-032

East Peoria, Illinois

_____, 2020

RESOLUTION BY COMMISSIONER _____

**RESOLUTION TO APPROVE THE
RIVERFRONT MIDRISE APARTMENT DEVELOPMENT AGREEMENT**

WHEREAS, the City of East Peoria (the “City”) has established, amended and expanded its West Washington Street Redevelopment Project Area (the “TIF District”) under authority of the TIF Act (65 ILCS 5/11 – 74.4.1); and

WHEREAS, the City currently owns riverfront property within the TIF District which would serve as a suitable location for a midrise apartment complex consisting of residential apartments, complementary amenities and related parking facility; and

WHEREAS, the Teekona Group, Inc. (the “Developer”) desires to design and construct such a complex on the City owned riverfront property consisting of an upscale midrise apartment complex of approximately 142 fair market residential apartment units in a self-contained urban design inclusive of a fitness center and other amenities commonly found in such a complex; and

WHEREAS, the City and the Developer desire to enter into a development agreement setting forth the terms under which Developer will design and construct the midrise apartment complex on City riverfront property; and

WHEREAS, it is in the best interests of the City to proceed with such development on the terms set forth in the Riverfront Midrise Apartment Development Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. The Riverfront Midrise Apartment Development Amendment with Teekona Group, Inc. is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the Riverfront Midrise Apartment Development Amendment, attached hereto as Exhibit A, together with such changes therein as the Mayor in his discretion deems appropriate; provided, however, that the City shall have no obligation under the Riverfront Midrise Apartment Development Agreement until such time as an

executed original of the Riverfront Midrise Apartment Development Amendment has been delivered to Teekona Group, Inc.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

RIVERFRONT MIDRISE APARTMENT DEVELOPMENT AGREEMENT

THIS DOWNTOWN MIDRISE APARTMENT DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of August, 2020 by and between the **CITY OF EAST PEORIA, ILLINOIS**, an Illinois municipal corporation (the “City”) and **TEEKONA GROUP, INC.** (“Teekona”), a collaboration of developers, brokers and contractors (“Developer”)

RECITALS

WHEREAS, The City has established, amended and expanded its West Washington Street Redevelopment Project Area (the “TIF District”) under authority of the TIF Act (65 ILCS 5/11 – 74.4.1); and

WHEREAS, The City currently owns riverfront property, commonly known as Lot #2 and more particularly described on Exhibit A attached hereto, within the TIF District which would serve as a suitable location for a midrise apartment complex consisting of residential apartments, complementary amenities and related parking facility; and

WHEREAS, the Developer desires to design and construct such a complex on Lot #2 (sometimes hereinafter “Project Site”); and

WHEREAS, The City and Teekona (collectively the “Parties”) have determined that before they incur additional expense and undertake further due diligence and in order to secure equity investment and financing they should execute this Downtown Midrise Apartment Development Agreement (the “Agreement”) incorporating the terms under which the development will proceed;

NOW THEREFORE, in consideration of the foregoing recitals and in consideration of the mutual covenants and agreement hereinafter set forth, the City and Developer agree as follows:

A. Teekona’s Obligations:

1. **Project.** Teekona shall cause to be built upon Lot #2 an upscale midrise apartment project substantially conforming to the submission it has made to the City and consisting of approximately 142 fair market residential apartment units in a self-contained urban design inclusive of a fitness center and other amenities commonly found in such a complex (hereinafter “Project”).

2. **Construction of Project.** Subject to conditions precedent to Teekona’s performance and the City’s performance of its obligations hereunder, the Developer shall commence construction of the Project within ninety (90) days after conveyance of Lot #2 to the Developer and thereafter proceed with due diligence to complete the Project.

3. **Investment.** Teekona shall invest no less than Thirteen Million Dollars (\$13,000,000) in the project, exclusive of the value of the land and any development fee or charge back.

4. **Commercial Uses.** Subject to the reasonable approval of the City, Teekona may at its discretion incorporate commercial uses compatible with residential apartments into the project.

5. **Quality.** To assure quality, Teekona's building design and specifications shall be subject to the reasonable approval of the City's Design Review Committee, shall conform to all City Code provisions and shall meet the design criteria adopted for the City's Levee District.

6. **Submission and Review of Project Plans and Specifications.** Subject to the terms and conditions of this Agreement, the Developer shall submit the Project Plans and Specifications to the City as soon as reasonably practicable after the same are completed. The City, acting through its Mayor or such other representative of the City as the Mayor may designate, shall within fifteen (15) business days after submission approve or disapprove the Project Plans and Specifications and any subsequent material changes or corrections to the Project Plans and Specifications required to be submitted from time to time. The sole purpose of the review contemplated by this Section is to verify compliance with Sections A.1. and A.3. of this Agreement and this initial approval shall indicate only that the Project presented meets the criteria set forth in these two sections. Any notice from the City stating that the Project Plans and Specifications (or changes or corrections to the Project Plans and Specifications) are disapproved shall state with specificity the modifications which are necessary to comply with this Agreement. If the Project Plans and Specifications are disapproved, they shall be resubmitted by the Developer until approved. The City shall be deemed to have approved any submission to which the City fails to respond within such fifteen (15) business day period. Review of the Project Plans and Specifications for compliance with applicable building codes shall be completed through a separate process which shall be conducted in the manner prescribed by the City Code, but expedited with the City's assistance. The City has reviewed the preliminary site plan and building elevation examples attached as Exhibit B and views such in a favorable light. The City and Developer mutually acknowledge the importance of developing this Project expeditiously. The City and Developer mutually acknowledge that this Project is a high priority and each party will be engaged during the planning and construction phase of this Project and will each utilize commercially reasonable and diligent efforts to ensure that the planning and construction of the Project is commenced and completed timely.

7. **Date of Completion.** Subject to a Delays as hereinafter defined and the City's performance of its obligations hereunder, the Developer shall cause the Date of Completion to be no later than October 31, 2022. "Delay" means "acts of

God” (i.e. fire, earthquake, unforeseen flood), inclement weather to the extent the same is extraordinary and clearly beyond the weather conditions typically experienced in the area of the Project Site) strikes, lockouts, labor troubles, inability to procure permits or materials, failure of power, governmental restrictions, acts, omissions or delays of the City, or reasons of a like nature not Developer’s fault. If Developer is delayed or prevented from performing any of its obligation under this Section A.7. because of Delays, then, except as otherwise specifically provided herein, the period of such Delays shall be deemed added to the time herein provided for the performance of such obligation and Developer shall not be liable for losses or damages caused or resulting from such Delays.

8. **Value Retention.** To assure that all project improvements retain value and the apartments remain high quality residential living options, Teekona shall establish and at all times maintain a repair and replacement reserve to be funded with ongoing deposits on a monthly basis at an annual rate equal to or greater than an average of \$700 per residential unit (\$99,400 annual total). Teekona shall be entitled to withdraw funds from such reserve account to fund capital expenditures and effectuate repairs and replacements required from time to time and may not otherwise access funds from such reserve account. The City will defer to Teekona’s lender(s) to monitor such a reserve account, but any withdrawal or expenditure from the reserve account shall require City’s approval either in an approved annual budget for the project or in response to Teekona’s specific request. The City’s approval cannot be unreasonably denied.

9. **Sale or Assignment of Interest.** In the event Developer chooses to sell its interest in the Project or assign its rights under this Agreement, the City shall have no further obligation under this Agreement unless the City has first consented to the sale or assignment, the purchaser or assignee has contractually committed to the City to perform all of the Developer’s obligations under this Agreement and the City has determined that the purchaser or assignee has the experience and financial ability to perform all of Developer’s obligations under this Agreement

10. **Compliance with Applicable Codes.** Except as otherwise specifically provided herein, Developer shall develop the Project in accordance with all applicable provisions of the City Code or duly-adopted variances thereof, and the City, upon request by the Developer, shall provide assistance in obtaining any such variances.

11. **Taxes and Governmental Charges.** Developer agrees to pay or cause to be paid promptly as and when the same shall become due and payable, all lawful real estate taxes, sales taxes or other lawful taxes, impositions and charges which may be imposed upon the Developer or any part of the Project Site, subject to the Developer’s right to contest the same in accordance with applicable laws

12. **Prevailing Wages.** Teekona shall assure prevailing wages are paid for all construction work related to the project.

13. **Earnest Money.** Within ten days following execution of the Agreement, Teekona shall pay to the City Ten Thousand Dollars (\$10,000) as non-refundable earnest money and evidence of Teekona's good faith intention to make best efforts to fulfill the financing condition precedent to its performance as set forth Article C. The City shall reimburse the Ten Thousand Dollars (\$10,000) earnest money to Developer, providing Developer is not in default under this Agreement, at such time as the Developer has commenced vertical construction of the Project. For all purposes of this Agreement Developer shall be deemed to have commenced vertical construction of the Project after site preparation has been completed and in the normal course of construction a vertical above ground member has been constructed.

14. **Reconveyance of Project Site.** Should the Developer fail to commence construction of the Project within the time limit established in Section A.2. of this Agreement, which failure continues for more than thirty (30) days after notice thereof by the City to the Developer, the City, as its sole remedy, may elect to require the Developer to reconvey the Project Site to the City at no cost to the City free and clear of all encumbrances other than those encumbrances in existence on the date that the City conveyed the Project Site to the Developer, after which this Agreement shall terminate and be of no further force or effect. If the Developer fails to commence vertical construction of the Project by July 31, 2021, which failure continues for more than thirty (30) days after notice thereof by the City to the Developer, the City, as its sole remedy, may elect to require the Developer to reconvey the Project site to the City at no cost to the City free and clear of all encumbrances other than those encumbrances in existence on the date that the City conveyed the Project Site to the Developer, after which the Agreement shall terminate and be of no further force or effect. If having commenced vertical construction of the Project by July, 31, 2021 the Developer thereafter fails to complete the Project within the time limit established in section A.7. of this Agreement, which failure to continues for more than thirty (30) days after notice thereof by the City to the Developer, the City shall have no further obligation under this Agreement, but in addition to all available remedies at law or in equity as set forth in E.2., shall have the right of first refusal, that is the right but not the obligation, in its sole discretion to purchase the Project Site together with all improvements thereon before title can be transferred to any other purchaser.

15. **Developer's Adherence to General Conditions.** Teekona shall adhere to the General Conditions set forth in Article E.

B. City's Obligations:

1. **Exclusivity Commitment.** The City shall not for a period of one hundred twenty (120) days following execution of this Agreement negotiate with or explore with any developer other than Teekona a project for its riverfront property known as Lot #2.

2. **Conveyance.** The City shall at closing convey to Teekona clear title to all of Lot #2 at no cost to Teekona.

3. **Parking Rights.** The City shall assure Teekona and its tenants and invitees non-exclusive parking rights to the City-owned parking lot on Conference Center Drive.

4. **Enterprise Zone Incentives.** The Developer shall be entitled to all Enterprise Zone Incentives available by virtue of the location of the Project Site within the boundaries of the Enterprise Zone. Any fees payable by the Developer in connection with the Enterprise Zone Incentives shall be paid on or before the date the Project is completed. Developer acknowledges that the real estate tax abatement ordinarily available within the Enterprise Zone is not available within the boundaries of any parcel located within a redevelopment project area created under authority of the TIF Act, including, without limitation, the West Washington Street TIF District. Consequently, the Project is not eligible for a real estate tax abatement as a consequence of the location of the Project Site within the West Washington Street TIF District.

5. **New Market Tax Credits.** The City shall, if requested by the Developer, cooperate with the Developer should the Developer seek New Market Tax Credits in conjunction with the Developer's efforts to secure financing for the Project. The City's commitment to cooperate shall extend to providing information and executing documents as may be required to qualify for New Market Tax Credits, but the City shall not be required to forgo or subordinate any of its rights under this Agreement.

6. **Closing.** At the Closing, the City shall convey the Project Site to the Developer by a recordable warranty deed subject to easements, restrictions and reservations of record approved by the Developer. The City shall convey the Project Site to the Developer in conjunction with the Developer securing the financing necessary to enable Developer to construct the Project. At the Closing, the City shall deliver an owner's or seller's affidavit, non-foreign affidavit, and such other affidavits and instruments as may be requested by the Developer or the Title Insurer, including, without limitation, evidence of the City's authority to execute and deliver this Agreement and such Closing documents. All documents to be delivered by the parties at Closing shall be in form and substance reasonably satisfactory to the City and the Developer. The City shall pay all closing costs that are customarily the responsibility of the Seller of commercial property in Illinois.

The parties shall use commercially reasonable efforts to cause the Closing to occur no later than December 31, 2020.

7. **Title Insurance.** Within thirty (30) days after the date Developer gives the City notice that it has fulfilled the financing contingency set forth in C.1. below, the City shall procure at the City's expense a commitment to issue an owner's policy of title insurance in the amount of One Million Dollars (\$1,000,000) issued by the Title Insurer showing a commitment to insure a fee simple absolute title to the Project Site to be vested in the Developer. Prior to the Closing, the Developer shall deliver notice to the City of any matters in such commitment that are not acceptable to the Developer. After receipt of said notice, the City shall have the right, at its election, to endeavor to cure such objections to or defects in title set forth therein and shall notify the Developer of such election prior to the Closing. If the City does elect to endeavor to cure such objections to or defects in title, it shall cure such objections prior to or at the Closing. If the City elects not to cure, or fails to respond to, any objections or defects, then the Developer may either (i) waive such title objections to or defects in title and proceed with Closing or (ii) terminate this Agreement. In the event of termination pursuant to this Section B.6, the parties shall have no further rights or liabilities under this Agreement.

8. **Environmental Conditions.** The City, to the extent such are within the City's possession or control, will provide the Developer with all title, environmental, civil, utility, survey, geotechnical and similar reports that would be of interest to a Developer concerning the Project Site. Developer may also obtain its own third-party reports concerning such matters. The Developer's obligations hereunder shall be contingent on Developer's acceptance or waiver of all matters shown on such reports.

9. **Zoning of the Project Site.** Subject to compliance with procedures set forth in the City Code, prior to the Closing, the City shall assign the Project Site to the zoning classification in the City Code which will allow the Project to be lawfully constructed and operated for its intended uses on the Project Site. In particular, but not by way of limitation, the zoning classification shall allow for first-floor residential use.

10. **Incentives.** Commencing with the receipt of real estate property taxes the first year after the project has been substantially completed and fully assessed and continuing for a total of fifteen (15) years or the expiration of the Camp Street TIF, whichever shall first occur, the City shall reimburse Teekona for eligible project expenditures an amount equal to the real estate property tax increment generated at the site and received by the City subject to the following terms and limitations:

For years 1 through 5 – payments shall not exceed \$400,000 a year.

For years 6 through 10 – payments shall not exceed \$300,000 a year.

Commencing year 11 – payments shall not exceed \$200,000 a year.

11. **City's Adherence to General Conditions.** The City shall adhere to the General Conditions set forth in Article E.

C. Conditions Precedent to Teekona's Performance:

1. **Financing Contingency.** The obligations of the Developer under the terms of this Agreement are contingent upon the Developer securing equity investors and financing on terms and conditions which are generally prevalent in the market place for commercial real estate projects. Developer shall use its best efforts to close on such financing as soon as possible and shall provide all information and financial data reasonably required by any potential lender. In the event the Developer fails to give the City written notification that it has received all required financing or the Developer otherwise fails to give the City written notification that it waives the financing contingency within one hundred twenty (120) days following execution of this Agreement, this Agreement shall terminate and the parties shall have no further obligation hereunder.

2. **City's Performance.** The obligations of the Developer are contingent upon the City conveying title to Lot #2 to the Developer and the City timely curing any default hereunder.

D. Conditions Precedent to City's Performance:

1. **Fulfillment or Waiver of Financing Contingency.** The obligations of the City under the terms of this Agreement are contingent upon the Developer notifying the City that it has received all required financing or the Developer is otherwise waiving the financing contingency. The City's obligations are further contingent upon the City's reasonable satisfaction that the Developer has secured adequate financing to timely complete the Project and that such financing is subject to and does not subordinate the rights of the City hereunder except to the extent that the City expressly agrees to such conditions.

2. **Developer's Performance.** The obligations of the City are contingent upon the Developer timely curing any default hereunder.

E. General Conditions:

1. **Breach and Opportunity to Cure.** Except for a breach of the Developer's obligation to commence construction, which is governed by the terms and conditions of Section A.2 and A.14. of this Agreement, before any failure of any party to this Agreement to perform its obligations under this agreement shall be deemed to be a breach of this agreement, the party claiming such failure shall notify in writing the party alleged to have failed to perform of the alleged failure and

shall demand performance. No breach of this Agreement may be found to have occurred if performance is completed to the reasonable satisfaction of the complaining party within thirty (30) days after receipt of such notice or in the case of a failure which by its nature takes an excess of thirty (30) days to cure such longer period of time as may be reasonably necessary to cure the same provided that the curing party is pursuing said cure with commercially reasonable diligence.

2. **Remedies in the Event of Breach.** In the event of a breach of this Agreement by either party beyond any applicable notice and cure period or in the event either party is adjudicated as bankrupt or makes a general assignment for the benefit of that party's creditors or if a receiver is appointed on account of a party's insolvency, which is not terminated, dismissed or vacated within sixty (60) days after filing, then the non-breaching party may without prejudice to any other right or remedy and after giving fifteen (15) days' written notice to the breaching party, the non-defaulting may take whatever actions at law or in equity are necessary or appropriate to (a) collect any payments due under this Agreement, (b) protect the rights granted to such non-defaulting party under this Agreement, (c) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition), (d) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it, or (e) if prior to Closing, terminate this Agreement. In the event of such termination, the breaching party shall not be entitled to receive any further payments or benefits provided for under the terms of this Agreement. In the event of a breach by the Developer, the City shall be entitled to all available remedies at law or in equity, including specific performance. In the event of a breach by the City, the Developer shall be entitled to all available remedies at law or in equity, including specific performance. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of eight percent (8%) per annum. Notwithstanding anything to the contrary in this Section, the City's rights and remedies upon a breach of the Developer's obligation to commence construction shall be as expressly set forth in Section A-14 of this Agreement.

3. **Amendment.** This Agreement and any exhibits attached hereto may be amended only by the mutual consent of the parties including in the case of the City, by the adoption of an ordinance or resolution of the City approving said amendment as provided by law, and by the execution of said amendment by the parties or their successors in interest.

4. **No Other Agreements.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and fully integrates the agreement of the parties.

5. **Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Developer, without the prior written approval of the City may assign this Agreement, and/or any of the Developer's rights and obligations hereunder, to an entity controlling, controlled by, or under common control with, the Developer, and/or collaterally assign this Agreement to the Project lenders in connection with securing financing.

6. **Consent.** Except as otherwise provided herein, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld or unduly delayed.

7. **Paragraph Headings.** Paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

8. **Severability.** If any provision, covenant, or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement (and to that end, any provisions, covenants, or portion of this agreement are declared to be severable).

9. **Applicable Law.** This agreement shall be construed in accordance with the laws and decisions of the State of Illinois.

10. **Memorandum.** A memorandum serving as notice of the Agreement shall be filed at the office of the Recorder of Deeds of Tazewell County, Illinois.

11. **Notices.** All notices delivered pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date of actual delivery with personal delivery, the next business day if sent by overnight delivery, or as of the third day from and including the day of posting if mailed by certified or registered mail return receipt requested with postage prepaid:

to the City: City of East Peoria
401 W. Washington Street
East Peoria, IL 61611
Attention: Mayor

with a copy to: Miller, Hall & Triggs, LLC
416 Main Street, Suite 1125
Peoria, IL 61602
Attention: Dennis R. Triggs

to the Developer:

Teekona Group, Inc.

Attention: Darrell Dunbar

with a copy to:

Attention: _____

CITY OF EAST PEORIA

TEEKONA GROUP, INC.

By _____

John P. Kahl
Its Mayor

By _____

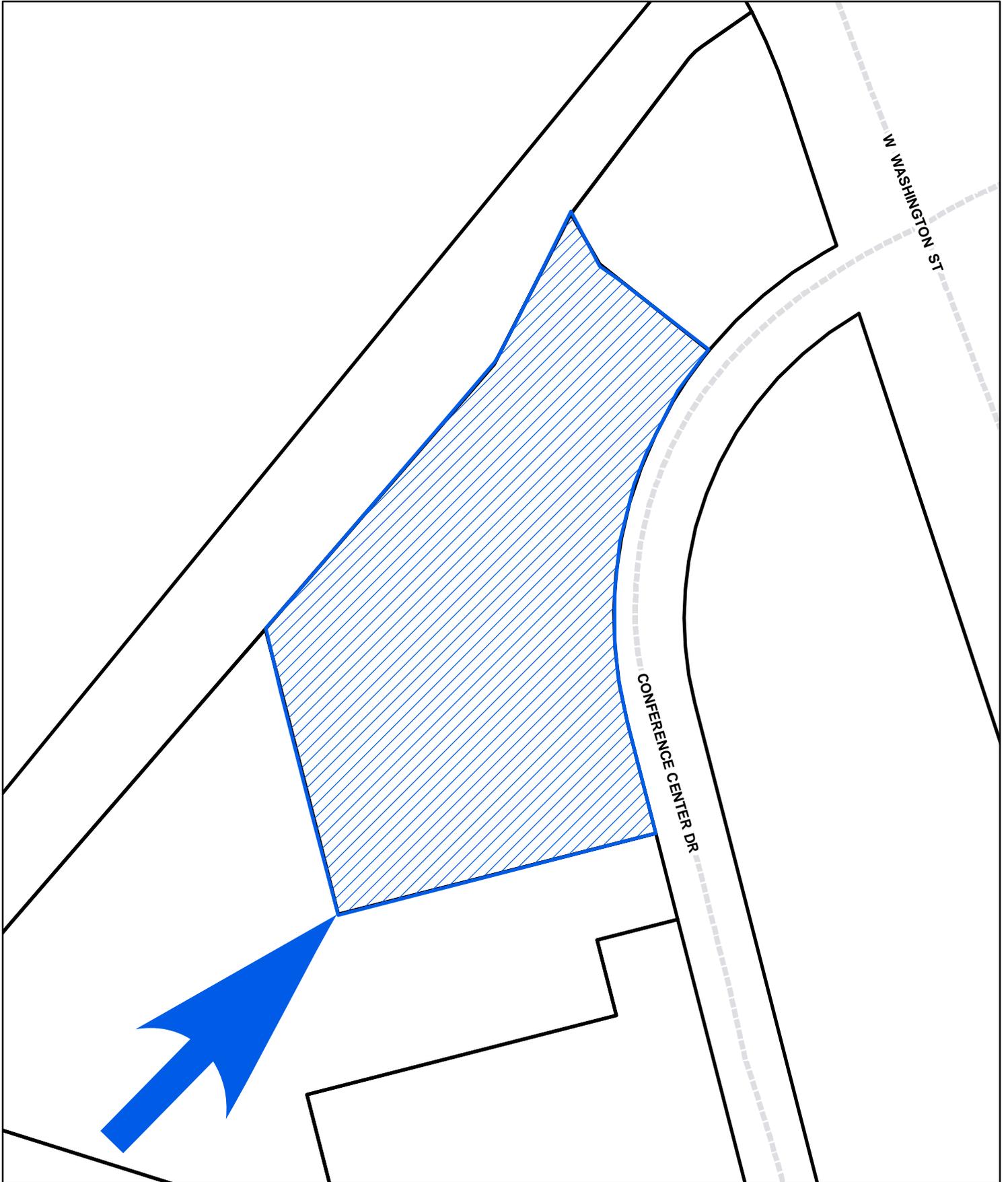
Darrell Dunbar
Its Vice President

Date: _____

Date: _____

Proposed Development Site

P.I.N.: 01-01-29-300-015









3 LEFT-SIDE ELEVATION
 A2-01 1" = 10'-0"



4 RIGHT-SIDE ELEVATION
 A2-01 1" = 10'-0"



2 REAR ELEVATION
 A2-01 1" = 10'-0"



1 FRONT ELEVATION
 A2-01 1" = 10'-0"

Riverview Lofts
 TEEKONA GROUP