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Zoning, Neighborhood and Development
Committee
Office of the Common Council-City Clerk
200 E. Wells Street, Room 205
Milwaukee, WI 53202

Dear Committee Members:

Re: Pending Zoning Matters for the Arena
General Planned Development District
(Common Council File Nos. 241339 and
241330); the Proposed Moxy Hotel

This firm represents MKE BLK23 LLC, the owner of the proposed Moxy Hotel site. For ease of reference, we will refer to our client as the "Bucks", since it is owned and controlled by the ownership group of the Milwaukee Bucks.

On behalf of our client, we would like to respond to the Memorandum prepared by the City's Legislative Reference Bureau dated March, 2025 that first appeared in the zoning files for the Moxy project the afternoon of May 2, 2025. The LRB Memorandum is entitled "History and Overview of TID No. 84". TID No. 84 is the tax increment district that was created by the City in 2015 in conjunction with the development of the new basketball arena (Fiserv Forum).

Consistent with its title, the LRB Memorandum describes the City's financial participation in the arena project through TID 84 and describes TID 84's financial performance through 12/31/23. The LRB Memorandum then goes on to address the Moxy project. The LRB Memorandum acknowledges that TID 84 is exceeding financial projections but asserts that the Moxy project is not the "highest and best use" for the site. The author states that TID 84 could perform even better with a larger project and the City should therefore "aim to maximize" the value of this site. The author supports his "highest and best use" argument with references to a section in the TID 84 project plan that hypothesized a 300 room hotel for the site and to the General Plan Development zoning for the arena district (GPD) that allows for buildings up to 20 stories in height (the Moxy will be seven stories). Although not stated expressly, the obvious implication from the LRB Memorandum is that the author believes the Common Council has the latitude to deny the zoning application for the Moxy solely on the basis of its not being the "highest and best use" for the site because it is significantly less than 20 stories in height.

Although generally accurate (prior to the section on the Moxy project), there are some misstatements and omissions in the LRB Memorandum's discussion of TID 84 and the performance of the TID. But let us first turn to the LRB's Memorandum's tacit assumption that there is some sort of "highest and best use" standard that the Common Council can apply to detailed planned development submissions, because that assumption is flatly incorrect.

The general planned development/detailed plan development section of the City's zoning code is often applied to large tracts of land in unique locations that are expected to be developed over time. The purpose of these zoning regulations is to allow flexibility in adapting to market forces and creativity in design and site composition. The construction of the new arena presented an ideal opportunity to utilize the flexibility afforded by this section of the zoning code to foster a vibrant, mixed use entertainment district. Accordingly, the arena GPD establishes a range of allowable uses, building sizes and design criteria which apply to all of the sites within the district. Other than the site for the arena itself, no particular use is assigned to any particular block. Buildings have to be at least four stories and no more than 20 stories; anything within those parameters is acceptable. There are no requirements for a minimum number of apartment units, hotel room units and square feet for any use or building.

The City's zoning code is quite clear that once a planned development district is created, the provisions of that plan constitute the zoning regulations for the district. Section 295-907-2g, MCO. A detailed plan submission must conform to the requirements of the general plan for the district and must also meet the standards set forth in Section 295-907-3, MCO. If a detailed planned submission meets these requirements and standards, it is a permitted use and must be approved. No additional requirements or standards apply nor may be imposed. There simply is no "highest and best use" requirement, test or standard set forth in the arena district GPD nor in Section 295-907-3. In fact, that term cannot be found anywhere within Section 295-907 (the section of the zoning code that establishes the general planned/detailed plan zoning structure).

Because there is no legal basis for denying a detailed plan submission under a "highest and best use" test, the balance of the LRB Memorandum is irrelevant with respect to the Moxy. But there are few points we would like to address.

First, the greater arena project budget was actually \$524 million, rather than \$500 million. The 2015 Cooperation, Contribution and Development Agreement between the Bucks and the City ("Development Agreement") referred to a budget of "not less than" \$500 million, which may be what the author relied upon. The additional \$24 million was covered by the Bucks.

Second, the LRB Memorandum implies that there was an \$8 million cash grant to the Bucks out of the City's financial contribution to the arena project. This is incorrect. The City's total financial contribution to the arena project was \$47 million, comprised of \$27 million of surplus funds from TID No. 22 and \$20 million from the newly-created TID 84. Thus, the City incurred \$20 million in new debt for the project through TID 84. \$8 million of this debt came from the Bucks, who were required

to purchase \$8 million of subordinated revenue bonds from the Redevelopment Authority. These bonds provided that the other \$12 million of City debt would be paid ahead of the Bucks; also, the Bucks' sole source of repayment was increment from TID 84. If there were not sufficient funds to repay the Bucks by the time TID was required to terminate, the Bucks would not get repaid. Thus, the Bucks were the primary financial shock absorber and had the primary risk if TID 84 failed (which, as noted below, is not the case). The Bucks received their first payment of interest on the revenue bonds in April of this year.

Third, the LRB Memorandum correctly notes that none of the City's contribution went into the costs of the new arena or into the Bucks' pockets. All \$47 million was spent on public assets. \$37 million paid for the construction of the new parking structure on Fifth and McKinley and the remaining \$10 million was spent on improvements to the plaza in front of the arena. The City owns the parking structure and the plaza. The Bucks manage the parking structure and split the revenue with the City. The City's share is currently over \$1 million per year and increasing, while the debt service incurred to pay for the parking structure is being funded entirely by the tax increments generated by the Bucks' projects in TID 84.

Fourth, as the LRB Memorandum notes, TID 84 is performing quite well. As of 12/31/23, the value of the development within TID 84 was roughly \$250 million, more than double the projected value for that date and halfway to the projected \$500 million "full buildout" value of the district. What the LRB Memorandum does not mention is that three or four years from now, after completion of the FPC Live entertainment venue, the recently approved Jeffers apartment project on Block 5 and (assuming approval) the Moxy, the development value of TID 84 will be equal to or only slightly below the \$500 million mark, with significant development sites still remaining on Blocks 2, 3 and 6. TID 84 is not just performing well, it is blowing the doors off of the projections. In less than 15 years, the City's \$47 million investment (which in and of itself is generating annual cash flow back to the City) will have spawned over ten times that much in new development. The conclusion to draw from this is that the arena GPD was well-crafted and the flexibility contained therein has served the City very well.

Lastly, we need to address the proposition that the block by block uses identified in the TID 84 project plan (and that also appear in an exhibit to the Development Agreement) somehow establish a master plan for development of the arena district and should guide the Council's deliberations. To circle back to the very first point of this letter, they do not and they cannot. Nor were they ever intended to. Neither the TID 84 project plan nor the Development Agreement are zoning. The hypothetical uses set forth in those documents are nothing more than that. The arena GPD was created in 2016, after the TID 84 project plan was adopted and after the Development Agreement was executed. If the Council had wanted to use either of those documents for guidance they could have done so. They chose not to, opting instead for maximum flexibility. Interestingly, until now, the hypothetical development schemes set forth in the TID 84 project plan and the Development Agreement have been totally ignored in every detailed plan submission reviewed and approved by the Council, notwithstanding that many of the approved detailed plan submissions are

entirely inconsistent with what is set forth in these schemes. The reason those hypothetical development schemes have previously been ignored is because they are irrelevant. They are not part of the applicable zoning regulations, and they have no bearing on the submission for the Moxy.

We thank you for your consideration of these zoning files.

Yours very truly,

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BY



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