
City of Waukesha
Tax Incremental Finance District No. 25 Development Agreement
Northview Industrial Project

This Tax Incremental Finance District No. 25 Development Agreement (the “Agreement”) is made on the date last written below, by and between Waukesha Northview, LLC, an Illinois limited liability company and/or a related entity (collectively, the “Developer”) and the City of Waukesha, a municipal corporation of the State of Wisconsin, located in Waukesha County, Wisconsin (the “City”). The Developer and the City are referred to together herein as the Parties.

RECITALS

WHEREAS, pursuant to the provisions of Section 66.1105, Wis. Stats., and pursuant to a Resolution of the City adopted on September 15, 2015, the City created Tax Incremental District No. 25 (“TID No. 25”); and

WHEREAS, certain costs incurred by the City for development of the district may be reimbursed from the property tax increment as provided by the “Tax Increment Law” (as defined below); and

WHEREAS, certain property at 901 Northview Road in the City described on Exhibit A attached hereto (the “Development Property”) is available for development; and

WHEREAS, the Developer’s proposed project at the Development Property consists of (i) acquisition of land, (ii) demolition and site preparation, (iii) construction of an approximately 214,533 square-foot warehouse facility (the “Facility”), and (iv) payment of certain professional costs and costs of environmental testing (collectively, the “Development Project”). The Development Project is anticipated to have an aggregate investment exceeding \$10,000,000 and will create jobs in the City of Waukesha; and

WHEREAS, the City’s goals and objectives for the Development Project include encouraging private development, improvements that accommodate additional industrial development, increased property values, and job creation that serve the needs of the community; and

WHEREAS, to promote the development of the Development Property, the City has created the TID No. 25 Project Plan (the “Project Plan”) attached hereto as Exhibit B to provide in part for the financing of certain contributions to the Developer relating to TID No. 25; and

WHEREAS, the City has determined that the economic vitality of the Development Project is essential to the economic health of the City and other taxing jurisdictions within the City, that the proposed development of the Development Property through the construction of the

Development Project is an integral part of the industrial needs of the residents of the City and the surrounding area, and that the benefits to be gained by the City as a result of the Development Project are greater than the costs to the City under this Development Agreement; and

WHEREAS, the Developer and the City agree that the development and improvement of the Development Property and resulting economic benefit to the City and the surrounding area, including growth in the tax base and job creation, will be secured by the development of the Development Property through the Development Project; and

WHEREAS, City staff, consultants for the City, and members of the Common Council have carefully considered how best to effectuate the development and improvement of the Development Property in the public interest, as have the Developer and its agents and representatives; and

WHEREAS, in order to induce the Developer to undertake the Development Project, the City has agreed to pay for certain costs included in the Project Plan through the use of existing municipal funds, borrowed funds, and/or tax increment funds pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Common Council of the City on October 6, 2015 authorized its representatives to execute this Agreement on behalf of the City, providing for certain duties and responsibilities of the City and the Developer;

NOW, THEREFORE, in consideration of the recitals, terms and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. General Provisions: Purpose.

- A. Incorporation of Proceedings and Exhibits.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by the City, including but not limited to adopted or approved plans and specifications on file with the City specifically referenced on Exhibit C hereto, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of the Developer and the City whether or not herein enumerated.
- B. Implementation Schedule and Time of the Essence.** All phases and schedules which are the subject of approvals, or are set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of the City or Designated Agent, which shall not be unreasonably withheld or delayed.
- C. Entire Agreement.** This Agreement, including all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties hereto in respect to the Development Project. This Agreement shall be deemed to include and incorporate such minutes, approvals,

plans and specifications referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, this Agreement shall be controlling; provided, however, that nothing contained herein shall be construed to limit the Common Council in the exercise of its legislative powers.

- D. Land Affected.** The parties acknowledge that the Development Project will encompass and affect the real property identified on Exhibit A, all of which will be within the boundaries of TID No. 25.

II. Definitions.

Except as otherwise specifically defined herein, for purposes of this Agreement the following terms shall have the following meanings:

“Agreement” means this document and all its component parts.

“City Financing” means the bonds, notes or other obligations issued by the City to pay the cost of the Development Incentive and related costs of financing for the “Acquisition, Testing and Mobilization Grant” (as defined below), the “Construction Completion Grant” (as defined below), and issuance expense pursuant to the Project Plan.

“Contractor” means the construction contractor, to be determined, qualified to do business in the State of Wisconsin contracted by Developer to construct the Development Project.

“Designated Agent” means a person or persons who have been authorized by the City’s Common Council to make minor approvals and modifications, as set forth herein, and in any resolution of the City naming such Designated Agent.

“Developer” means Waukesha Northview, LLC, an Illinois limited liability company and/or a designated related entity organized to develop, receive grant payments and/or own the Development Project, and any and all successors in interest to such entities.

“Development Incentive” means payment from the City to the Developer in the form of grants and as reimbursement for certain project costs, as provided herein.

“Development Project” means the redevelopment and improvement of the Development Property, and the development of the Facility as described on Exhibit D hereto.

“Development Property” means the real property described in Exhibit A attached hereto and incorporated herein together with any improvements existing thereon and to be constructed pursuant to the Final Development Plan.

“Final Development Plan” means the final development plan adopted by the City in accordance with TID No. 25 setting forth the approved development within the boundaries of TID No. 25, including the Development Property.

“Project Plan” means the Project Plan prepared and approved in conjunction with the creation of TID No. 25.

“Property Tax Increment” means the gross amount of tax increment actually received by the City (as defined in Section 66.1105, Wis. Stats.) generated by properties within the boundaries of TID No. 25, including development on the Development Property. Property Tax Increment does not include any amounts attributable to interest or state exempt-computer aid.

“Property Tax Increment Base” means the aggregate value, as equalized by the Wisconsin Department of Revenue, of the properties within the boundaries of TID No. 25, including the Development Property, as of January 1, 2015.

“Site Work” means the final site work including all paving, landscaping and storm water management facilities as set forth in the approved plans for the Development Project.

“Tax Increment Law” means Section 66.1105, Wis. Stats.

III. Obligations of the City.

A. Developer Grants. As an incentive to the Developer to undertake the development of the Development Property through construction of the Development Project, the City agrees to provide the Developer Incentive in the form of grants as follows:

1. The City will pay a \$500,000 grant upon confirmation of the purchase of the land and approval of building permits (the “Acquisition, Testing and Mobilization Grant”) as provided by Section V.E.1., below.
2. The City will pay a \$650,000 grant upon completion of the core and shell and substantial completion of Site Work and approval by the City of compliance of the Site Work to the approved plans for the Development Project (the “Construction Completion Grant”) as provided by Section V.E.2., below.
3. The City will pay additional grant funds on an annual basis to an aggregate maximum of \$1,725,000 or for up to fifteen (15) annual payments, whichever is reached first (the “Employment Level Grants”), in accordance with Section V.E.3., below, and the following requirements:
 - a. If 10-15 employees are engaged in full-time employment by employers maintaining full-time places of employment within the Development Property at a minimum hourly pay of \$15, City shall pay to Developer a total of 33% of the net Property Tax Increment attributable to the Development Property remaining after City Financing payments are satisfied and all City administrative costs allowable under the Tax Increment Law are paid.

- b. If 16-25 employees are engaged in full-time employment by employers maintaining full-time places of employment within the Development Property at a minimum hourly pay of \$15, City shall pay to Developer a total of 66% of the net Property Tax Increment attributable to the Development Property remaining after City Financing payments are satisfied and all City administrative costs allowable under the Tax Increment Law are paid.
- c. If 26 or more employees are engaged in full-time employment by employers maintaining full-time places of employment within the Development Property at a minimum hourly pay of \$15, City shall pay to Developer a total of 100% of the net Property Tax Increment attributable to the Development Property remaining after City Financing payments are satisfied and all City administrative costs allowable under the Tax Increment Law are paid.
- d. Any net Property Tax Increment that is unused for a particular year because Developer does not meet employment goals for that year is forfeited by Developer and does not carry forward to subsequent years.
- e. Claims of employment at the Development Property are subject to verification by the City, and a refusal by employers at the Development Property to respond to the City's reasonable requests for proof of employment status may result in the denial of the amount of Employment Level Grants attributable to employment that is unverifiable to the City.

B. Financing Developer Incentive. To fund the Acquisition, Testing and Mobilization Grant and the Construction Completion Grant, the City shall issue bonds in the principal amount of \$1.15 million plus the City's cost to issue the bonds, with principal and interest amortized over a period of not less than ten (10) years. The City shall fund the Employment Level Grants from the Property Tax Increment in accordance with Section III.A.3., above, and Section V.E.3., below. The amounts of deductions from the net Property Tax Increment for City Financing payments, as described in Sections III.A.3.a-c, above, shall be determined after the initial City Financing is completed. In the event the City subsequently re-finances and the actual City Financing payments and the costs decrease, City shall be entitled to retain up to fifty percent (50%) of the amount of the difference for other uses allowable under the Tax Increment Law. The amounts of deductions from the net Property Tax Increment for administrative costs allowable under the Tax Increment Law, as described in Sections III.A.3.a-c, above, shall be determined annually.

C. Development Property Sidewalks. As part of the City's future plans to promote non-vehicle connections in the area, the Developer shall install sidewalks along the Development Property on the south side of Northview Road and on the west

side of Aviation Drive. Reimbursement of the Developer's costs of constructing the sidewalks is included within the accumulative maximum of the Employment Level Grants set forth above.

- D. Modifications to Development Project.** The City agrees to consider in good faith any modification of the Development Project proposed by the Developer, provided that any such modification shall be subject to future negotiation, agreement and approval between the City and the Developer.
- E. City Performance Subject to Required Government Approvals.** The Developer acknowledges that various specific undertakings of the City described herein require approvals from the Common Council (and other City bodies), other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. The City's agreements under this Section III are conditioned upon obtaining all such approvals in the manner required by law.

IV. Developer's Obligations.

- A. Develop the Development Property.** The Developer agrees to develop and improve the Development Property through undertaking the Development Project as described in Exhibit D.
- B. Construction Schedule and Guaranteed Maximum Price.** The Developer agrees to commence, continue and complete, or cause other entities to commence, continue and complete, construction of the Development Project in accordance with the Schedule attached as Exhibit E. The Developer shall provide to the City a guaranteed maximum price for the Facility core and shell and all Site Work ("GMP") within fifteen (15) days of the date on which the Developer's construction contract for the Development Project is awarded.
- C. Guaranty of Minimum Assessed Value.** Developer hereby guarantees to the City that as of January 1, 2018, and each January thereafter until this Agreement terminates as provided herein, the minimum equalized value of the Development Property for real estate tax purposes shall equal or exceed \$12,500,000.00 (the "Minimum Assessed Value"). The Developer guarantees and agrees to make annual payment to the City, in lieu of taxes, any shortfall between the actual property tax payments for the particular year and the property tax which would be due on the Property assessed at the Minimum Assessed Value (the "Tax Shortfall"). If Developer fails to make payment to the City for the Tax Shortfall, Developer consents to the City placing a special charge for the unpaid amount upon the Development Property's next subsequent property tax bill pursuant to Section 66.0627, Wis. Stats.
- D. Job Creation.** Developer believes that the Development Property will create and/or preserve a significant number of full-time position jobs in the City of Waukesha. For purposes of determining the number of jobs created and/or

preserved, employees of Developer shall be counted, provided said employees are employed full-time at the Development Property, by a business conducting operations there at least 50 weeks per year. For purposes of this Agreement, “full-time position” means a regular full-time position for which the employee is required, as a condition of employment, to work at least 35 hours per week and 1820 hours per year at the Development Property, less time off for holidays, paid vacations and other leave. Developer shall promptly provide to the City such documentation as is reasonably requested by the City to verify the status of employees at the Development Property.

- E. Rights of Access.** Upon at least twenty-four (24) hours’ notice to Developer or Contractor, Developer shall permit representatives of the City to have access to the Development Property and any portions of the Development Project at all reasonable times during the construction of the Facility core and shell to ensure compliance with the terms and conditions of this Agreement.
- F. Maintenance, Repair and Reconstruction.** Developer agrees that at all times after construction of the Development Project, it will keep and maintain in good condition and repair such portions of the Development Property and the Development Project as are owned by the Developer (or any affiliate thereof), and shall promptly reconstruct any portion of the Development Property that is damaged by fire, wind, flood, vandalism, or other casualty loss, using the proceeds of the insurance required by this Agreement, such that no loss in the assessed value of the Development Property is attributable to failure to maintain, repair, or reconstruct after casualty loss.
- G. Taxes.** Developer will pay when due all federal, state and local taxes in connection with the Development Property that it owns.
- H. Insurance.** During the term of this Agreement, the Developer shall maintain, and, in the assignment document, shall require that any transferees or assignees of any portion of the Development Property maintain, insurance in such amounts and against such risks both generally and specifically with respect to the Development Property, as are customarily insured against in developments of like size, kind and character, including customary builders risk or equivalent insurance during construction and customary casualty, property and liability insurance. Developer shall provide the City evidence of all such insurance upon request. So long as this Agreement is in effect, Developer covenants to apply, and to require in the assignment document that any transferees or assignees of any portion of the Development Property to apply, any and all insurance proceeds to rebuild and maintain the Development Property.
- I. Completion of the Project.** Developer agrees that the Development Property shall be developed, and the Facility core and shell and substantially all Site Work of the Development Project shall be completed, by December 31, 2017.

J. Indemnification.

1. The Developer shall, at its sole expense, indemnify and hold the City, and its governing body members, officers, agents, independent contractors, consultants, legal counsel, servants and employees (hereinafter, for purposes of this Section, collectively the “Indemnified Parties”) harmless from any claims, demands, lawsuits, causes of action, liabilities, attorney fees, losses or damages, of any kind, arising in any way from conditions or occurrences at the Development Property or from the Developer’s actions or inactions in relation to the Development Project, including but not limited to property damage, personal injury or death, any defect in the Development Project, or environmental conditions created by Developer on, in or under the Development Property, except for such items that arise as a result of the negligent or intentional acts of the Indemnified Parties.
2. The City shall indemnify and hold the Developer harmless from any claim, demand, suit, action or other proceeding by any person or entity arising from the negligence, willful misrepresentation or willful misconduct of the City (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby.
3. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City, as the case may be.

V. Conditions Precedent to City’s Obligations.

The City’s obligations under this Agreement are conditioned upon the following:

- A. Schedule.** Developer shall provide the Schedule of construction for the Development Project as attached as Exhibit E.
- B. Corporate Existence.** The Developer shall provide upon request a certified copy of its formation documents and a good standing certificate issued by the appropriate governmental authority of the state of its incorporation for itself and any related entity organized to develop, receive grant payments and/or own the Development Project.
- C. Incumbency; Due Authorization.** The Developer shall provide upon request a certificate of incumbency and resolutions of the Board of Directors of the Developer, showing that the Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

D. Certificates of Insurance. Developer shall have delivered to the City certificates of all insurance required under this Agreement.

E. Funding of Developer Grants.

1. Acquisition, Testing and Mobilization Grant. The Developer shall provide confirmation of the purchase of the Development Property and all necessary building permits issued for the Development Project. Within thirty (30) days of the City's receipt of the same, but no sooner than January 1, 2016, the City will pay \$500,000.00 to Developer or Contractor (if designated by Developer) in accordance with Section III.A.1., above.
2. Construction Completion Grant. The Developer shall complete the construction of the Facility core and shell and substantially all Site Work of the Development Project and shall provide written notice of completion to the City. On or before the City's receipt of Developer's notice of completion, the City may engage a construction expert to review actual construction expenses of the Facility core and shell and all Site Work as compared to the GMP, which review shall be completed within sixty (60) days. If Developer's actual construction costs are less than the GMP, the amount of the Construction Completion Grant may be reduced by fifty percent (50%) of the amount of the difference provided, however, that such project savings may present an opportunity to reinvest in upgrades to the Development Project, and provided utilization of such savings for upgrades is approved by the City, the amounts expended on upgrades will be included in Developer's actual construction costs. If Developer's costs exceed the final approved GMP, Developer shall be responsible for all cost overruns. Within seventy-five (75) days of the City's receipt of Developer's notice of completion, the City shall pay \$650,000.00 to Developer or Contractor (if designated by Developer) in accordance with Section III.A.2., above, unless reduced in accordance with this Section V.E.2.
3. Employment Level Grants. On or before December 31st of each year beginning in 2017, Developer shall submit the total number of jobs at the Facility as a jobs assessment for the project. On March 1 of each year, or after all due and outstanding property taxes on the Development Property are paid, whichever occurs last, for the year related to said job assessment, the City shall pay additional monies to Developer on an aggregate basis up to a maximum of \$1,725,000.00 or for up to fifteen (15) annual payments, whichever is reached first, in accordance with Section III.A.3., above; provided, however, no Employment Level Grants shall be paid if the Developer is in default of its obligations under this Agreement, including, but not limited to, payments in lieu of taxes pursuant to Section IV.C. Assuming all property taxes are timely paid and Developer is not in default, the following schedule will apply:

Submit Job Total by	For Year	Incentive Paid by
Friday, December 29, 2017	2017	Thursday, March 01, 2018
Friday, December 28, 2018	2018	Friday, March 01, 2019
Monday, December 30, 2019	2019	Monday, March 02, 2020
Wednesday, December 30, 2020	2020	Monday, March 01, 2021
Thursday, December 30, 2021	2021	Tuesday, March 01, 2022
Friday, December 30, 2022	2022	Wednesday, March 01, 2023
Friday, December 29, 2023	2023	Friday, March 01, 2024
Monday, December 30, 2024	2024	Monday, March 03, 2025
Tuesday, December 30, 2025	2025	Monday, March 02, 2026
Wednesday, December 30, 2026	2026	Monday, March 01, 2027
Thursday, December 30, 2027	2027	Wednesday, March 01, 2028
Friday, December 29, 2028	2028	Thursday, March 01, 2029
Friday, December 28, 2029	2029	Friday, March 01, 2030
Monday, December 30, 2030	2030	Monday, March 03, 2031
Tuesday, December 30, 2031	2031	Monday, March 01, 2032

- F. Satisfaction and Certification of Conditions.** If all conditions contained in this Section V are satisfied or if the City waives in writing said conditions, then the above conditions shall be deemed satisfied. The City agrees to provide a certificate, within 5 days as reasonably requested by Developer, or their lenders, to confirm which of the above conditions are satisfied and which remain.

VI. Conditions Precedent to Developer’s Obligations.

The Developer’s obligations under this Agreement are conditioned upon the Developer having obtained resolutions of the Board of Directors of the Developer, which resolutions provide that the Developer has been duly authorized to enter into this Agreement and all other agreements, documents and contracts required to be executed in connection with the transactions which are the subject of this Agreement.

VII. Representations, Warranties and Covenants.

- A. Developer Representations Warranties and Covenants.** Developer represents and warrants to the City as follows:

1. **Taxes.** Developer has paid, and will pay when due, all federal state and local taxes, and will promptly prepare and file returns for accrued taxes for the Development Property.
2. **Compliance with Zoning.** Developer covenants that the Development Property, upon completion of the Development Project, will conform and comply in all respects with applicable zoning laws, rules, regulations and ordinances.

3. Certification of Facts. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading.
4. Good Standing. The Developer is an Illinois limited liability company duly formed and validly existing under the laws of the State of Illinois and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. The Developer (or an affiliated entity organized to develop, receive grant payments, and/or own the Development Project) is qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.
5. Due Authorization. The execution, delivery and performance of this Agreement and all other agreements requested to be executed and delivered by the Developer hereunder have been duly authorized by all necessary partnership action of the Developer and constitutes valid and binding obligations of the Developer, in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.
6. No Default. No default or event which with the giving of notice or lapse of time, or both, would be a default exists under this Agreement, and the Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other material agreement or instrument to which the Developer is a party or an obligor.
7. Compliance with Laws and Codes. The Developer covenants that the Development Project, when completed, will conform and comply in all respects with all applicable laws, rules regulations and ordinances, including, without limitation, all building codes and ordinances of the City. The Developer will comply with, and will cause the Development Project to be in compliance with, all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all environmental laws, rules, regulations and ordinances.
8. Commencement and Completion. Developer shall commence construction of the Development Project no later than July 1, 2016 and will continue construction of the Development Project diligently and shall complete construction of the Facility core and shell and all Site Work for the Development Project no later than December 31, 2017.

9. Development Would Not Occur “But For” Financing Assistance. The development of the Development Property would not occur but for the tax increment financing assistance being provided by the City hereunder, and the amount of tax increment financing provided is necessary for the project to proceed based on cost estimates for the Development Project.
10. Approvals and Permits. The Developer shall at its expense obtain all necessary approvals and permits necessary to undertake the overall Development Project on the Development Property, including but not limited to, site plan review, zoning approvals, building permits and any other local, state or federal approvals or permits.
11. Construction Contracts. Developer upon request shall provide to the City copies of executed construction contracts that demonstrate attainment of the Schedule.
12. No Tax-Exempt Status. The Parties intend that the Development Property shall remain subject to property taxation and not be exempt from property taxation; but, in the event the Development Property is exempt from taxation in whole or in part, Developer or its successor shall make payments in lieu of taxes until this Agreement terminates as provided herein and twenty (20) years thereafter. Therefore, the Parties agree that until this Agreement terminates as provided herein and twenty (20) years thereafter, the Development Property shall not be sold, conveyed or otherwise transferred to any third party in any way that results in the Development Property being rendered exempt from property taxation unless a payment in lieu of taxes agreement is entered into with the City (the “PILOT Agreement”). The PILOT Agreement may be with, and any payments in lieu of taxes may be made by, a tenant(s) of the Development Property. Any attempted sale, conveyance or other transfer in violation of this provision without a PILOT Agreement shall be null and void. Developer shall not seek, or allow itself, to hold any status which would render the Development Property exempt from property taxation without a PILOT Agreement. This provision shall be binding on all successors to, and assignees of, Developer.

B. City Representations, Warranties and Covenants.

1. City Authority. The City represents and warrants to the Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City under this Agreement.
2. No Conflict. The execution, delivery and performance of City’s obligations pursuant to this Agreement will not violate or conflict with the City’s indenture, instrument or material agreement by which the City is bound, nor will the execution, delivery, or performance of the City’s

obligations pursuant to this Agreement violate or conflict with any law applicable to the City.

3. No Litigation. There is no litigation or proceeding pending or threatened against or affecting the City that would adversely affect the Development Project, the enforceability of this Agreement, or the ability of the City to perform its obligations under this Agreement.

VIII. Default.

A. Developer Default.

1. Remedies. In the event (i) any representation or warranty of the Developer herein or in any agreement or certificate delivered pursuant hereto is false in any material respect when made and identified in a written notice to Developer providing for seven (7) days to respond; or (ii) of the Developer's default hereunder which is not cured within thirty (30) days after written notice thereof to Developer, the City shall have all rights and remedies available under law or equity with respect to said default. In addition, subject to the foregoing but otherwise without limitation, the City shall have the following specific rights and remedies:
 - a. With respect to matters that are capable of being corrected by the City and following written notice to Developer providing for seven (7) days to correct, the City may at its option enter upon the Development Property for the purpose of correcting the default and the City's reasonable costs in correcting same, plus interest at the legal rate under Wisconsin Statutes, shall be paid by Developer to the City immediately upon demand;
 - b. Injunctive relief;
 - c. Specific performance; and
 - d. Money damages.
2. Reimbursement. Any amounts expended by the City in enforcing this Agreement, including reasonable attorney fees, and any amounts expended by the City in curing a default on behalf of the Developer, together with interest at the legal rate, shall be paid by Developer to the City upon demand and shall constitute a lien against the Development Property until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage, provided that any such lien shall at all times be subordinate and subject to any mortgage of Developer's lender.

3. Remedies are Cumulative. All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
4. Failure to Enforce Not a Waiver. Failure of the City to enforce any provision contained herein shall not be deemed a waiver of the City's rights to enforce such provision of any other provision in the event of a subsequent default.

B. City Default.

1. Remedies. In the event of the City's default hereunder which is not cured within thirty (30) days after written notice thereof to the City, Developer shall have all rights and remedies available under law or equity with respect to said default. In addition, and without limitation, Developer shall have the following specific rights and remedies:
 - a. With respect to default by the City of any of its obligations hereunder, Developer, at its option, may after expiration of the thirty (30) days, and after giving additional written notice to the City of its option to so, elect one of the following remedies:
 - b. Injunctive relief;
 - c. Specific performance; and
 - d. Money damages.
2. Reimbursement. Any amounts expended by Developer in enforcing this Agreement, including reasonable attorney fees, and any amounts expended by Developer in curing a default on behalf of the City, together with interest at the legal rate shall be reimbursed or paid to Developer upon demand.
3. Remedies are Cumulative. All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
4. Failure to Enforce Not a Waiver. Failure of Developer to enforce any provision contained herein shall not be deemed a waiver of Developer's rights to enforce such provision or any other provision in the event of a subsequent default.

- C. Good Faith Cure.** If a defaulting party has commenced and is actively pursuing cure, but such cure cannot be accomplished within said 30 day grace period, then there shall be no default as long as defaulting party is continuing to actively cure such matter. Further, to the extent the non-defaulting party has an additional party from whom to seek the remedy, the non-defaulting party shall also take

enforcement action against such other party to result in a quicker resolution of the outstanding problem.

IX. Miscellaneous Provisions.

- A. Assignability.** Any assignment of this Agreement shall provide that all rights and obligations shall be binding on the assignee and the assignee shall enter into an Acceptance of Assignment and Obligations Agreement (the “Assignment Agreement”) with Developer providing that the assignee shall be bound by, and fulfill the obligations in, the Agreement which shall relieve Developer and any related entity from liability for performance of the obligations hereunder. Neither the Developer nor the City may assign their rights or obligations under this Agreement without issuing prior written notice to the other as provided herein. Specifically, however, Developer shall have the right to assign as collateral to its lender(s), any rights to receive money from the City hereunder without entering into an Assignment Agreement. No such assignment to Developer’s Lender for collateral purposes shall relieve the Developer from liability for performance of its obligations hereunder. Developer shall also have the right to assign its rights and obligations under this Agreement to an affiliated business entity organized to develop, receive grant payments and/or own the Development Project without entering into an Assignment Agreement.
- B. Nondiscrimination.** In the performance of work under this Agreement, Developer agrees not to discriminate against any employee or applicant for employment nor shall the development or any portion thereof be sold to, leased or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry and that the construction and operation of the Development Project shall be in compliance with all effective laws, ordinances and regulations relating to discrimination on any of the foregoing grounds.
- C. No Personal Liability.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City or Developer, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
- D. Force Majeure.** No party shall be responsible to any other party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

- E. Parties and Survival of Agreement.** Except as otherwise expressly provided herein, this Agreement is made solely for the benefit of the parties hereto and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof, except that Developer's lender(s) shall have a right to take an assignment of this Agreement for collateral purposes and to enforce rights of the Developer hereunder to receive amounts due to Developer from the City, but only under the conditions contained herein. All representations and agreements in this Agreement shall remain operative and in full force and effect until fulfilled and shall survive the closing.

- F. Successors Bound.** This Agreement is binding upon the Developer and all of Developer's successors, assignees, and grantees.

- G. Notices.** All notices, demands, certificates or other communications under this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one business day after deposit with a nationally recognized overnight commercial courier service, airbill prepaid, or forty-eight (48) hours after deposit in the United States mail postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To the City:	City of Waukesha ATTN: Mayor 201 Delafield Street Waukesha, WI 53188
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With a copy to:	City of Waukesha ATTN: City Attorney 201 Delafield Street Waukesha, WI 53188
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To Developer: Waukesha Northview, LLC
c/o HSA Commercial Real Estate
ATTN: Mr. John E. Shaffer
233 South Wacker Drive, Suite 350
Chicago, IL 60606

and

Waukesha Northview, LLC
c/o HSA Commercial Real Estate
ATTN: Mr. Eric E. Ogden
233 South Wacker Drive, Suite 350
Chicago, IL 60606

or its successor, provided that written notice
has been provided to the City of the name and
address of the successor

With a copy to: Brian C. Randall, Esq.
Friebert, Finerty & St. John, S.C.
Two Plaza East – Suite 1250
330 East Kilbourn Avenue
Milwaukee, WI 53202

- H. Governing Law.** The laws of the State of Wisconsin shall govern this Agreement.
- I. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions of this Agreement.
- J. Execution in Counterparts.** This Agreement may be signed in any number of counterparts which shall all be effective as originals.
- K. Public Record and Recording.** This Agreement shall be maintained by the City as a public record. A Memorandum of Development Agreement, in the form attached hereto as Exhibit F, giving notice of this Agreement and reciting as a short form certain provisions shall be executed by Developer and delivered for recording against the Development Property to the Register of Deeds for Waukesha County, and the Developer shall bear the cost of recording.
- L. Disclaimer Relationships.** Nothing contained in this Agreement or any contract between Developer and the City or any act by the City or any third parties shall be deemed to create any relationship other than independent contractors.
- M. Severability.** If any provision of this Agreement is declared by a court having jurisdiction to be unenforceable, it shall be severed from the remainder of this

Agreement to the extent that it may be, and the remainder shall remain enforceable.

- N. Termination.** This Agreement and all obligations hereunder, shall terminate upon the satisfaction of the conditions set forth in Section III of this Agreement have been fully satisfied.
- O. No Drafting Presumption.** This Agreement has been drafted as a joint effort of the Parties after lengthy negotiations, consultations, and approval as to form. Accordingly, neither of the Parties may hereafter be entitled to a presumption that any portion of this Agreement should be construed either for or against a particular party or contend that this Agreement was drafted by a particular party.

[REMAINDER OF PAGE BLANK – SIGNATURES CONTAINED
ON THE FOLLOWING 2 PAGES]

In witness whereof, the parties to this Agreement have caused this instrument to be signed and sealed by duly authorized representatives on the dates written below.

CITY OF WAUKESHA, WISCONSIN

By: _____
Shawn N. Reilly, Mayor

By: _____
Gina Kozlik, City Clerk-Treasurer

STATE OF WISCONSIN }
 } ss.
WAUKESHA COUNTY }

BEFORE ME, the undersigned authority, on this _____ day of _____, 2015 personally appeared Shawn N. Reilly and Gina Kozlik, known to me to be the persons whose names are subscribed to the foregoing instrument, and known to me to be the Mayor and City Clerk-Treasurer, respectively, of the City of Waukesha and acknowledged to me that they executed said instrument for the purposes and considerations therein expressed, and as the act of said corporation.

Name: _____
Notary Public, State of Wisconsin
My commission _____

WAUKESHA NORTHVIEW, LLC

By: _____

STATE OF ILLINOIS)
 } ss.
_____ COUNTY)

BEFORE ME, the undersigned authority, on this _____ day of _____, 2015 personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the _____ of Waukesha Northview, LLC and acknowledged to me that he/she executed said instrument for the purposes and considerations therein expressed, and as the act of said company.

Name: _____
Notary Public, State of Illinois
My commission _____

THIS DOCUMENT WAS DRAFTED BY
AND SHOULD BE RETURNED TO:
S. Todd Farris, Esq.
Friebert, Finerty & St. John, S.C.
330 East Kilbourn Avenue – Suite 1250
Milwaukee, WI 53202

EXHIBIT A

DEVELOPMENT PROPERTY LEGAL DESCRIPTION

Parcel 1 of Certified Survey Map No. 2913, Parcel 2 and that part of Parcel 1 of Certified Survey Map No. 7492 and unplatted lands, all in the Northeast 1/4 of the Northwest 1/4 of the Section 34, Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, which is bounded and described as follows: COMMENCING at the Northeast corner of said Northwest 1/4 Section; thence South 88°23'10" West along the North line of said 1/4 Section 1121.23 feet to a point; thence South 01°36'50" East 33.01 feet to the point of beginning of the lands to be described; thence North 88°23'10" East along the South line of Northview Road 674.74 feet to a point on the West line of Aviation Drive; thence South 00°33'40" East along said West line 585.42 feet to a point; thence South 88°49'16" East along said West line 0.53 feet to a point on a curve; thence Southeasterly 180.28 feet along said West line and arc of a curve, whose center lies to the Northeast, whose radius is 350.00 feet and whose chord bears South 18°27'49" East 178.29 feet to a point; thence South 87°14'10" West 732.31 feet to a point; thence North 04°52'08" East 141.50 feet to a point; thence North 01°36'50" West 630.06 feet to the point of beginning.

Said lands contain 514,482 square feet, or 11.8109 acres.

EXHIBIT B

PROJECT PLAN

[TO BE ATTACHED, AS ADOPTED ON SEPTEMBER 29, 2015]

EXHIBIT C

PLANS AND SPECIFICATIONS

The plans and specifications referenced in this Development Agreement shall be the Final Site Plan & Architectural Review materials in File # PC15-0181, as approved by the City Plan Commission on July 8, 2015, and subject to final construction plans and specifications submitted to and approved by the City.

EXHIBIT D

DEVELOPMENT PROJECT

The Development Project referenced in this Development Agreement shall be the demolition of existing improvements and construction of new improvements at 901 Northview Road including an approximately 214,533 square foot building suitable for manufacturing and/or distribution together with parking and site improvements.

EXHIBIT E

SCHEDULE

The Developer shall commence the Development Project by July 1, 2016, and complete the Facility core and shell and substantially all Site Work of the Development Project by December 31, 2017.

EXHIBIT F

MEMORANDUM OF DEVELOPMENT AGREEMENT

[REMAINDER OF PAGE BLANK –
FOLLOWING PAGES TO BE REPLACED WHEN SHORT FORM VERSION IS
EXECUTED AND RECORDED BY DEVELOPER]

MEMORANDUM OF DEVELOPMENT AGREEMENT

This Memorandum of Development Agreement (the “Memorandum”) is executed this _____ day of _____, 2015, by Waukesha Northview, LLC, an Illinois limited liability company (“Developer”), whose address for purposes hereof is 233 South Wacker Drive, Suite 350, Chicago, Illinois 60606.

NOTICE IS HEREBY GIVEN THAT:

A. Developer and the City of Waukesha have entered into a Development Agreement (the “Development Agreement”) approved by the City on October 6, 2015, regarding the property known generally as 901 Northview Road, Waukesha, Wisconsin, as more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”).

B. This Memorandum is being executed and recorded in the Public Records of Waukesha County, Wisconsin, in order that third parties may have notice that the Property is subject to the terms and conditions in the Development Agreement which include covenants binding on any successor or assign of Developer as set forth in the Development Agreement.

C. A copy of the Development Agreement can be obtained from the Director of Community Development, City of Waukesha, Community Development Department, 201 Delafield Street, Room 200, Waukesha, Wisconsin 53188.

D. Among other provisions, the Development Agreement contains the following provisions, which are binding upon the successors-in-interest to the original Developer:

1. **Guaranty of Minimum Assessed Value.** Developer hereby guarantees to the City that as of January 1, 2018, and each January thereafter until this Agreement terminates as provided herein, the minimum equalized value of the Development Property for real estate tax purposes shall equal or exceed \$12,500,000.00 (the “Minimum Assessed Value”). The Developer guarantees and agrees to make annual payment to the City, in lieu of taxes, any shortfall between the actual property tax payments for the particular year and the property tax which would be due on the Property assessed at the Minimum Assessed Value (the “Tax Shortfall”). If Developer fails to make payment to the City for the Tax Shortfall, Developer consents to the City placing a special charge for the unpaid amount upon the Development Property’s next subsequent property tax bill pursuant to Section 66.0627, Wis. Stats.

2. **Maintenance, Repair and Reconstruction.** Developer agrees that at all times after construction of the Development Project, it will keep and maintain in good condition and repair such portions of the Development Property and the Development Project as are owned by the Developer (or any affiliate thereof), and shall promptly reconstruct any portion of the Development Property that is damaged by fire, wind, flood, vandalism, or other casualty loss, using the proceeds of the insurance required by this Agreement, such that no loss in the assessed value of the Development Property is attributable to failure to maintain, repair, or reconstruct after casualty loss.

3. No Tax-Exempt Status. The Parties intend that the Development Property shall remain subject to property taxation and not be exempt from property taxation; but, in the event the Development Property is exempt from taxation in whole or in part, Developer or its successor shall make payments in lieu of taxes until this Agreement terminates as provided herein and twenty (20) years thereafter. Therefore, the Parties agree that until this Agreement terminates as provided herein and twenty (20) years thereafter, the Development Property shall not be sold, conveyed or otherwise transferred to any third party in any way that results in the Development Property being rendered exempt from property taxation unless a payment in lieu of taxes agreement is entered into with the City (the "PILOT Agreement"). The PILOT Agreement may be with, and any payments in lieu of taxes may be made by, a tenant(s) of the Development Property. Any attempted sale, conveyance or other transfer in violation of this provision without a PILOT Agreement shall be null and void. Developer shall not seek, or allow itself, to hold any status which would render the Development Property exempt from property taxation without a PILOT Agreement. This provision shall be binding on all successors to, and assignees of, Developer.

E. This Memorandum is to provide notice of certain provisions of the Development Agreement. All terms and provisions of the Development Agreement remain binding upon the Developer and Developer's successors and assigns, regardless of whether they are included in this Memorandum or not.

IN WITNESS WHEREOF, the Developer has caused this Memorandum to be executed by its duly authorized representative as of the date first above written.

DEVELOPER:

WAUKESHA NORTHVIEW, LLC

By: _____

Printed Name: _____

Its: _____

ACKNOWLEDGMENT

STATE OF _____ }
 } SS.
_____ COUNTY }

Personally came before me this _____ day of _____, 2015, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of _____
My Commission: _____

**THIS DOCUMENT WAS DRAFTED BY
AND SHOULD BE RETURNED TO:**

S. Todd Farris, Esq.
Friebert, Finerty & St. John, S.C.
330 East Kilbourn Avenue – Suite 1250
Milwaukee, WI 53202

EXHIBIT A

[Legal Description]

Parcel 1 of Certified Survey Map No. 2913, Parcel 2 and that part of Parcel 1 of Certified Survey Map No. 7492 and unplatted lands, all in the Northeast 1/4 of the Northwest 1/4 of the Section 34, Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, which is bounded and described as follows: COMMENCING at the Northeast corner of said Northwest 1/4 Section; thence South 88°23'10" West along the North line of said 1/4 Section 1121.23 feet to a point; thence South 01°36'50" East 33.01 feet to the point of beginning of the lands to be described; thence North 88°23'10" East along the South line of Northview Road 674.74 feet to a point on the West line of Aviation Drive; thence South 00°33'40" East along said West line 585.42 feet to a point; thence South 88°49'16" East along said West line 0.53 feet to a point on a curve; thence Southeasterly 180.28 feet along said West line and arc of a curve, whose center lies to the Northeast, whose radius is 350.00 feet and whose chord bears South 18°27'49" East 178.29 feet to a point; thence South 87°14'10" West 732.31 feet to a point; thence North 04°52'08" East 141.50 feet to a point; thence North 01°36'50" West 630.06 feet to the point of beginning.

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