
**City of Waukesha
Tax Incremental Finance District No. 23
Development Agreement
Oberlin Filter Project**

This Tax Incremental Finance District No. 23 Development Agreement (the “Agreement”) is made this ____ day of _____, 2014, by and between Pilot Court Partnership, LLP, a Wisconsin limited liability partnership, and/or a related limited liability 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 June 3, 2014, the City created Tax Incremental District No. 23 (“TID No. 23”); and

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

Whereas certain property in the City described on Exhibit A attached hereto (the “Development Property”) is available for development; and

Whereas the Developer’s proposed project consists of (i) acquisition of land, (ii) construction of an approximately 90,000 square-foot manufacturing facility at 809 Silvernail Road in the City of Waukesha, Wisconsin (the “Facility”) to be operated by Production Service Company, Inc., doing business as Oberlin Filter Company, to manufacture industrial filtration equipment, (iii) acquisition and installation of equipment at the Facility and (iv) payment of certain professional costs and costs of issuance (collectively, the “Development Project”). The Development Project is anticipated to have an aggregate investment exceeding \$10,000,000 and will preserve 75 jobs in the City of Waukesha; and

Whereas the goals and objectives for the Development Property 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. 23 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. 23; and

Whereas the City has determined that the economic vitality of the Development Property 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 commercial and 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 and/or the use of borrowed funds pursuant to the terms and conditions of this Agreement; and

Whereas, the Common Council of the City on _____, 2014 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.

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.

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.

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. 23.

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 including funding of reserve funds, capitalized interest and issuance expense pursuant to the Project Plan.

“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 Pilot Court Partnership, LLP, a Wisconsin limited liability partnership.

“Development Incentive” means payment from the City to the Developer in the form of a grant, as provided herein.

“Development Project” means the development and improvement of the Development Property 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. 23 setting forth the approved development of the Development Property.

“Project Plan” means the Project Plan prepared and approved in conjunction with the creation of TID No. 23 in the City of Waukesha.

“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 the Development on the Development Property.

“Property Tax Increment Base” means the aggregate value, as equalized by the Wisconsin Department of Revenue, of the Development Property and Additional Properties as of January 1, 2014.

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

III. Obligations of the City.

A. Developer Incentive Payment.

As an incentive to the Developer to undertake the development of the Development Property through construction of the Development Project, the City agrees to make the following Developer Incentive payment:

The City will make a one-time payment of Nine Hundred Seventy-five Thousand Dollars (\$975,000) to the Developer upon satisfaction of the conditions set forth in Section V below.

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.

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.

Develop the Development Property. The Developer agrees to develop and improve the Development Property through undertaking the Development Project as described in Exhibit D.

Construction Schedule. The Developer agrees to commence, or cause other entities to commence, construction of the Development Project in accordance with the Schedule attached as Exhibit E.

Guaranty of Minimum Assessed Value. Developer hereby guarantees to the City that as of January 1, 2016 and each January thereafter during the term of this Agreement and terminating as of December 31, 2028, the minimum equalized value of the Development Property for real estate tax purposes shall equal or exceed \$6,000,000.00 (the “Minimum Assessed Value”). The Developer guarantees and agrees to make 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”).

Guaranty of Job Creation. Developer hereby guarantees job preservation, directly or indirectly in the City of Waukesha, of a minimum of 75 full-time positions by December 31, 2015. For purposes of determining the number of jobs preserved, employees of Developer and its wholly-owned subsidiaries, as well as jobs created pursuant to sub-contracting arrangements with other City of Waukesha employers shall be counted, provided said employees are employed at City of Waukesha facilities. 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 40 hours per week and 2080 hours per year, less time off for holidays, paid vacations and other leave approved by the Developer.

Rights of Access. 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 and following the construction when the City deems access necessary to ensure compliance with the terms and conditions of this Agreement.

Maintenance and Repair. 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).

Taxes. Developer will pay when due all federal, state and local taxes in connection with the Development Property that it owns.

Insurance. During the term of this Agreement, the Developer shall maintain, and 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. So long as this Agreement is in effect, Developer covenants to apply, and to require 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.

Completion of the Project. Developer agrees that the Development Property shall be completely developed, and the Development Project shall be completed, by December 31, 2015.

A. 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:

Schedule.Developer shall provide the Schedule of construction for the Development Project.

Corporate Existence.The Developer shall provide a certified copy of its formation documents and a good standing certificate issued by the appropriate governmental authority of the state of its incorporation.

Incumbency; Due Authorization.The Developer shall provide 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.

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

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.

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 a limited-liability partnership duly formed and validly existing under the laws of the State of Wisconsin 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 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 December 31, 2014 and will continue construction of the Development Project diligently and shall complete construction of the Development Project no later than December 31, 2015.

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 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. Therefore, the Parties agree that for the life of Tax Increment District No. 23, 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. Any attempted sale, conveyance or other transfer in violation of this provision 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. This provision shall be binding on all successors to, and assignees of, Developer.

A. City Representations, Warranties and Covenants.

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.

1. 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.

2. 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 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, and 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, 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 the obligations of the City under 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.

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.

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.

Assignability. Neither the Developer nor the City may assign their rights or obligations under this Agreement without the prior written consent of the other, except as otherwise provided herein, and specifically, Developer shall have the right to assign as collateral to its lender(s), any rights to receive money from the City hereunder. No such assignment shall relieve the Developer from liability for performance of its obligations hereunder.

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.

To Developer:

Pilot Court Partnership
c/o Michael Ignatowski
President
Oberlin Filter Company
404 Pilot Court
Waukesha, WI 53186

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

Governing Law. The laws of the State of Wisconsin shall govern this Agreement.

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.

Execution in Counterparts. This Agreement may be signed in any number of counterparts which shall all be effective as originals.

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.

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.

Termination. This Agreement and all obligations hereunder, shall terminate upon occurrence of the earliest of the following to occur:

- (i) The City Financing and any obligations issued to refinance the City Financing being paid in full;
- (ii) The City receiving Tax Increments or guaranteed revenue stream payments from the Developer in an aggregate amount sufficient to pay the City Financing, all debt service thereon, and any obligations issued to refinance the City Financing; and
- (iii) Termination of district by operation of law.

B. 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.

In witness whereof, the parties to this Agreement have caused this instrument to be signed and sealed by duly authorized representatives this ____ day of _____, 2014.

CITY OF WAUKESHA, WISCONSIN

By: _____
Shawn N. Reilly, Mayor

[SEAL]

By: _____
Gina Kozlik, City Clerk

PILOT COURT PARTNERSHIP, LLP

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN)
) SS
COUNTY OF WAUKESHA)

On this _____ day of _____, 2014, before me, a notary public, in and for said County, personally appeared Shawn N. Reilly, Mayor, and Gina Kozlik, City Clerk, of the City of Waukesha, Wisconsin, to me known to be the persons described in and who executed the within instrument and acknowledged the same to be the free act and deed of such persons.

Notary Public, State of Wisconsin
My Commission: _____

STATE OF WISCONSIN)
) SS
COUNTY OF WAUKESHA)

On this _____ day of _____, 2014, before me, a notary public, in and for said County, personally appeared _____, the _____ of Pilot Court Partnership, LLP, a Wisconsin limited liability partnership, to me known to be the person described in and who executed the within instrument and acknowledged the same to be the free act and deed of such person.

Notary Public, State of Wisconsin
My Commission: _____

EXHIBIT A

DEVELOPMENT PROPERTY

See attached legal description.

EXHIBIT B

PROJECT PLAN

See attached copy of Tax Incremental District No. 23 dated

_____.

EXHIBIT C

PLANS AND SPECIFICATIONS

See attached copy of plans and specifications and construction budget.

EXHIBIT D

DEVELOPMENT PROJECT

The Development Project consists of the (i) acquisition of land, (ii) construction of an approximately 90,000 square foot manufacturing facility to be located at 809 Silvernail Road in the City of Waukesha, Wisconsin (the “Facility”) to be operated by Production Service Company, Inc., a Wisconsin corporation, doing business as Oberlin Filter Company, to manufacture industrial filtration equipment, (iii) acquisition and installation of equipment at the Facility and (iv) payment of certain professional costs and costs of issuance (collectively, the “Project”).

EXHIBIT E

SCHEDULE

The Developer shall commence the Development Project by December 31, 2014, and complete the Development Project by December 31, 2015.