



DCC# 1251068

CITY OF MANITOWOC TID NO. 21
DEVELOPMENT AGREEMENT WITH KONA
REALTY LLC

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NAME AND RETURN ADDRESS

City Clerk
City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

052-447-002-030
Parcel Identification Number

This instrument was drafted by:
Adam Tegen
City of Manitowoc
Community Development Director



**CITY OF MANITOWOC TID NO. 21
DEVELOPMENT AGREEMENT WITH
KONA REALTY LLC**

THIS AGREEMENT (hereinafter called the "Agreement") is made as of the ^{9th} day of ~~March~~ ^{May} 2022, by and between The City of Manitowoc (hereinafter called the "CITY") and Kona Realty LLC, or its assignee or designee (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to construct the Project (defined below) on a parcel of land known as Tract 1 of the Certified Survey Map recorded in Volume 17 CSM, Page 101 as Document 798740, located within the City of Manitowoc, Manitowoc County, Parcel 052-447-002-030, more specifically described in Exhibit A (the "Property"); and

WHEREAS, DEVELOPER will invest a total of approximately \$18 million on the Property including building construction, equipment purchases, site preparation, and soft costs. Construction will be for a 64,900 square foot addition onto the existing facility. The addition will be utilized for offices, warehousing and manufacturing space. The estimated construction cost is approximately \$7.2 million (the "Project"). The purpose of the Project is to allow the expansion of Kaysun Corporation's ("KAYSUN") office, manufacturing and warehousing operations in order to measurably increase production, while solidifying DEVELOPER and KAYSUN's commitment to its' Manitowoc location and resulting in job creation; and

WHEREAS, the Property is located in Tax Increment Finance District No. 21 ("TID 21"), and planned public investments identified in the Project Plan for TID 21 include site development and development project contributions. The use of Tax Incremental Financing is necessary for the Project to take place, as the proposed scale of the Project would not be fiscally possible due to continually increasing construction material costs and to ensure that expansion occurs at the current location versus the acquisition of another company outside of the area; and

WHEREAS, the CITY created TID 21 to promote industrial development and to accommodate growth of existing manufacturing businesses in the community along with new development, creating tax base and employment opportunities for the community; and

WHEREAS, the completed Project is anticipated to result in additional economic activity and increased property values throughout TID 21.

NOW, THEREFORE, in consideration of the promises and obligations set forth, it is mutually agreed between the PARTIES as follows:

- I. PROPOSED PROJECT SCOPE AND CONSTRUCTION. DEVELOPER agrees to construct the Project including an approximately 64,000 square foot office, manufacturing and warehousing addition and specialized equipment to support KAYSUN's continued



business growth in accordance with this Agreement. The total Project costs will be approximately \$18 million with an estimated construction cost of \$7.2 million. The assessed value increase is estimated to be \$3.345 million.

- A. The DEVELOPER shall undertake all reasonable efforts to complete the Project (which shall be deemed achieved by the delivery of a final certificate of occupancy for the main portion of the addition included in the Project and constructed on the Property) (the "Completion Date") on or about December 31, 2023, in accordance with site and building plans as approved by the CITY.
- B. The CITY will cooperate and use reasonable efforts with respect to any and all permits necessary for completion of the Project including without limitation approvals needed from all City departments (e.g., Fire, Police, Community Development, Industrial Development Corporation, Council and all other approving or permitting authorities).
- C. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.
- D. In recognition of the provided incentive, the DEVELOPER shall be cognizant of the CITY'S preference for DEVELOPER to utilize local contractors in the Project.
- E. The Preliminary Concept Plan for the Project (hereinafter "Concept Plan") is attached as Exhibit "B" and is incorporated by reference to this Agreement. By execution of this Agreement, the PARTIES expressly approve the Concept Plan. The CITY or the DEVELOPER may at any time propose modifications to the Concept Plan subject to the agreement of the CITY and the DEVELOPER. All site and building plans are subject to review and approval by the CITY for compliance with federal, state and municipal code requirements.
- F. The time for performance of any term, covenant, or condition of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, or condition under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to adverse environmental conditions (such as contaminated soil or groundwater), adverse weather conditions, acts of God, pandemic or epidemic, any other party in this Agreement, strikes, labor disputes, labor shortages, materials shortages, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency. To the extent of any unavoidable delay, all dates and deadlines set forth herein shall be reasonably extended to effectuate the intent of this Agreement.

II. FINANCIAL ASSISTANCE



- A. The City shall provide a Total Incentive of 20%, of the increase in assessed value created by the Completion Date. Based upon the estimated increase of assessed value of \$3,345,000, the Total Incentive is estimated at \$669,000. The City shall provide an estimated Annual TIF Payment totaling \$699,000 to be paid beginning in 2025 per subsection II(B). In the event the increase in the total increment on the Completion Date is less than or exceeds the estimated assessed value, the Annual TIF Payment shall be adjusted to maintain the Total Incentive at 20% of the increase in assessed value. The adjustment shall be accomplished by increasing or reducing the value of the Annual TIF Payment.
- B. The Annual TIF Payment shall begin in 2025 (based on 2024 real estate taxes) and continue for an estimated 11 years. CITY shall reimburse the DEVELOPER 95% of Annual TIF Increment Revenue paid to TID 21 for the property, estimated at \$61,000, until the Total Incentive equals 20% of the increase in assessed value of the Project on the Completion Date. The City may elect to complete the Annual TIF Payment sooner than the estimated 11-year period outlined if funding allows.
- C. The Annual TIF Payment shall be 95% of the amount calculated by subtracting the Base Year Taxes from the actual real property taxes paid on an annual basis starting with the December 2024 tax bill. The "Base Tax Value" is the 2021 assessed real estate value for the Property, which is \$4,154,000. The actual taxes paid on the Base Tax Value are defined to be the "Base Year Taxes." Should the assessed value of the property decrease below the Base Tax Value prior to the Completion Date, the parties agree to meet and confer to discuss amending the agreement. Real property taxes for purposes of this formula do not include any special assessments, special taxes, or special charges, and personal property taxes are excluded from this calculation.
- D. The CITY shall take no action to terminate or dissolve TID 21 until the Annual TIF Payment has been fully paid to the DEVELOPER. For the avoidance of doubt, the cumulative value of the Annual TIF Payment shall not result in an exceedance of the Total Incentive.
- E. The Annual TIF Payment will be made each year by August 15 following the CITY receiving proof from DEVELOPER that the annual real estate and personal property tax bills for the Property have been paid in full, whether in one payment or in installments as permitted by state law and the Manitowoc Municipal Code.

III. DEVELOPER'S TRANSFER RESTRICTIONS AND OBLIGATIONS

- A. DEVELOPER shall be prohibited from selling or transferring the Property to an entity which is exempt from real estate taxes without the CITY's written consent.



- B. Until completion of the obligations under the Section I.A. above, there shall be no sale of the Property, nor any assignment of rights or obligations under this Agreement, without written CITY consent, which shall not be unreasonably withheld. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement. DEVELOPER may assign their payments to a lending institution as collateral, and the Community Development Director for CITY is authorized to consent to such an arrangement upon approval of the Finance Director/Treasurer and City Attorney, which approval shall not be unreasonably withheld. In addition, notwithstanding any other provision herein, DEVELOPER may assign ownership of the Property to an affiliate entity.

IV. OTHER RIGHTS AND REMEDIES.

- A. **Termination and Remedies.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, such party shall, upon written notice from any other party, proceed promptly to ensure or remedy such default or breach, and, in any event, within 60 days after receipt of such notice unless such default or breach cannot, with reasonable diligence, be cured within such period in which case said defaulting party shall commence such cure within such period and diligently proceed to cure such default. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings to compel specific performance by the party in default or breach of its obligation.

Completion of the development in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the DEVELOPER and the CITY; accordingly, the CITY and the DEVELOPER shall, in the event of legal proceedings, seek remedies to compel the specific performance of the defaulting party as the only adequate remedy and shall not seek damages in lieu of specific performance unless specific performance is legally unavailable, in which event the CITY and the DEVELOPER may seek damages as authorized. No other remedies for the PARTIES to this agreement exist outside of this Agreement.

- B. **Municipal Officials Not to Take Interest in Agreement.** No official or employee of the CITY shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are PARTIES to this Agreement nor in any tenant of the Property. No official or employee of the CITY shall be personally liable to the DEVELOPER or any successor in interest, in the event of any default or breach by the CITY, or for any amount which becomes due to the DEVELOPER or its successors under this Agreement.
- C. **Developer Financing.** Notwithstanding Section III or any other provision contained herein, The DEVELOPER may transfer, assign or encumber the Property in order to secure financing for the Property and/or for construction of the Project and any refinancing thereof. Said lender may place liens and/or mortgages on the Property, including any renewals, extensions, replacements, modifications or refinancing. Lender's mortgages and/or loans may be transferred or assigned by lender in a



secondary market without prior CITY approval. In any circumstance, Lender shall provide reasonable notice to the CITY of such actions. This Section shall survive any foreclosure proceeding.

- D. **Applicable Law, Severability and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin governing agreements made and fully performed in Wisconsin. All litigation surrounding this agreement shall occur in Manitowoc County Circuit Court or the Eastern District of Wisconsin. If any provision of this Agreement, or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then (unless in the judgment of the party or PARTIES thereby adversely affected such provision was a material part of the consideration for their entering into this Agreement, that without it they would not have entered into this Agreement) the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the CITY and the DEVELOPER with respect to its subject matter, there being no terms, conditions, warranties or representatives with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their respective successors and assigns.
- E. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.
- F. **Third Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the PARTIES hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- G. **No Partnership Created.** This Agreement specifically does not create any partnership or joint venture between the PARTIES hereto, or render any party liable for any of the debts or obligations of any other party.
- H. **Formalities and Authority.** The PARTIES hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope of content of this Agreement or in any way affect its provisions.
- I. **Notices and Demands.** A notice, demand or other communications under this Agreement shall be sufficiently given or delivered if it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or delivered personally:

To DEVELOPER:

Kona Realty, LLC
Attn: Benjamin Harrison



5500 West Drive
Manitowoc, WI 54220

With a required copy to:

Attorney Andrew Steimle
Steimle Birschbach LLC
21 Maritime Drive
Manitowoc, WI 54220

To CITY:

City of Manitowoc
Attention: City Clerk
900 Quay Street
Manitowoc, WI 54220

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the other as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

- J. **Nonmerger and Survival.** Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

[Signature pages follow.]

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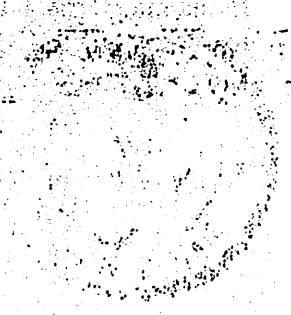
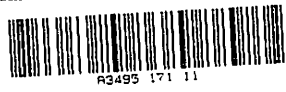




Exhibit A
Legal Description of the Property

Tax Parcel: 052-447-002-030

Tract 1 of the Certified Survey Map recorded in Volume 17 CSM, Page 101 as Document 798740, Said Certified Survey Map being located in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 34, also in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, T.19N, R.23E, City of Manitowoc, Manitowoc County, Wisconsin, Being a Resurvey of Lots 1, 2, 3, and 4, Block 2 of the Manitowoc I-43 Industrial Park Subdivision No. 1 and Lots 5 and 6 Block 2 of the Manitowoc 1-43 Industrial Park Subdivision No. 2.



**Exhibit B
Concept Plan**

See attached.

