



DOC# 1273569

CITY OF MANITOWOC TID NO. 23
DEVELOPMENT AGREEMENT WITH
ANR MANITOWOC RETAIL LLC

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NAME AND RETURN ADDRESS

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

Parcel Identification Number:
052-835-401-025

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



**CITY OF MANITOWOC TID NO. 23
DEVELOPMENT AGREEMENT WITH
ANR MANITOWOC RETAIL LLC**

THIS AGREEMENT (hereinafter called the "Agreement") made as of the 25th day of June, 2024, by and between The City of Manitowoc (hereinafter called the "CITY") and ANR MANITOWOC RETAIL LLC (hereinafter called the "DEVELOPER"). The CITY and DEVELOPER may be referred to individually as a "PARTY" and may collectively be referred to as the "PARTIES."

WITNESSETH:

WHEREAS, DEVELOPER seeks to develop the Project defined below on a parcel of land with an address of 2577 South 44th Street, City of Manitowoc, Manitowoc County on Parcel 052-835-401-025, more specifically described as and shown on Exhibit A (the "Property"); and,

WHEREAS, DEVELOPER intends to cause investment of a total of approximately \$3,000,000 on the Property for site preparation, construction, equipment, furnishings, and soft costs (collectively, the "Project"). The purpose of the Project is to construct a standalone restaurant. The Project will provide needed food options along the I-43 corridor. The Project will also result in the support of construction jobs and the creation of restaurant jobs; and,

WHEREAS, the Property is located in Tax Increment Finance District No. 23 ("TID 23"), and development incentives were identified in the Project Plan for TID 23 to support projects within TID 23. The use of Tax Incremental Financing is necessary for the Project to take place as the Project is faced with continued pressure from higher than normal construction costs, and soil conditions; and,

WHEREAS, the CITY has identified the I-43 corridor for the continued expansion of hospitality, restaurant, and retail uses to serve the needs of the community, serve visitors to the community, and add tax base for the community; and,

WHEREAS, the completed Project is anticipated to result in additional economic activity and food options, while increasing property values throughout TID 23 and the community.

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

I. PROJECT SCOPE AND CONSTRUCTION.

- A. The DEVELOPER agrees to complete the Project for the construction of a standalone restaurant, in accordance with the Site Plan attached as Exhibit B. The total Project costs will be approximately \$3,000,000. Developer shall begin construction of the Project by October 1, 2025.
- B. The DEVELOPER shall use its good faith best efforts to complete the Project. The Project shall be deemed complete by the delivery of a final certificate of occupancy



by no later than January 1, 2027 (the "Completion Date") in accordance with site and building plans as approved by the CITY. CITY acknowledges that site and building plans may be subject to change throughout the Project, subject to CITY's further review and approval, which shall not be unreasonably withheld.

- C. The CITY will make all reasonable efforts to facilitate the approval of any and all local permits necessary for completion of the Project.
- D. The DEVELOPER shall comply with all applicable federal, state, and municipal codes throughout the Project, including submitting site plans and obtaining applicable permits.
- E. The Exterior Concept Plans and Interior Floor Plans for the Project (hereinafter, collectively, the "Concept Plan") will be attached as Exhibit C and will then be incorporated into this Agreement, following submission to, and approval by, the City. Such approval must be obtained prior to the required commencement of construction date in Sec. 1(A), or this Agreement shall become null and void.
- 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, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty or delay in obtaining any necessary permit from any governmental agency.

II. FINANCIAL ASSISTANCE

- A. The City shall provide to the DEVELOPER a Total Incentive of \$150,000. The City shall provide the Total Incentive through an Annual TIF Payment to be paid beginning in 2028 per subsection II(B). The Total Incentive shall be in the form of a tax increment revenue note ("MRO") which shall earn 5% annual interest starting on January 1, 2028.
- B. Payment shall begin in 2028 (based on collection of 2027 real estate taxes) and continue until the Total Incentive and interest is paid, estimated to take 15 years. CITY shall reimburse the DEVELOPER with 90% of increment created on an annual basis as outlined in the City of Manitowoc Tax Increment District #23 Tax Increment Revenue Note attached as Exhibit D. The City may elect to complete the Annual TIF Payment sooner than the period outlined if funding allows, in the City's sole discretion.
- C. For the purpose of calculating the Minimum Increment Value and Minimum Tax Increment the base value of the Property is \$145,000.



- D. The CITY shall take no action to terminate or dissolve TID 23 prior to December 31, 2042, unless the Total Incentive 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 as outline in the Tax Increment Revenue Note.
- E. The Annual TIF Payment will be made each year by November 1 following the CITY receiving proof that the annual real estate taxes 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. If the total annual real estate taxes have not been paid by November 1, the Annual TIF Payment shall be reduced proportionally by the outstanding balance until such time that the annual real estate taxes are paid in full.

III. DEVELOPER'S OBLIGATIONS AND TRANSFER RESTRICTIONS

- A. The DEVELOPER agrees to Minimum Tax Increment Value for the Project for the duration of this Agreement. The Minimum Tax Increment Value shall follow the schedule below:
- \$145,000 by January 1, 2025
 - \$145,000 by January 1, 2026
 - \$2,000,000 by January 1, 2027, and thereafter, until the MRO is fully paid.
- B. In the event the value of the Project does not reach the Minimum Tax Increment Value outlined in Section III(A), plus the base value, the DEVELOPER agrees to pay the difference between the (i) the Property Taxes collected by the CITY and (ii) the Property Taxes that would have been collected had the Minimum Tax Increment Value plus the base value, been met, (the "Shortfall"). The Shortfall, if any, shall be paid by the DEVELOPER to the CITY on or before August 15 for each year such Shortfall occurs for the duration of this Agreement. The DEVELOPER shall pay and reimburse the CITY for all reasonable attorney's fees and costs incurred by the CITY to collect from the DEVELOPER the Minimum Tax Increment payments, including any Shortfall, or otherwise incurred to enforce the terms of this Agreement. In addition to any other remedy available at law or in equity, the CITY, in its discretion, may also enforce collection of the DEVELOPER's obligation to pay Property Tax Increment Shortfalls by imposing special assessments or special charges in accordance with the procedure against the DEVELOPER pursuant to Wis. Stat. §§ 66.0703 and 66.0627, which procedure is hereby consented to and all objections are hereby waived by the DEVELOPER.
- C. The DEVELOPER shall be prohibited from selling the Property or any part of the Property to an entity which is exempt from real estate taxes, without the approval of the Manitowoc Common Council.
- D. Until completion of the obligations under Sections I and II above, there shall be neither sale of the Property nor any assignment of rights or obligations under this Agreement,



without CITY consent, which shall not be unreasonably withheld, except to the extent such sales of the Property are sales in the DEVELOPER's ordinary course of business. This statement shall not prohibit mortgages, leases or easements, which leave DEVELOPER liable to CITY under this Agreement. DEVELOPER may assign the MRO 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 and City Attorney.

- E. DEVELOPER and/or their successors may not challenge any Property tax assessment on the Property which is at or below an amount equal to Minimum Tax Increment Value plus base value prior to full payment of the MRO, nor cause the Property to be used in such a fashion that taxes cannot be assessed, at any time.

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 sixty (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.
- B. The CITY and the DEVELOPER shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purpose of this Agreement; provided that any delay in instituting or prosecuting any such actions or proceedings or otherwise asserting such rights, shall not operate as a waiver of such rights to, or deprive it of or limit such rights in any way (it being the intent of this provision that a PARTY should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of any remedy because of concepts of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems involved); nor shall any waiver in fact made with respect to any specific default, be considered or treated as a waiver of any rights with respect to other defaults or with respect to the particular default except to the extent specifically waived in writing.
- C. Except as expressly provided otherwise in this Agreement, the rights and remedies of the PARTIES to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any PARTY of any one or more such remedies shall not preclude the exercise of it, at the same different times, of any other such remedies for any other default or breach by any other PARTY. No waiver made by any such PARTY with respect to the performance or manner of time thereof, of any obligation of any other PARTY or any condition of its own obligation under this Agreement shall be considered a waiver of any rights of the PARTY making waiver with respect to the



particular obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the PARTY making the waiver of any other obligations.

- D. 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. 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. No member of DEVELOPER or any member of its members shall be personally liable to the CITY or any successor in interest, in the event of any default or breach by DEVELOPER, or for any amount which may become due to the CITY by DEVELOPER or its successors under this Agreement.
- E. **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. 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.
- F. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the PARTIES hereto.
- G. **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.
- H. **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.
- I. **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.

J. **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: ANR Manitowoc Retail LLC
Attn: Rachit Dhingra
7065 N. Port Washington Road
Glendale, WI 53217

With a copy to: Attorney Alan Marcuvitz
von Briesen & Roper, s.c.
411 East Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202

To CITY: City of Manitowoc
Attn: City Clerk
900 Quay Street
Manitowoc, WI 54220

With a copy to: City of Manitowoc
Attn: City Attorney
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.

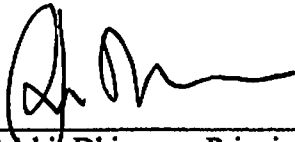
K. **Nonmerger and Survival.** Any provision in this Agreement which has not been fully performed prior to transfer of possession shall not be deemed to have terminated, but shall, unless expressly waived in writing, survive such transfer of possession and be in force and effect until performed.

{SIGNATURE PAGES FOLLOW}



IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the year and date set forth above, and by so signing this Agreement, certify that they have been duly and properly authorized by their respective entities to make these commitments, and intend them to be binding upon their respective entities and to execute this Agreement on their behalf.

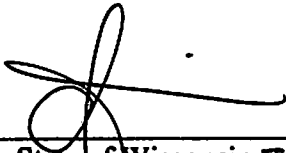
ANR MANITOWOC RETAIL LLC:

By: 
Rashit Dhingra – Principal of ANR Manitowoc Retail LLC

ILLINOIS
STATE OF ~~WISCONSIN~~)
COOK) ss.
MANITOWOC COUNTY)

Personally came before me this 21ST day of JUNE, 2024, the above named Rashit Dhingra, to me known be the person who executed the foregoing instrument on behalf of ANR Manitowoc Retail LLC.




Notary Public, State of ~~Wisconsin~~ ILLINOIS
My Commission: DECEMBER 7, 2024

{ANR MANITOWOC RETAIL LLC SIGNATURE PAGE TO DEVELOPMENT AGREEMENT}

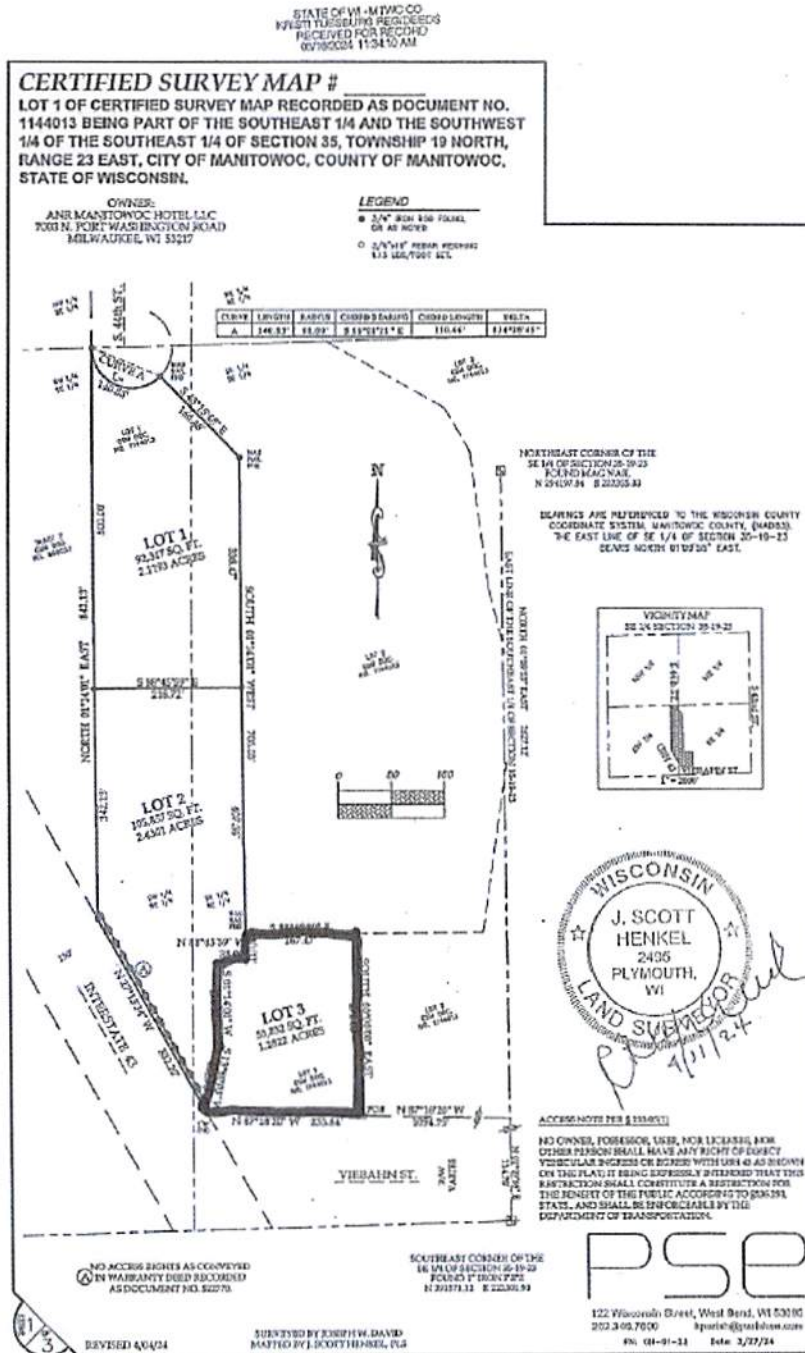


Exhibit A

Legal Description of the Property:

Lot 3 of the Certified Survey Map Recorded as Document 1272380 Being Part of Lot 1 of the Certified Survey Map Recorded as Document No. 1144013 Being a Part of the Southeast 1/4 and the Southwest 1/4 of the Southeast 1/4 of Section 35, Township 19 North, Range 23 East, City of Manitowoc, County of Manitowoc, State of Wisconsin Encompassing 1.2822 Acres.

Depiction of the Property:





**Exhibit C
Concept Plans**

To Be Submitted and Approved per Section I(E)



Exhibit D
CITY OF MANITOWOC
TAX INCREMENT DISTRICT NO. 23 TAX INCREMENT REVENUE NOTE

THIS TAX INCREMENT NOTE (the "Note") is issued this ____ day of _____, 2024 by the CITY OF MANITOWOC, a Wisconsin municipal corporation (the "City") to ANR MANITOWOC RETAIL LLC, its successors and assigns ("Developer").

WITNESSETH

- A. The City and Developer have entered into a development agreement dated _____, 2024 (the "Development Agreement").
- B. The Note is issued by the City pursuant to the Development Agreement.
- C. Terms that are capitalized in this Note that are not defined in this Note and that are defined in the Development Agreement shall have the meanings assigned to such terms by the Development Agreement.

AGREEMENT

1. General. The City hereby promises to pay to Developer, subject to all of the terms and conditions of this Note, the principal amount of One Hundred Fifty Thousand Dollars (\$150,000), together with interest as described in Section 2, below, in payments described in Section 3, below.

2. Interest. The rate of interest shall be five percent (5%) per annum. Interest shall accrue from January 1, 2028 with proof of a valid building permit issuance for the Project.

3. Payments. Payments of principal and interest in the amounts set forth on the maturity schedule attached hereto as Schedule 1 shall be due in annual installments beginning on November 1, 2028 and annually thereafter through the calendar year following the closure of Tax Increment District No. 23. Each November 1st payment date described in this Section 3 is referred to as a "Note Payment Date." Interest accrued through November 1st preceding the first Note Payment Date shall be added to the principal outstanding under the Note effective on such November 1st date. Prepayment of the amounts evidenced by this Note may be made in full or in part at any time without penalty. If, by the final Note Payment Date, there has been over the life of this Note insufficient Tax Increment to pay all principal and interest due under this Note, the City shall have no further obligation to make any payments whatsoever on this Note. This Note is unsecured and is non-recourse.

4. Nature of Obligation. The principal and interest payments to be made on the Note Payment Dates shall be payable solely from the Tax Increment (as defined in the Tax Increment Law) from the Property (a) accrued during the calendar year or years preceding the applicable Note Payment Date, and (b) actually received by the City by such Note Payment Date. The Note shall be a special and limited obligation of the City and not a general obligation. On each Note Payment Date, the City shall apply all Tax Increment received from the Property for the previous year's taxes in the following priority:



First, 10% to the City's reasonable cost to administer the District and for any other purpose permitted by the Project Plan and Tax Increment Law.

Second, to payment of any interest due on this Note.

Third, to the payment of any past due principal on this Note.

Fourth, to payment of any principal due under this Note on the Note Payment Date.

Nothing shall preclude City from using increment from other properties in the TID to pay this Note, however, the City is not required to use increment from other properties in the TID if the district is not performing.

5. Subject to Appropriations. The City's obligation to make payments on this Note shall be conditioned on the requirement that the Common Council shall appropriate Tax Increment to make such payments, there shall not be an Event of Default on the part of the Developer under the Development Agreement, and that all payments then due under any special assessments, if any, have been paid.

6. Transfer of Note. In order to transfer or assign this Note, the transferee or assignee shall surrender the same to the City either in exchange for a new bond or for transfer of this Note on the registration records for this Note maintained by the City. Any transferee or assignee shall take this Note subject to the foregoing conditions and subject to all of the provisions of the Development Agreement.

7. Miscellaneous. This Note is subject to the Tax Increment Law and to the Development Agreement.

[SIGNATURE PAGE FOLLOWS]



CITY:

CITY OF MANITOWOC, WISCONSIN

By: _____

Justin M. Nickels, Mayor

Date: _____, 2024

Attest: _____

Mackenzie Reed, City Clerk

Date: _____, 2024

APPROVED AS TO FORM:

Eric Nycz, City Attorney

Date: _____, 2024

DEVELOPER:

ANR MANITOWOC RETAIL LLC

By: _____

Rachit Dhingra

Its: _____

Date: _____, 2024