

Public Infr
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Rev: 11/12/15

**DEVELOPMENT AGREEMENT
924 YORK STREET PARKING LOT**

THIS AGREEMENT (hereinafter called the "Agreement") made as of the ___ day of November, 2015, by and between the **City of Manitowoc** (hereinafter called the "City") and **924 York LLC**, a Wisconsin limited liability company (hereinafter called the "Developer") and **Forefront Management LLC**, a Wisconsin limited liability company (hereinafter called the "Borrower"). The City, Developer and Borrower may collectively be referred to as the "Parties."

WITNESSETH:

WHEREAS, the Community Development Authority of the City has approved a loan to the Borrower (refer to Exhibit A, attached) to fund acquisition of the property legally described on the attached Exhibit B (tax parcel number 000-167-100) generally located at 924 York Street (hereinafter the "Property"); and

WHEREAS, the Developer, under separate agreement with the Borrower, has agreed to construct a parking area on the Property for use by the Borrower and the City; and

WHEREAS, the Property is a brownfield site with a legacy of historic land uses that involved underground tanks and the storage of petroleum products on the site, and that may have experienced a release of such products to the soil or groundwater; and

WHEREAS, the City, Developer, and Borrower are committed to seeing the Property achieve environmental closure, to redeveloping the Property into a parking area that will support the growth of jobs and tax base, and to bringing appropriate resources to bear on the long term maintenance and management of the Property.

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

- I. Proposed Project Scope and Developer Obligations. Developer shall demolish the existing buildings and construct a parking lot on the Property that substantially conforms with the site plan, attached as Exhibit C (the "Construction Project"). The Construction Project includes two phases: (1) construction of a compacted gravel parking surface for use from November of 2015 through May 2016, and (2) construction in May 2016 of an asphalt paved parking area conforming with the approved site plan (SP 9-2015 dated 10/13/15). Developer shall also comply with the following requirements:
 - A. Developer shall secure the services of one or more appropriate contractor(s) and expend all funds necessary to complete the Construction Project.
 - B. Developer shall ensure that the parking lot is constructed to standards acceptable to the City and shall allow, at all reasonable times, for City inspection of the Construction Project.
 - C. Upon completion of the compacted gravel parking surface, the Developer shall lease the Property to the City at \$0.00 cost. The lease shall be in form and content approvable by the City Attorney, and the lease shall be assignable by the City to the Borrower.

- D. Upon completion of the asphalt paved parking area conforming to the approved site plan, the Developer intends to sell the Property to the Borrower.
 - E. The Developer shall comply with all applicable Federal, State, and Municipal codes throughout the Construction Project, including submitting necessary plans and obtaining applicable permits.
 - F. The Developer's obligations under this Agreement will be considered satisfied and complete when the scope of work is complete as deemed with a certificate of completion from the City.
- II. Proposed Project Scope and Borrower Obligations. Borrower shall acquire the Property from the Developer as part of its business expansion (the "Expansion Project"). The Expansion Project includes the remodeling of offices at 600 York Street to provide for 80 to 100 new employees including information technology and billing to support a larger expansion of the company at multiple locations around the US. Borrower's plans for the Expansion Project also include the following:
- A. Borrower intends to accept loan funds from the City under terms approved by the Community Development Authority. (The loan terms and repayment are governed under a separate agreement.)
 - B. After acquisition, and as a condition of loan approval, Borrower shall deed the Property to the City and to lease up to 50 parking stalls from the City. The lease will reflect \$0.00 cost to Borrower over the period of loan repayment.
 - C. The Borrower has provided a parking plan that shows that at least 75% of its anticipated parking demand can be met with off-street parking upon completion of the Construction Project. The Borrower agrees to make a good faith effort to require that its employees park in assigned off-street spaces, thus opening up on-street spaces for the Borrower's customers and other downtown businesses.
- III. Financing and City Obligations. City shall provide assistance toward closure of the environmental issues at the Property. Expressly contingent upon achieving protection from any ongoing environmental liabilities, the City will accept ownership of the Property. The City's obligations also include the following:
- A. The City will provide to the benefit of the Construction Project and Expansion Project Phase 1 and Phase 2 Environmental Assessments of the Property under its US Environmental Protection Agency 2015 Site Assessment Grant. The City will also fund the removal of an underground storage tank as part of the Environmental Assessment. The Phase 1 reports will include completion of the All Appropriate Inquiries process for Borrower and City.
 - B. Should environmental issues at the Property require remediation actions beyond the scope of the Construction Project and the City financing defined in Section III.A. above, the City will pursue additional funding under its US Environmental Protection Agency Brownfields Revolving Loan Fund. Under such circumstances, it will be understood by all Parties that this Agreement may need to be amended or revised.

- C. The City's Community Development Authority has approved a loan to Borrower to fund the Borrower's cost of acquiring the Property. (The loan terms and repayment are governed under a separate agreement.)
- D. Upon execution of a lease with the Developer, the City shall provide winter maintenance of the compacted gravel parking area including snow removal. Such maintenance shall be conducted to the City's operational standards for public parking areas with compacted gravel surfaces. The City will confirm that its insurance policies provide coverage for the intended use of the Property under such lease.
- E. Upon completion of the Construction Project and transfer of the Property to the City, the City shall provide ongoing maintenance and operation of the parking area. The City shall lease to Borrower up to 50 parking spaces on the Property. At least 3 of the newly constructed parking spaces shall be made available to other lessees. The lease shall be for an initial term of 9 years and shall be renewable at the option of the Borrower and City for up to 6 additional years.
- F. The City will cooperate with respect to the timely issuance of all approvable permits necessary for completion of the Project. All Parties agree to use reasonable efforts to obtain performance on the conditions of this Agreement.

IV. Rights of Access

- A. The Developer shall permit representatives of the City to have reasonable access to the Property at all reasonable times for the purposes of enforcing this Agreement, including, but not limited to, inspection of all work being performed in connection with the Project.
- B. **No Charge.** No compensation shall be payable nor shall any charge be made in any form by any Party for the access provided in this Section. The City shall not test, sample or remove any materials without Developer's written consent unless necessary for construction inspection and construction material testing or sampling purposes.

V. 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 Project in accordance with the terms and conditions of this Agreement is the essential and unique consideration for the obligations of the Parties; accordingly, the Parties shall, in the event of legal proceedings, authorize the remedies to compel the specific performance of the defaulting party. The Parties agree that specific performance constitutes completion of the scope of work defined in this Agreement.

- B. The Parties 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.
- E. **Insurance.** Prior to commencing demolition under this Agreement, the Developer shall obtain or cause its Contractor to provide and keep in full force and effect during demolition, an all-risk builder's risk insurance policy for the Property on which demolition is occurring with coverage equal to the total amount of the Developer's demolition contract or contracts for all improvements being demolished. Such builder's risk insurance policy shall name the Developer and the City as an additional insured, subordinate in its rights to such proceeds to the Developer's mortgagee. However, in such a case, Developer is not relieved of its obligation to perform under this Agreement. The Developer and its Contractor shall also obtain and keep in full force and effect during demolition, a comprehensive general liability insurance policy with all risks coverage of at least \$2,000,000.00 in the aggregate. Such policies of insurance shall be written by insurance companies authorized to do business in the state of Wisconsin. The City shall be named as additional insured on these certificates of insurance. Prior to commencement of demolition, the Developer shall file with the City a certificate of insurance with appropriate additional insured and notice endorsements setting forth that all coverage herein is in full force and effect and providing the City will be given 10 days written notice prior to termination or cancellation of such coverage.
- F. **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 among the Parties 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, their respective successors and assigns. The parties agree any litigation relating to this agreement shall be in Manitowoc County Circuit Court, Manitowoc, Wisconsin.

- G. **Amendments to Agreement.** This Agreement may not be changed orally, but only by agreement in writing and signed by the Parties.
- H. **Other Parties.** Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties and not for the benefit of any other persons, as fourth party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, expressed or implied, upon any other person.
- I. **No Partnership Created.** This Agreement specifically does not create any partnership or joint venture between the Parties, or render any party liable for any of the debts or obligations of any other party.
- J. **Formalities and Authority.** The Parties 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.
- K. **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: 924 York LLC
 Attention: Peter Allie
 100 Maritime Drive, Suite 3C
 Manitowoc, WI 54220

To BORROWER: Forefront Management LLC
 Attention: Brian Van De Kreeke
 801 York Street
 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.

- L. **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.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed the date first above written.

Attest:

City of Manitowoc

Justin M. Nickels, Mayor

Jennifer Hudon, Clerk

Attest:

924 York LLC

name, title

Attest:

Forefront Management LLC

name, title

**Exhibit A
CDA Loan Approval
(Project Narrative)**

To be attached.

DRAFT

Exhibit B
Legal Description

To be attached.
924 York Street (also known as 201 N 10th Street)

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**Exhibit C
Approved Site Plan**

To be attached.
(SP 9-2015 dated 10/13/15)

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