

RESOLUTION 2021- 5312

AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPER'S AGREEMENT BETWEEN TANN INVESTMENT COMPANY, LLC AND THE CITY OF KAUKAUNA

WHEREAS, TANN Investment Company, LLC proposes to develop lands currently owned by the City of Kaukauna along Oak Grove Road, Parcel 322112100, Kaukauna, Wisconsin with a 43,200 square foot industrial facility; and

WHEREAS, to assist in the City created Tax Increment Financing District No. 6; and

WHEREAS, but for the use of \$180,000.00 in Tax Increment Financing, the project would not occur; and

WHEREAS, the City of Kaukauna and TANN Investment Company, LLC have agreed upon terms in the development agreement attached herein as Exhibit "A".

NOW, THEREFORE, Be It Resolved, by the Common Council of the City of Kaukauna that the Mayor is hereby authorized on behalf of the City to enter into a Developer's Agreement with the Developer for the use of up to \$180,000.00 in Tax Increment Financing, said Development Agreement is attached and made a part hereof.

Introduced and adopted this 21st day of December, 2021.

APPROVED: _____
Anthony J. Penterman, Mayor

ATTEST: _____
Sally A. Kenney, City Clerk

DEVELOPERS AGREEMENT

This Agreement entered into as of the date stated below is by and between the City of Kaukauna (City), a Municipal Corporation and political subdivision of the State of Wisconsin, and TANN Investment Company, LLC (Developer).

WITNESSETH

WHEREAS, Developer, for the benefit of its affiliate, TANN Corporation, wishes to develop lands described in Exhibit A. or as follows:

PART OF LOT FIVE (5) OF NEW PROSPERITY CENTER, BEING LOCATED IN THE NORTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 19 EAST, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN CONTAINING 355,080 SQUARE FEET OF LAND AND BEING FURTHER DESCRIBED BY:

Commencing at the North $\frac{1}{4}$ corner of said Section 7;
Thence South $00^{\circ}49'17''$ West 652.37 feet along the East line of the NW $\frac{1}{4}$ of said Section 7 to the Easterly extension of the North line of Oak Grove Road;
Thence North $89^{\circ}10'43''$ West 402.92 feet along said extension and then the North line thereof to the Southeast corner of Lot 5 of New Prosperity Center and being the point of beginning;
Thence continue North $89^{\circ}10'43''$ West 600.00 feet along said North line and being coincident with the South line of said Lot 5;
Thence North $00^{\circ}49'17''$ East 591.56 feet to the North line of said Lot 5 and being coincident with the South line of C.T.H. "JJ";
Thence South $89^{\circ}13'31''$ East 600.00 feet along North line of said Lot 5 to the Northeast corner thereof and being coincident with the South line of said C.T.H. "JJ";
Thence South $00^{\circ}49'17''$ West 592.04 feet along the East line of said Lot 5 to the point of beginning.

WHEREAS, the City and Developer have agreed to specific plans for the development of a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping, all in accord with applicable State of Wisconsin and City building codes or other regulatory mandates; and,

WHEREAS, the City and Developer have agreed to the scope and type of improvements and have agreed to the respective obligations of each for the Development; and

WHEREAS, the authorized signature for Developer is the owner of the above described lands (Property); and

WHEREAS, this redevelopment project is located wholly within the existing Tax Increment District No. 6 (District); and

WHEREAS, subject to obtaining financial assistance set forth herein, Developer intends to undertake an industrial development (Project) that will increase property values, create new employment opportunities, and provide other tangible benefits to the surrounding neighborhood and City as a whole; and

WHEREAS, the City desires to encourage economic development, expansion of its tax base, and creation of new jobs within the City, the District and the Property. The City finds that the development of the Property and the fulfillment, generally, of the terms and conditions of this Agreement are in the vital and best interest of the City and its residents and serve a public purpose in accordance with state and local law; and

WHEREAS, the Project would not occur without the use of Tax Incremental Financing; and

WHEREAS, the City, pursuant to Common Council action dated _____, 2021 has approved this Agreement and authorized the execution of the Agreement by the proper City officials on the City's behalf; and

WHEREAS, Developer has approved this Agreement and authorized Matthew Fritsch, one of the Members of Developer, to execute this Agreement on Developer's behalf; and

WHEREAS, all terms that are in upper case but not defined in this Agreement and that are defined under the TID Law shall have the definitions assigned to such terms by the TID Law.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Developer hereby agree as follows:

1.0 Agreement

1.01 Purpose of Agreement. The parties have agreed upon a plan for the development of a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping. The purpose of this Agreement is to formalize and record the understandings and undertakings of the parties and to provide a framework within which the redevelopment of the land within the Property will take place.

1.02 Definitions. The terms listed below shall be defined for the purposes of this Agreement as follows:

- A. **Assessed Value:** means the dollar valued assigned to a property to measure applicable taxes, as determined by a municipal assessor.
- B. **City:** means the City of Kaukauna, a Wisconsin Municipal Corporation. The City may also be referred to as the City of Kaukauna.
- C. **Closing:** means the satisfactory completion, on the part of all parties, of all undertakings as specified in Sections 3.01, 3.02, and 3.03 as they relate to the different Phases of the Development.
- D. **Development:** means the overall construction of the improvements and uses anticipated by the Project and this Agreement for the Property.
- E. **Development Area:** means the sum of all property described in Exhibit A, and constitutes the total boundaries of the project for which this Agreement is provided.
- F. **Development Plan:** means the Development Area described in Exhibit A as improved by the site improvements outlined in Exhibit B and as further described by this Agreement.
- G. **Developer:** means TANN Investment Company, LLC, a Wisconsin limited liability company.
- H. **Developer Costs:** means costs directly incurred by Developer where such costs qualify for disbursement and reimbursement through the use of tax incremental financing pursuant to Section 66.1105 of the Wisconsin Statutes.
- I. **Increment:** means the increase in taxable value of the property as measured in annual property tax increase due to this development project.
- J. **Private Utilities:** means natural gas, telephone, cable television, and any other services within or serving the Development Area and not owned by the City of Kaukauna and/or Kaukauna Utilities.
- K. **Public Improvements:** means all Public Utilities and easements associated with said utilities, any other services within or serving the Development Area owned by the State of Wisconsin or the City of Kaukauna and or Kaukauna Utilities, street right of way including curb, gutter, pavement and street lights, and associated access easements, future driveways, future sidewalks, and storm water facilities related to the Development Area.
- L. **Public Utilities:** means the sanitary sewer, storm sewer, water main, lift stations, booster pumps and street lighting systems within or serving the Development Area and owned by the City of Kaukauna and/or Kaukauna Utilities.
- M. **Site Plan:** means the specific physical layout of the Development Area as shown on the Development Plan.
- N. **Tax Increment:** means the Value Increment multiplied by the incremental tax rate for TIF District 8.
- O. **Value Increment:** means the equalized value of the Development Area less the Base Value of the Development Area.
- P. **Incremental Base:** means the property value established by the Wisconsin Department of Revenue at the time TIF District 8 is created.
- Q. **Zoning Code:** means Chapter 17 of the Code of Ordinances of the City of Kaukauna. The Zoning Code may also be referred to as the "Code".

2.0 Description of Development

2.01 Development Area. The Development includes the land area previously defined in this Agreement as the Development Area. The Development Area will be redeveloped and improved with the development of a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping, with site improvements as described and depicted in the attached site plan Exhibit A.

3.0 Undertakings of the Parties

3.01 Undertakings of Developer. Developer agrees that it shall:

- A. Prepare site plans, specifications, development timetables, and budgets for redevelopment and construction work to be undertaken in the Development Area. This includes at a minimum, approval of the following bodies:
 - a. Industrial and Commercial Development Commission approval of site plan.
- B. Develop plans for the construction of a minimum of a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping within the Property.
- C. Insure a minimum assessed valuation \$2,800,00.00 (two million, eight hundred thousand dollars and zero cents) for the Development.
- D. Complete construction in a timely fashion for final occupancy on or before April 30, 2023.
- E. Purchase the Property from the City for an agreed upon price of \$228,000.00 (two hundred and twenty eight thousand dollars and zero cents), and close on the transaction before January 28, 2022.

3.02 Undertakings of the City. The City agrees that it shall:

- A. Borrow, if necessary and appropriate, sufficient funds for the performance of its obligations under this Agreement as described in this section.
- B. The City will provide the following development incentives:
 - a. **TIF Incentive**
 - i. A Developer incentive in the amount of \$180,000.00 will be provided to Developer, in line with the "but for" provisions of TIF law under Wisconsin State Statutes.
 - ii. The incentive will be paid out to Developer based on the schedule shown in Exhibit B.
 - b. **Guaranteed Valuation Benchmark**
 - i. If the Development fails to reach or exceed the agreed upon minimum valuation outlined in 3.01(C), it is understood the tax dollar will not be met to reimburse the TIF district for incentives given in this agreement. With

that, Developer agrees to an annual payment in lieu of taxes (PILOT) for the difference until the TIF district is closed. The PILOT payment formula is further defined in Exhibit C.

- ii. The PILOT payment amount shall be confirmed by the City Finance Director and Developer will be billed this difference and shall make payment in full within 30 days of receipt.
- iii. If Developer fails to make payment within 30 days then such payment will be assessed against the subject property noted in this developers' agreement
- iv. Developer further waives all public hearing and notice requirements under Wis. Stat. § 66.0703 and waives right to petition against said Special Assessment.

c. Other incentive terms and conditions

- i. Subject to the terms, covenants and conditions of the Agreement and applicable provisions of law, and as an inducement by the City to Developer to carry out the Development Project, the City will provide payments to Developer, only to assist with Developer Costs. The City's total contribution for Developer Costs shall be limited to a maximum of \$180,000.00 (City's Contribution) as per 3.02(B)(a). The City's Contribution may be prepaid at any time, but until paid in full, the payment will be provided to Developer as outlined in Exhibit B. No payments shall be distributed if Developer is not in full compliance with all provisions of this Agreement. No Payments shall be distributed if any property taxes on the Development Area are due and owing.
- ii. Issue all required permits and other project approvals in a timely manner, provided all applications for permits and project approvals are in compliance with the City's ordinance, rules, and regulations; and
- iii. Cooperate with Developer to facilitate Developer's performance under Section 3.01.

3.03. Performance Subject to Required Government Approvals. The City and Developer acknowledge that various undertakings of the parties, as described in Sections 3.01 and 3.02, require approvals from the City's Common Council and/or Industrial and Commercial Development Commission as well as from governmental bodies external to the City, some of which approvals may require public hearings and other legal procedures as conditions precedent thereto. The parties' agreements under Section 3.01 and 3.02 are conditioned upon the obtaining of all such approvals in the manner required by law. The parties to the Agreement cannot assure that all such approvals will be obtained; however, they agree to use their best good faith efforts to obtain them on a timely basis. If any of the parties is unable to obtain such approvals, all parties will, at their option, be entitled to cancel the Agreement, provided that the City has obligated no funds nor begun any work required for this Development.

4.0 Development Area Construction and Redevelopment

4.01 Agreement to Complete Redevelopment and Site Improvements. Subject to the satisfaction of the Undertakings of the City in Section 3.02, Developer shall cause the necessary redevelopment and construction of site improvements on the Development Parcel. The construction of the project shall be fully completed no later than April 30, 2023. All Development Area construction and redevelopment work shall proceed with due diligence for completion.

4.02 Agreement to Provide Minimum Building Footprint. The Developer shall cause to be built a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping, in accord with the attached Development Plan and consistent with the attached Project Timetable. Any shortfall in the building footprint shall constitute a default of the contract and will result in the incentive being reduced to correspond with the reduced assessed value and reduced increment.

4.03 Agreement to Provide Minimum Assessed Value. Developer shall cause the development of a 180' x 240' building containing a 43,200 square foot industrial facility, including 10,000 square feet of office space within said industrial facility, with surface parking and landscaping, per the site plan in Exhibit B. This project is forecasted to generate a minimum assessed value of \$2,800,000.00 on January 1, 2024 based on construction completion on or before April 30, 2023.

4.04 Additional Guarantees. In order to provide additional assurances for the performance of the Project and the use of TID #6 financing, the Developer hereby provides the following guarantees:

- A. Developer shall maintain the building in orderly condition.
- B. Developer shall own the building and the lot and guarantee the terms of this Agreement. Should Developer sell the building and/or lot, no further payments to Developer or subsequent owners shall occur.
- C. Developer will strive to provide an architectural plan that is cohesive with surrounding uses.
- D. Developer shall not apply for or receive a tax-exempt status for the Project within the life of the TIF District (2026).
- E. Developer acknowledges their responsibility for any state or federal tax implications of receiving a TIF incentive from the City of Kaukauna for this project.

ACCEPTANCE OF TANN INVESTMENT COMPANY, LLC'S INTEREST

IN WITNESS WHEREOF, Matthew Fritsch, a Member of Developer, has agreed to and executed this Contractual Agreement _____, 2021.

By:

Matthew Fritsch
Member of Developer

State of Wisconsin)
)ss.
County of Outagamie)

This instrument was acknowledged before me on this ___ day in _____, 2021 by Matthew Fritsch, Member of TANN Investment Company, LLC.

(Signature of Notary)
Expiration of Commission: _____

ACCEPTANCE OF CITY OF KAUKAUNA'S INTEREST

The foregoing Contractual Agreement is hereby duly accepted by the City of Kaukauna _____, 2021.

By:

Anthony J. Penterman
Mayor, City of Kaukauna

Attest:

Sally A. Kenney
Clerk, City of Kaukauna

State of Wisconsin)
)ss.
County of Outagamie)

This instrument was acknowledged before me on this ___ day in _____, 2021 by Anthony J. Penterman as Mayor and Sally A. Kenney as Clerk of the City of Kaukauna.

(Signature of Notary)
Expiration of Commission: _____

Exhibit A. Development Area

Certified Survey Map document is shown on the following three pages

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CERTIFIED SURVEY MAP NO. _____

PART OF LOT FIVE (5) OF NEW PROSPERITY CENTER, BEING LOCATED IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 19 EAST, CITY OF KAUKAUNA, OUTAGAMIE COUNTY, WISCONSIN.

SHEET 2 OF 3

SURVEYOR'S CERTIFICATE:

I, Thomas M. Kromm, Wisconsin Professional Land Surveyor, certify that I have surveyed, divided and mapped under the direction of the City of Kaukauna, part of Lot Five (5) of New Prosperity Center, being located in the Northeast 1/4 of the Northwest 1/4 of Section 7, Township 21 North, Range 19 East, City of Kaukauna, Outagamie County, Wisconsin containing 355,080 Square Feet (8.1515 Acres) of land and being further described by:

Commencing at the North ¼ corner of said Section 7;
Thence South 00°49'17" West 652.37 feet along the East line of the NW ¼ of said Section 7 to the Easterly extension of the North line of Oak Grove Road;
Thence North 89°10'43" West 402.92 feet along said extension and then the North line thereof to the Southeast corner of Lot 5 of New Prosperity Center and being the point of beginning;
Thence continue North 89°10'43" West 600.00 feet along said North line and being coincident with the South line of said Lot 5;
Thence North 00°49'17" East 591.56 feet to the North line of said Lot 5 and being coincident with the South line of C.T.H. "JJ";
Thence South 89°13'31" East 600.00 feet along North line of said Lot 5 to the Northeast corner thereof and being coincident with the South line of said C.T.H. "JJ";
Thence South 00°49'17" West 592.04 feet along the East line of said Lot 5 to the point of beginning.

Said lands subject to all easements and restrictions of record. That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the City of Kaukauna subdivision ordinance in surveying, dividing and mapping the same. That this map is a correct representation of all exterior boundaries of the land surveyed and the division thereof.

Dated this _____ day of _____, 2021.

Wisconsin Professional Land Surveyor: Thomas M. Kromm

This Certified Survey Map is a part of tax parcel 322112100.
This Certified Survey Map is fully contained within the property described in the following recorded instrument:
Doc. No. 1709794.
All building setbacks and other land use requirements should be verified by the City of Kaukauna prior to any construction or other land use activity. There may be easements of record which affect the lands described on this Certified Survey Map but are not shown hereon. This Certified Survey Map does not constitute a warranty as to the existence or non-existence of any easements or agreements, which may affect said lands. A complete and accurate title report or abstract of the described property would reveal any easements or agreements of record.

COMMON COUNCIL RESOLUTION

"Resolved by the Common council of the City of Kaukauna, that this Certified Survey Map is hereby approved." Passed and approved by resolution No. _____ on this _____ day of _____, 2021.

Mayor – Anthony J. Penkerman

Date

I hereby certify that the above is a true and correct copy of the resolution adopted by the Common Council on _____, 2021.

City Clerk – Sally Kenney

Date

Exhibit B: Monetary Incentive Disbursement Schedule

The monetary incentive will be paid out within 30 days of successfully passing each of the inspection points listed in the table below at the percentage listed.

Inspection Points	Percentage
Foundation Inspection	50%
Final Occupancy Inspection	50%

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Exhibit C: PILOT Payment Formula and Example

PILOT Formula: $(A-B)/1,000 \times D = E$

Example: For tax bills that will be received in December 2024 for the 2024 levy, let's assume the actual assessed value that is valued as of January 1, 2024 comes in at \$2,600,000 and the total mill rate on the 2024 tax bill calculates to be \$18.50. The formula will then take the difference of the Guarantee Assessed value outlined in 3.01(C) and the actual to find the difference. In this example that is \$200,000. That \$200,000 is what the PILOT will be based on. That \$200,000 is then converted to 1,000's and multiplied by the mill rate on subject tax bill, in this example \$18.50. A PILOT payment of \$3,700 would be due within 30 days of receipt.

Year	Guarantee Assessment	Actual Assessed value	Assessed Difference	Current Year Mill Rate	PILOT
	(A)	(B)	(C)	(D)	(E)
2024	\$2,800,000	\$2,600,000	\$200,000	\$18.50	\$3,700

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