

III

Res. No. 130 - 21 - 22. By Alderpersons Mitchell and Filicky-Peneski.  
February 7, 2022.

A RESOLUTION authorizing entering into a Development Agreement with  
CORTA Sheboygan, LLC and NS Retail Holdings, LLC.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute  
the Development Agreement Between CORTA Sheboygan, LLC, NS Retail Holdings,  
LLC, and the City of Sheboygan regarding property located at 518 S. Taylor  
Drive, a copy of which is attached hereto and incorporated herein.

FAP

\_\_\_\_\_  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the  
Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**DEVELOPMENT AGREEMENT  
BETWEEN  
CORTA SHEBOYGAN, LLC  
NS RETAIL HOLDINGS, LLC  
AND  
CITY OF SHEBOYGAN**

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2022 (the "Agreement"), by and between CORTA Sheboygan, LLC, a Florida limited liability company, with its principal offices located at 16232 SW 92 Ave., Miami FL 33157, and a registered agent in Wisconsin located at 301 S. Bedford St., Suite 1, Madison WI 53703, (hereinafter "Developer"), NS Retail Holdings, LLC, a Delaware limited liability company, with its principal offices located at 5910 N. Central Expressway, Suite 1600, Dallas TX, 75206, and a Registered Agent in Wisconsin, Registered Agent Solutions, Inc., 901 S. Whitney Way, Madison WI 53711 (hereinafter "NS Retail"), and the City of Sheboygan, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City").

**RECITALS**

**WHEREAS**, Developer is in the business of providing real estate site selection and development services; and

**WHEREAS**, NS Retail owns certain property located at 518 S. Taylor Drive in Sheboygan, Sheboygan County, Wisconsin, (the "Property"); said property includes land and a building that previously housed a ShopKo department store; and

**WHEREAS**, NS Retail has entered into an agreement with Developer to redevelop the property into a two-tenant retail box with two national retailers not currently in the Sheboygan market, and to construct an additional building on an outlot that is part of the land and will be owned by Developer in order to develop a nationally branded food or service use (referred herein collectively as the "Project"); and

**WHEREAS**, The City believes that the retail development project on the Property is in the vital and best interests of the City and the health, safety and welfare of its residents, in part because of the increase in the City's tax base resulting from the Project; and

**WHEREAS**, It is in the mutual interest of all parties to proceed with the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the NS Retail through a Development Incentive Payment in order to bring about the development of the Project by the Developer.

**AGREEMENT**

**ARTICLE I.  
DEFINITIONS**

All capitalized terms used herein and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

"Agreement" means this Agreement, as the same may be from time to time modified, amended or supplemented.

“Development Incentive Payment” means a lump sum payment in the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) paid by the City to NS Retail pursuant to the terms in Section 201, below.

“Tax Incremental Value” means the assessed value of the Property as of January 1, 2023, less the assessed value of the Property as of January 1, 2022.

## ARTICLE II. DEVELOPMENT INCENTIVE PAYMENT PROVISIONS

**Section 201. *Incentive Payment.*** The City agrees to make a Development Incentive Payment (defined below) as an inducement for the development of the Project. Said payment is conditioned on the completion of the project with a Tax Incremental Value of Four Million Six Hundred Thousand Dollars (\$4,600,000), of which no less than Three Million Four Hundred Thousand Dollars (\$3,400,000) of the increment shall be realized as a result of the renovation of the former ShopKo store and no less than One Million Two Hundred Thousand Dollars (\$1,200,000) realized as a result of the development of the outlot. Provided Developer has complied with the terms of the Agreement and provided reasonable evidence to the City of the same (“Increment Requirements”), the City agrees to pay the Development Incentive Payment to NS Retail. The Development Incentive Payment shall be paid by June 30, 2022. If Developer fails to provide satisfactory evidence that the Increment Requirements have been met, no payment shall occur.

**Section 202. *Refund of Incentive Payment.*** The Parties recognize that the City does not have the authority on its own to determine the Tax Increment Value, and that an assessed value of the Project will not be determined until after the Development Incentive Payment is made. As such the NS Retail agrees that should the Increment Requirements not be met relative to the assessed value of the Property and its constituent parcels as of January 1, 2023, it shall refund the Development Incentive Payment by January 31, 2023.

**Section 203. *Purpose.*** The Development Incentive Payment made under this Agreement is provided by the City as part of a negotiated, lawful contract with Developer and NS Retail in exchange for consideration, including requirements to develop the Property in a manner that inures to the benefit of the general public. Said payments are in no way tied to future property tax payments and do not provide any future tax break, nor do they refund already paid taxes.

## ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

**Section 301. *Representations and Warranties of the Developer.*** The Developer makes the following representations and warranties which the City may rely upon in entering into this agreement.

(A) Developer is a duly organized and existing limited liability company in current status under the laws of the State of Florida, registered as a foreign LLC in Wisconsin, with a registered agent on file with the Wisconsin Department of Financial Institutions.

(B) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by Developer, and no other or further acts or proceedings of Developer are necessary to authorize and approve the execution, delivery and performance of this Agreement and the



matters contemplated hereby. This Agreement has been duly executed and delivered by Developer and constitute the legal, valid and binding agreement and obligation of Developer, enforceable against it in accordance with their respective terms.

(C) The Project to be constructed will be fully subject to taxation under Wisconsin Property Tax Laws. Developer, for itself, its successors and assigns, shall take no action(s), and shall file no claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under Property Tax Laws.

**Section 302. Representations and Warranties of NS Retail Holdings.** NS Retail Holdings makes the following representations and warranties which the City may rely upon in entering into agreement.

(A) NS Retail Holdings is a duly organized and existing limited liability company in current status under the laws of the State of Delaware, registered as a foreign LLC in Wisconsin, with a registered agent on file with the Wisconsin Department of Financial Institutions.

(B) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by NS Retail Holdings, and no other or further acts or proceedings of NS Retail Holdings are necessary to authorize and approve the execution, delivery and performance of this Agreement and the matters contemplated hereby. This Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by NS Retail Holdings and constitute the legal, valid and binding agreement and obligation of NS Retail Holdings, enforceable against it in accordance with their respective terms.

(C) NS Retail Holdings is the current owner of the Property.

(D) The Project to be constructed will be fully subject to taxation under Wisconsin Property Tax Laws. NS Retail Holdings, for itself, its successors and assigns, shall take no action(s), and shall file no claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under current Property Tax Laws.

#### **ARTICLE IV. INDEMNIFICATION OF THE CITY**

**Section 401. Indemnified Parties.** For purposes of this Agreement, the Indemnified Parties are: the City and its governing body members, officers, agents—including independent contractors, consultants, and legal counsel—servants and employees.

**Section 402. Indemnification.** Except for any willful misrepresentation, any willful misconduct, or negligent acts of the Indemnified Parties, the Developer and NS Retail Holdings will protect and defend the Indemnified Parties for actual damages from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the action or inaction of the Developer and/or NS Holdings (or other persons acting on their behalf or under its direction or control or as their principal) under this Agreement. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed

to be covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

## **ARTICLE V. MISCELLANEOUS**

**Section 501. *Conflict of Interests; City Representatives Not Individually Liable.*** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the parties to this agreement or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer, NS Retail Holdings, or a successor or on any obligations under the terms of this Agreement.

**Section 502. *Titles of Articles and Sections.*** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 503. *Successors and Assigns.*** This Agreement shall be binding upon the respective successors and assigns of the parties.

**Section 504. *Notices and Demands.*** A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (a) in the case of the Developer, is addressed to or delivered personally to the Developer at 16232 SW 92 Ave., Miami FL 33157; and
- (b) in the case of NS Retail Holdings, is addressed to or delivered personally to NS Retail Holdings at 5910 N Central Expressway, Suite 1600, Dallas, TX 75206; and
- (b) in the case of the City, is addressed to or delivered personally to the City, Attention: City Clerk, at 828 Center Avenue, Sheboygan, Wisconsin 53081;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section. If delivered by registered or certified mail, such notice, demand or other communication shall be deemed delivered and received upon deposit in the U.S. Mail.

**Section 505. *Governing Law.*** This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

**Section 506. *Drafting.*** Each of the Parties hereto acknowledges that each Party was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against any Party hereto because one is deemed to be the author thereof.

**Section 507. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signatures delivered by facsimile, email (in pdf.) or similar electronic methods shall be deemed to be original signatures for all purposes.

**Section 508. Recording.** This agreement or a memorandum of this Agreement shall be recorded in the Office of Sheboygan County Register of Deeds against the Property at the cost of NS Retail Holdings.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, and NS Retail Holdings has caused this Agreement to be duly executed in its name and behalf by its members on or as of the day first above written.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its members, on or as of the day first above written.

**CITY OF SHEBOYGAN**

**CORTA SHEBOYGAN, LLC**

BY: \_\_\_\_\_  
Ryan Sorenson, Mayor

BY: \_\_\_\_\_  
Cory Presnick

ATTEST: \_\_\_\_\_  
Meredith DeBruin, City Clerk

**NS RETAIL HOLDINGS, LLC**

BY: \_\_\_\_\_  
Kirk Klatt

**ACKNOWLEDGMENTS**

STATE OF WISCONSIN    )  
  ) ss  
SHEBOYGAN COUNTY    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, the above named Ryan Sorenson, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires \_\_\_\_\_



STATE OF FLORIDA )  
 ) ss  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, the above named Cory Presnick, \_\_\_\_\_ of CORTA Sheboygan, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires \_\_\_\_\_

STATE OF TEXAS )  
 ) ss  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2021, the above named Kirk Klatt, \_\_\_\_\_ of NS RETAIL HOLDINGS, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires \_\_\_\_\_

Authorized pursuant to Res. No. \_\_\_\_-21-22.

This instrument drafted by:

City Attorney Charles Adams  
828 Center Ave., Suite 210  
Sheboygan, WI 53081  
WI State Bar No. 1021454