

VIII

R. C. No. 39 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. July 5, 2022.

Your Committee to whom was referred Direct Referral Res. No. 33-22-23 by Alderpersons Mitchell and Filicky-Peneski authorizing entering into a Development Agreement with Sheboygan Southpoint Development, LLC.; recommends adopting the Resolution.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

Res. No. 33 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
June 27, 2022.

A RESOLUTION authorizing entering into a Development Agreement with Sheboygan Southpoint Development, LLC.

WHEREAS, this Development Agreement was previously discussed with the Common Council in closed session on September 20, 2021; and

WHEREAS, the primary change to the agreement previously discussed is an increase in the incentive cap.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Development Agreement Between Sheboygan Southpoint Development, LLC and the City of Sheboygan regarding proposed development in the Sheboygan Enterprise campus, a copy of which is attached hereto and incorporated herein.

F+P
adopt

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
SHEBOYGAN SOUTHPOINT DEVELOPMENT, LLC
AND THE CITY OF SHEBOYGAN

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into as of the ____ day of _____, 20__ by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin, with its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter "City"), and Sheboygan Southpoint Development, LLC, a Wisconsin limited liability corporation with its registered agent's office located at c/o G&K Wisconsin Services, LLC, 200 S. Washington St., Suite 100, Green Bay, WI 54301 (hereinafter "Developer").

RECITALS

Developer has proposed building a 100,000 square foot stucco and metal exterior "spec" industrial building in the City's SouthPointe Enterprise campus with the goal of attracting a tenant during or shortly after construction (the "Project.") The building would be designed in such a manner that it could be expanded by another 50,000 to 100,000 square feet.

As part of the Project, Developer has agreed to purchase from the City approximately 14.7 acres of land in the SouthPointe Enterprise Campus (the "Property") for \$367,500, to reimburse the city for any brokerage fees related to the sale of the property, and to expend \$7,900,000 in hard and soft costs to develop and construct the building. Said Development shall take place in Tax Incremental Financing District 18 (TID 18). In exchange for said Development, the City agrees to make an initial payment in the amount of \$367,500 after construction begins and annual payments after the first full year of completion totaling 20% of Tax Incremental Value in equal amounts for a total of ten years ("Development Incentive Payments") to reimburse Developer for the costs of engaging in the Development ("Project Costs.") Said payments shall be made in accordance with State Tax Increment Law, in order to further create incentives and opportunities for appropriate private development, including the development that is the subject of this agreement, which will contribute to the overall development of the City. The sum total of all payments to be made by the City to the Developer shall be capped at One Million Five Hundred Eighty Thousand (\$1,580,000) Dollars.

The City is authorized, by Section 66.1105(9)(a) of Wisconsin Statutes, as amended, to pay the Project Costs from the special fund of TID 18 or from the proceeds of municipal obligations issued under Wisconsin Statutes, as amended.

The City is authorized by Section 66.1105(3)(e) of Wisconsin Statutes, as amended, to enter into any contract or agreement necessary or convenient to implement the provisions and effectuate the purposes of the Project Plan for TID 18, as it may be amended.

The Project to be undertaken by the Developer, as described herein, is of particular importance to the City and provides special benefits to the City because of its location in the City's new SouthPointe Enterprise Campus, because it will serve to encourage further development within the campus.

The Project Plan includes "Development Incentive Payments" as eligible project costs for purposes of carrying out the Project Plan.

The City proposes to enter into this Development Agreement with the Developer to achieve the objectives of TID 18 and to facilitate the implementation of TID 18's Project Plan, as it may be amended, and the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the continued development in accordance with this Agreement.

It is in the mutual interest of all parties to proceed with development of the Project, and in return for the benefits to be derived therefrom, the City is prepared to provide financial assistance to the Developer through development incentives in order to bring about the development and thereby promote the sound growth of the City's downtown area.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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

"Developer" means Sheboygan Southpoint Development, LLC and its permitted successors and assigns.

"Development Incentive Payment" means payments in the maximum amount of One Million Five Hundred Eight Thousand Dollars (\$1,580,000) paid by the City to Developer pursuant to the terms in Article VI below.

"Events of Default" means any of the events described in Article X hereof.

"Hard costs" means funds spent physically constructing the Project. Such costs may include site work; remediation; architectural and civil costs; remediation; utilities serving the Project; contractor, subcontractor, and construction management fees; storm water facilities (both offsite and onsite); geotechnical and other testing; construction completion and payment and performance bonds; and all labor and materials required.

"Investment" means all costs and expenditures made or incurred from the date of this Agreement and on or before the completion date of the construction of all buildings on the Project Site as required by this Agreement. Such costs and expenditures shall not include the purchase price of the land, inventory, moveable equipment, or personal property items.

"Plans and Specifications" means the plans and specifications for the Project prepared by the Developer which have previously been approved by the City Plan Commission in accordance with all procedures and requirements of the City for such approvals.

"Project" means the development proposed by Developer herein for construction of a 100,000 square foot stucco and metal exterior "spec" industrial building upon 14.7 acres of

land to be purchased by the Developer in the City's SouthPointe Enterprise campus (the "Property"), constructed in a manner so as to facilitated expansion of the building by another 50,000 to 100,000 square feet.

"Soft Costs" means funds reasonably required to be spent in support of the physical construction of the Project. Such costs may include acquisition costs, appraisals, title insurance, document recording, legal and accounting costs, permit costs, financing costs, and property insurance, but shall not include real property or personal property taxes.

"Tax Incremental Value" means the assessed value of the Property as of January 1 of the year following completion of construction of the Project and the issuance of an occupancy permit by the City, less the assessed value of the Property as of January 1, 2022.

"TID Project Plan" means the Project Plan for proposed Tax Incremental Financing District No. 18 of the City of Sheboygan, Wisconsin.

ARTICLE II. OVERVIEW OF THE PROJECT

The Project consists of the purchase from the City of 14.7 acres of land in the SouthPointe Enterprise Campus (the "Property") and the construction thereupon of a 100,000 square foot stucco and metal exterior "spec" industrial building.") The building would be designed in such a manner that it could be expanded by another 50,000 to 100,000 square feet. Construction shall be completed by November 30, 2023 at an estimated total project cost of \$7,900,000.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer makes the following representations and warranties which the City may rely upon in entering into this and all other agreements with the Developer and granting all approvals, permits and licenses for the Project.

(A) Developer is a duly organized and existing limited liability company in current status under the laws of the State of Wisconsin.

(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, and the exhibits, documents and instruments associated herewith and made a part hereof, have 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, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.

(C) There are no lawsuits filed or pending, or to the knowledge of Developer, threatened against Developer that may in any way jeopardize the ability of Developer to perform its obligations hereunder.

(D) Developer has sufficient funds through equity investment in Developer and through lending sources for the completion of the Project, and Developer shall, from time to time upon the request of the City, provide evidence thereof satisfactory to the City. The Developer shall promptly notify the City of any material adverse change in the Developer's financial condition.

(E) 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 neither take any action(s) or file any claim(s) seeking, promoting or encouraging exemption of the Project in whole or part from taxability under Property Tax Laws, nor shall it advocate any position or change in state law which would jeopardize or call into question the taxability of the Project.

ARTICLE IV. UNDERTAKINGS OF THE DEVELOPER

4.1 Purchase of the Property. The Developer shall close on the purchase from the City within ninety days of the date of this Agreement of approximately 14.7 acres of land in the

SouthPointe Enterprise Campus. Developer shall pay \$367,500.00 and reimburse the city for any brokerage fees related to the sale of the property.

4.2 Construction of the Project. The Developer shall commence construction of the Project within sixty days after closing of the purchase of the Property. Developer shall complete construction by November 1, 2023.

4.3 Compliance with Codes, Plans and Specifications, Etc. The building and other improvements to be constructed upon the Property, the construction thereof, and their uses shall comply with all applicable codes and ordinances of the City, and with all pertinent provisions of this Agreement, the Development Plan, The TID 18 Project Plan, and the Plans and Specifications. The acceptance of this Agreement and granting of any and all approvals, licenses and permits by the City shall not obligate the City to grant any variances, exceptions or conditional use permits, or approve any building the City determines not to comply with the City codes and ordinances. All work done by or for Developer shall be in accordance with all applicable City codes and ordinances, the Plans and Specifications, and other applicable laws and regulations. All plans for each aspect of the work must be approved by the City (which may delegate such approvals to its staff in accordance with City codes, ordinances and policies). If permits or approvals are required for any such work, issuance of such permits or approvals is a condition to commencement of such work, and Developer will at its sole cost and expense take such action as required to seek such approvals and permits.

4.4 Taxability of the Project. Developer hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under state law. Developer shall take no action at Open Book, Board of Review, or in Circuit Court to reduce the assessed valuation of the Project to a value lower than that necessary to create a Tax Incremental Value less than the sum of the Minimum Investment amount as defined in Article V. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate directly any position or change in state law which would jeopardize or call into question the taxability of the Project or eliminate real estate or personal property taxation in the State of Wisconsin. This section shall remain in place until all payments to be made by the City pursuant to this Agreement have been made.

4.5 Payments in Lieu of Taxes. Notwithstanding the above, in the event that the Project is determined at any time to be exempt from real and/or personal property taxation under state law, or in the event that a particular tax is eliminated or repealed, Property Owner, for itself and its successors and assigns, agrees to make payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the property were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project and the Property.

4.6 Good Faith Hiring and Contracting Efforts. Developer agrees to exercise good faith in striving whenever possible to hire, retain, and contract with qualified individuals and businesses residing and/or based in the City of Sheboygan, as well as veteran- and minority-owned businesses. Developer agrees to undertake reasonable efforts to make opportunities known and available to local residents and businesses, such as advertising in publications and internet resources frequented by such residents and businesses.

ARTICLE V. DEVELOPER GUARANTEE TO CITY

Developer for itself, its successors and assigns, hereby guarantees to construct or provide for private construction of the Project with an Investment of no less than Six Million Seven Hundred and Fifty Thousand (6,750,000.00) Dollars within 15 months after commencement of construction. Developer shall provide the City a statement of its investment in the Project Site, computed in accordance with this section, no later than sixty (60) days after the completion date of construction of the Improvements on the Project Site as required by the Agreement, or such later date as the parties may hereafter agree. Such statement shall be certified by a certified public accountant.

If the Tax Incremental Value of the buildings and other Improvements on the Project Site, as determined by the City Assessor's office for real estate tax purposes, is equal to or greater than \$6,750,000 on January 1, 2024, or such later date as the parties may hereafter agree, then the Developer shall be deemed to have satisfied its obligation with respect to Minimum Investment.

ARTICLE VI. DEVELOPMENT INCENTIVE

6.1 Incentive Payment. The City agrees to make payments to the developer as follows:

- a) Within sixty days after the issuance of all necessary construction permits and commencement of construction by Developer, the City shall make a payment in the amount of \$367,500 to Developer. Such amount represents the amount paid by the Developer for the Property.
- b) Upon satisfaction of Developer's obligations with respect to the Investment provisions contained in Article V herein, the City will further make up to ten annual payments to the Developer on or before September 30 of each year in the amount equal to one tenth (1/10th) of twenty percent (20%) of the Tax Incremental Value in the first year of full assessment after construction less the \$367,500 initial payment, except that in no case shall the amount paid in any given year exceed an amount equivalent to 95% of the tax increment (excess taxes generated as a result of a positive Tax Incremental Value) generated by the project in that year. Payment by the City of the annual payments herein provided shall only be made if the Developer has paid current year property taxes related to the Property (real and personal) to the City in full. The City's obligation to make such annual payments shall terminate on the tenth year after the first annual payment.
- c) The initial payment of Three Hundred Sixty-Seven Thousand Five Hundred (\$367,500.00) Dollars and the ten annual payments shall together constitute the Development Incentive Payments. Said Development Incentive Payments shall be made as an inducement for the development of the Project. In no case shall the sum total of all payments exceed the lesser of 20% of the equalized Assessed value for the first year after full assessment after construction or One Million Five Hundred Eighty Thousand (\$1,580,000) Dollars.
- d) If the Developer has not completed the Project by November 1, 2023, then the City's obligation to make Development Incentive Payments hereunder shall terminate. Additionally, if the Developer has not completed the Project by, the Developer shall, within sixty days,

either return the initial payment of Three Hundred Sixty-Seven Thousand Five Hundred (\$367,500.00) Dollars, or deed the Property back to the City.

6.2 Purpose. The Development Incentive Payment made under this Agreement is provided by the City as part of a negotiated, lawful contract with Developer 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 VII. CONDITIONS TO THE UNDERTAKINGS OF THE CITY

As a condition to each and all of the covenants, agreements and other obligations of the City under this Agreement, all of the following shall occur, in addition to all other requirements and conditions set forth in this Agreement:

- a) The Project shall be completed by November 1, 2023.
- b) All representations, guarantees, and warranties of Developer set forth in Articles III, IV, and V, and other representations and warranties in this Agreement and in all agreements expressly referred to herein shall be true, complete and correct.
- c) All covenants and obligations of Developer under this Agreement are duly performed, observed and satisfied.
- d) No Event of Default has occurred, or with the giving of notice or lapse of time would occur.

ARTICLE VIII. CONSTRUCTION PLANS; CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION

8.1. Plans for Construction of Improvements. Plans and specifications with respect to the development of the Property and the construction of Improvements thereon shall be in material conformity with this Agreement, and all applicable federal, state and local laws and regulations. As promptly as possible after the date of execution of this Agreement, but no sooner than sixty (60) days of execution of this Agreement, the

Developer shall submit to the City, for approval by the City, plans, drawings, specifications and related documents, and the proposed construction schedule (which plans, drawings, specifications, related documents and progress schedule, together with any and all changes therein that may thereafter be made and submitted to the City as herein provided are, except as otherwise clearly indicated by the context, hereinafter collectively called "Construction Plans"), with respect to the Improvements to be constructed by the Developer on the Property, in sufficient completeness and detail to show that such Improvements and construction thereof will be materially in accordance with the provisions of this Agreement.

The City shall, if the Construction Plans originally submitted materially conform to the provisions of this Agreement, approve in writing such Construction Plans and no further filing by the Developer or approval by the City thereof shall be required, except with respect to any material change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of their receipt by the City.

If the City, in its reasonable discretion, so rejects the Construction Plans in whole or in part as not being in material conformity with this Agreement, the Developer shall submit new or corrected Construction Plans which are in material conformity with this Agreement within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans hereinabove provided with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City, which approval shall not be unreasonably withheld or delayed, provided, that in any event the Developer shall submit Construction Plans which are in material conformity with the requirements of this Agreement, as determined by the City, no later than ninety (90) days after the date the Developer receives written notice from the City of the City's first rejection of the original Construction Plans submitted to it by the Developer.

All work with respect to the Improvements to be constructed or provided by the Developer on the Property shall be in material conformity with the Construction Plans as approved by the City. The term "Improvements," as used in this Agreement, shall be

deemed to have reference to the Improvements as provided and specified in the Construction Plans as approved.

Developer, as an inducement to the City to proceed with establishment of a Tax Incremental District and to provide Development Incentive Payments as provided herein to Developer for the development of the Project, hereby represents that the contemplated Project will be fully subject to real estate and personal property taxes under state law. Developer further represents and agrees for itself, its successors and assigns, that it shall take no action(s) or advocate any position or change in state law which would jeopardize or call into question the taxability of the Project, that it agrees not to take any action that will change the taxability of the property, and that it shall insert deed restrictions in any subsequent transfer of any portion of the Project to ensure that all future owners, assignees, and title holders of record shall be bound by the requirements of this paragraph.

Notwithstanding the above, in the event that the Project, or the Property, or any part thereof, is determined at any time to be exempt from real and/or personal property taxation under state law, Developer, for itself, its successors and assigns, agrees to make payments in lieu of taxes to the City, County, school district, and any other property taxing jurisdictions in the amounts and within the time periods that would otherwise be required as if the property were fully taxable, in recognition of the valuable governmental services and benefits available and/or provided to the Project and the Property.

8.2. Changes in Construction Plans. If the Developer desires to make any material change in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the Construction Plans, as modified by the proposed change, materially conform to the requirements of Section 501 hereof with respect to such previously approved Constructions Plans, the City shall approve the proposed change and notify the Developer in writing of its approval, which approval shall not be unreasonably withheld or delayed. Such change in the Construction Plans shall, in any event, be deemed approved by the City unless rejection thereof, in whole or in part, by written notice thereof by the City to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the City's receipt of notice of such change.

ARTICLE IX. INDEMNIFICATION OF THE CITY

The Developer hereby indemnifies and holds harmless the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section collectively referred to as the "Indemnified Parties"), against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the development of the Project, provided that the foregoing indemnification shall not be effective for any negligent acts of the Indemnified Parties in fulfilling the obligations of the City or its agents as set forth in this Agreement. Except for any willful misrepresentation or any willful misconduct of the Indemnified Parties, the Developer will protect and defend the Indemnified Parties 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 (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership and operation of the Project. 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 X. DEFAULT/REMEDIES

10.1 Events of Default. An Event of Default is any of the following:

- a) A failure by the Developer to cause substantial completion of the Project to occur pursuant to the terms, conditions and limitations of this Agreement, or the failure of the Developer to perform or observe any and all covenants, conditions, obligations or agreements on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the Developer of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the Developer commences to cure such matter within the forty-five (45) day period and thereafter

reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of written notice to Developer, then the event will not be an Event of Default.

- b) The failure by the City to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed when and as required under this Agreement, in either case within forty-five (45) days after written notice to the City of such failure, provided that if such matter is not financial and cannot be cured within such forty-five (45) day period but if the City commences to cure such matter within the forty-five (45) day period and thereafter reasonably and continuously takes action to complete such cure and such cure is completed within ninety (90) days of the date of notice to the City, then the event will not be an Event of Default.
- c) Developer becomes insolvent or is the subject of bankruptcy or insolvency proceedings.

10.2 Remedies on Default. Whenever an event of default occurs and is continuing, the other non-defaulting party may take any one or more of the following actions:

- a) The non-defaulting party may immediately suspend their performance under this Agreement from the time any notice of an Event of Default is given until they receive assurances from the defaulting party deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement.
- b) The non-defaulting party may take any action, including legal or administrative action, in law or in equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the defaulting party under this Agreement.

10.3 No Remedy Exclusive. No remedy or right conferred upon or reserved to the City in this Agreement is intended to be exclusive of any other remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement now or hereafter existing at law or in equity or by

statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

10.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

10.5 Agreement to Pay Attorneys' Fees and Expenses. Whenever any event of default occurs and either the non-defaulting party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand thereof, pay the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

ARTICLE XI. FORCE MAJEURE

No party will be responsible to any other party for any resulting losses if the fulfillment of any of the terms of this Agreement (other than any financial obligation) is delayed or prevented by war, strikes, fires, floods, acts of God, and other reasons wholly without the control of the party with whose performance there was interference, and which, by the exercise of reasonable diligence, such party is unable to prevent, and the time for performance will be extended by the period of delay occasioned by any such cause.

ARTICLE XII. ADDITIONAL PROVISIONS

12.1 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to this

Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer's successors or assigns on any obligations under the terms of this Agreement.

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

12.3 No Implied Approvals. Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of Developer to obtain all necessary approvals, licenses and permits from the City in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the City to approve or disapprove the Development Plan, Plans and Specifications, or any part thereof, or to impose any limitations, restrictions and requirements on the development, construction and/or use of the Project as a condition of any such approval, license or permit; including, without limitation, requiring any and all other development and similar agreements.

12.4 No Assignment. Developer may not assign its rights in this Agreement without the express prior written consent of the City. Developer shall not sell, transfer or convey the Property unless and until an occupancy permit has been issued. No owner of the Property may subdivide the Property nor sell, transfer or convey less than the entire Property.

12.5 No Joint Venture. Neither anything in this Agreement nor any acts of the parties to this Agreement shall be construed by the parties or any third person to create the relationship of a partnership or joint venture between or among such parties.

12.6 Time of the Essence. Time is deemed to be of the essence with regard to all dates and time periods set forth herein or incorporated herein.

12.7 Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

12.8 Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered or mailed by certified or registered mail, return receipt requested, to the parties' respective addresses as follows:

To the City: City of Sheboygan, Wisconsin
828 Center Ave.
Sheboygan, WI 53081
Attn: City Clerk

with a copy to:
City Attorney
City of Sheboygan, Wisconsin
828 Center Ave., Suite 304.
Sheboygan, WI 53081

To the Developer: Consolidated Construction Co., Inc.
4300 N. Richmond St.
Appleton, WI 54913

12.9 Entire Agreement. This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the City with respect to the matters set forth herein. This Agreement may be modified only by a writing signed by all parties.

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

12.11 Cooperation. The City and the Developer agree to cooperate in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. The City and the Developer each will at any time, or from time to time at the written request of the other, sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

12.12 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.

12.13 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed an original.

12.14 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 the Developer.

12.15 Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and permitted assigns.

12.16 Fees. Upon execution of this Agreement, and thereafter upon request of the City, the Developer shall reimburse the City for all legal, consulting and other fees and expenses incurred in connection with the preparation of this Agreement and other documents and agreements referred to herein up to a maximum of Five Thousand (\$5,000) Dollars.

This document consists of eighteen (18) pages, including the following signature page and excluding Exhibits.

SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF SHEBOYGAN, WISCONSIN

BY: _____
Ryan Sorenson, Mayor

ATTEST: _____
Meredith De Bruin, City Clerk

SHEBOYGAN SOUTHPOINT DEVELOPMENT, LLC

BY: _____
Its: Managing Member

ATTEST: _____
Its: _____

This document authorized by and in accordance with Res. No.
____-22-23.