

9
AGREEMENT AND MORTGAGE



Document Number

Document Title

Doc # 810036

Recorded

February 22, 2011 2:25 PM

CONNIE J WOOLEVER

REGISTER OF DEEDS

WALWORTH COUNTY, WI

Fee Amount: \$30.00

Total Pages: 9

Recording Area

Name and Return Address

CITY OF WHITEWATER

PO BOX 070

WHITEWATER, WI 53190

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT - DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

AGREEMENT AND MORTGAGE

WHEREAS, the City of Whitewater (hereinafter "Mortgagor"), whose address is 312 West Whitewater Street, Whitewater, Wisconsin 53190 has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (hereinafter "EDA"), whose address is c/o Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, a financial assistance award in the amount of Four Million Seven Hundred Forty Thousand Eight Hundred Nine and No/100 Dollars (\$4,740,809.00) (hereinafter "Award Amount") pursuant to a Financial Assistance Award executed by the Mortgagor on October 6, 2009, and bearing EDA Project Number 06-01-05479 (hereinafter "Project"); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said financial assistance award and pursuant to the Financial Assistance Award, the Award Amount is to be used for the purpose of construction of a new 37,200 square feet Innovation Center building on the real Property described in Exhibit "A," attached hereto and made a part hereof (hereinafter "Property"); and

WHEREAS, any transfer or conveyance of a Project by an EDA Recipient must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3211, is not authorized to permit transfer or conveyance of a Project to parties not eligible to receive EDA financial assistance unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA financial assistance was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid Financial Assistance Award from EDA provides that the authorized purpose for which the Award Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Financial Assistance Award, or use the Property for purposes other than and different from those purposes set forth in the Financial Assistance Award and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 C.F.R. Part 314, or by 15 C.F.R. Parts 14 or 24; and

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WHEREAS, the value of EDA's right to repayment under the terms of 15 C.F.R. Parts 14 and 24 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Financial Assistance Award, 15 C.F.R. Parts 14 and 24 or 13 C.F.R. Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Financial Assistance Award or in violation of the regulations set forth in 13 C.F.R. Part 314 and 15 C.F.R. Parts 14 or 24, as such Financial Assistance Award or regulations may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect 20 years from the date of construction completion, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement and Mortgage shall be the Award Amount or the amount actually disbursed or an amount determined pursuant to 13 C.F.R. Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Financial Assistance Award, 15 C.F.R. Parts 14 or 24, or 13 C.F.R. Parts 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Financial Assistance Award Application and the Financial Assistance Award authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the Financial Assistance Award; said lease arrangements must provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and the proposed Lessee must provide adequate compensation to Mortgagor for said lease. Any lease agreements entered

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into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges and Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

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The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage - Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Breach:

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may

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be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

Further, upon Mortgagor's breach or default of any other covenant, note, mortgage, or agreement of Mortgagor which is secured by the Property, EDA, its designees or assigns may declare the entire indebtedness secured by this Agreement and Mortgage immediately due, payable and collectible.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument that can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared severable.

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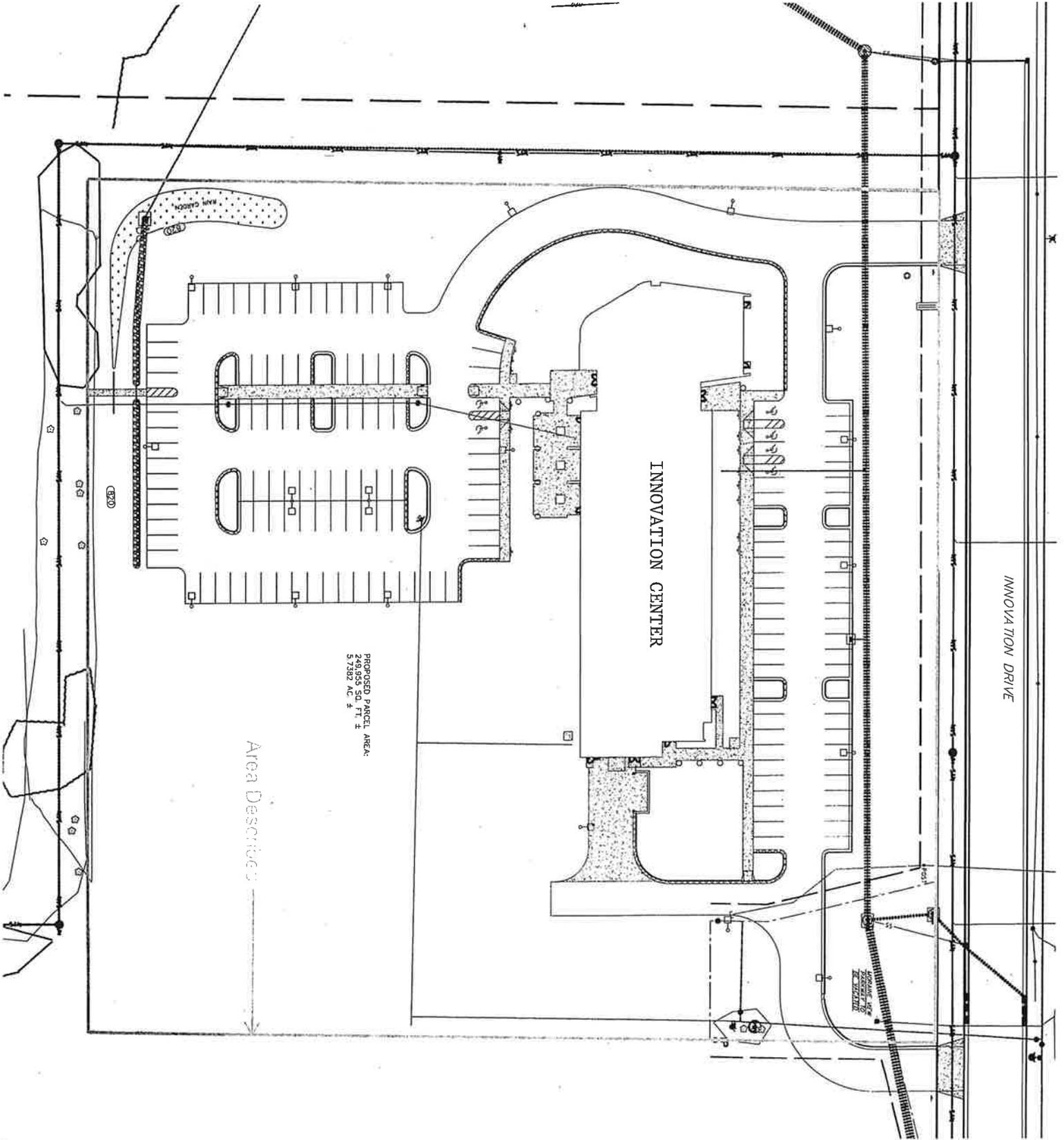
Innovation Center—Exhibit A, 1 of 2
Whitewater University Technology Park
Whitewater, Wisconsin

Part of the SW 1/4 of the NE 1/4 of Section 3, Town 4 North, Range 15 East, City of Whitewater, Walworth County, Wisconsin, more particularly described as follows:

Commencing at the Northeast corner of said Section 3;
thence South 1° 03' 10" West, 1,396.53 feet along the east line of the northeast 1/4 of said Section 3
thence South 89°58'04" West, to the point of beginning;
thence South 01° 03' 04" West, 500.30 feet;
thence South 89° 57' 30" East, 500.00 feet;
thence North 01° 03' 04" East, 500.38 feet;
thence South 89° 58' 04" West, 500.00 feet to the point of beginning;

Said parcel contains 5.7 acres or 250,123 square feet, more or less.

EXHIBIT A, 2 of 2



PROPOSED PARCEL AREA:
249,855 SQ. FT. ±
3.7502 AC. ±

Area Description

INNOVATION DRIVE

SEWER LINE