

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR REDEVELOPMENT AUTHORITY CONSIDERATION

ITEM DESCRIPTION: Discussion and possible action on approving contract for sale of land for private development by and between the Redevelopment Authority of the City of Sheboygan and VanHorn Development, LLC.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: February 20, 2019

MEETING DATE: February 27, 2019

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

Van Horn Development, LLC is interested in acquiring the former Kingsbury property located at the intersection of the North 10th Street and Wisconsin Avenue. Under the terms of the contract for sale of the land, the Developer would construct at least 30 units of townhome market rate condominiums at an estimated cost of the \$4,000,000.

The developer would purchase the property for \$50,000. The Authority would then place the \$50,000 into an escrow account to reimburse the Developer for fifty percent of the eligible environmental costs incurred by the Developer up to the amount placed in escrow at the time of closing.

The Developer is proposing to begin construction around April 1, 2019.

STAFF COMMENTS:

None

ACTION REQUESTED:

Motion to grant approval of the contract for sale of the land for private development by and between the Redevelopment Authority of the City of Sheboygan and Van Horn Development, LLC.

ATTACHMENTS:

- I. Contract for Sale of Land for Private Development

**CONTRACT FOR
SALE OF LAND FOR PRIVATE DEVELOPMENT
BY AND BETWEEN
REDEVELOPMENT AUTHORITY OF THE CITY OF SHEBOYGAN
AND
VANHORN DEVELOPMENT, LLC**

THIS DEVELOPMENT AGREEMENT (the "Agreement"), made this ____ day of _____, 2019, by and between the Redevelopment Authority of the City of Sheboygan, a public body corporate of the State of Wisconsin (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called the "Authority"), having its principal offices at 828 Center Avenue in the City of Sheboygan, Wisconsin, and Van Horn Development, LLC, a Wisconsin incorporated business (hereinafter called "Developer"), having an office for the transaction of business at W5073 County Road O, Plymouth, WI.

RECITALS

WHEREAS, The Authority has offered to sell and the Developer is willing to purchase certain real property more particularly described in Exhibit "A" attached hereto and made a part hereof (which property as so described is hereinafter called "the Property") and to develop the Property by constructing at least 30 units of townhome market rate apartments, all at an estimated cost of Four Million and 00/100 Dollars (\$4,000,000.00) (hereinafter called "the Project"), in accordance with this Agreement; and

WHEREAS, The Authority believes that the development of the Property through construction of the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety and welfare of its residents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I.
OVERVIEW OF THE PROJECT**

Section 101. Overview. The project consists of multiple aesthetically pleasing buildings consisting of a total of at least 30 units of market rate housing with two bedrooms and two-stall garages, and all site improvements. The buildings shall be built as slab on grade, with a variety of exterior material which may include Smart Board, Brick, or other materials specifically approved by the City. EIFS may also be used, but only as an accent on the building(s). The design of the buildings and of the Project as a whole shall be subject to the approval of the Architectural Review Committee of the City of Sheboygan, pursuant to the Sheboygan Zoning Ordinance.

**ARTICLE II.
DEFINITIONS**

Section 201. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

“Authority” means the Redevelopment Authority of the City of Sheboygan.

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

“City” means the City of Sheboygan, Wisconsin.

“Developer” means Van Horn Development, LLC and its successors and assigns.

“Events of Default” means any of the events described in Section 1204 hereof.

“Plans and Specifications” means the plans and specifications for the Project prepared from time to time by the Developer which are approved by the City in accordance with all procedures and requirements of the City for such approvals.

“Project” means the development proposed by the Developer.

**ARTICLE III.
SALE: PURCHASE PRICE**

Section 301. Purchase Price. Subject to all the terms, covenants and conditions of this Agreement, the Authority will sell the Property to the Developer for, and the Developer will purchase the Property from the Authority and pay therefor, the total amount of Fifty Thousand and 00/100 (\$50,000) dollars, hereinafter called “Purchase Price,” to be paid in cash or by certified check simultaneously with the delivery of the Deed (as defined below) conveying the Property to the Developer (the “Sale”).

**ARTICLE IV.
ESCROW AND USE OF SALE PROCEEDS**

Section 401. Escrow of Proceeds; Reimbursement of Eligible Environmental Costs. The Authority shall place the entire sum of its proceeds from the sale of the Property into an escrow account held at Woodland Title Services. The Authority agrees that it shall use said funds to reimburse the Developer for fifty percent (50%) of eligible environmental costs incurred by the Developer, up to the amount placed in escrow at the time of closing. The Authority is not obligated to pay the Developer for any additional amount once the funds in the escrow account are exhausted.

Eligible environmental costs shall include environmental investigations, remediation or monitoring of the site, removal of hazardous waste containers, soil removal, capping, barrier installation, vapor intrusion systems and piling support systems

**ARTICLE V.
ANTICIPATED CONSTRUCTION SCHEDULE**

Section 501. Construction Schedule. It is anticipated that the construction schedule for the Project will be carried out as follows:

City Plan Approvals
Issuance of Building Permits

February 28, 2019
March 15, 2019

Start Construction
Substantial Completion

April 1, 2019
December 31, 2019

It is anticipated that the Property will be sold and conveyed as of March 1, 2019.

**ARTICLE VI.
CONVEYANCE OF PROPERTY**

Section 601. Form of Deed. The Authority shall convey to the Developer title to the Property described in Exhibit "A" by warranty deed (the "Deed"). Such conveyance and title shall be subject to all other conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement, subject to:

- (a) Rights or claims of parties in possession not shown by the public records;
- (b) Easements or claims of easements, not shown by the public records;
- (c) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and inspection of the premises;
- (d) Any lien or right to a lien, for services, labor, or material hereto or hereafter furnished, imposed by law and not shown by the public records; and,
- (e) Such other liens, encumbrances, covenants or restrictions disclosed in the title insurance commitment to be provided by the Authority as set forth in Section 604(d) below; provided, however, that the Developer has consented to and approved of such liens, encumbrances, covenants, or restrictions as permitted encumbrances. The items referenced in Subsections (a) through (d) above and this Subsection (e) are referred to herein collectively as "Permitted Liens."

Furthermore, both the Authority and the Developer recognize and acknowledge that there may be easements, encumbrances, or reservations disclosed in the title insurance commitment with respect to the Property which will be continued, or newly created, or reserved in the conveyance of the Property from the Authority to the Developer. The Authority shall use its best efforts to minimize the impact upon the Developer's Project of any such easement(s) or encumbrance(s), and the Developer's obligation to purchase the Property shall be conditioned upon the Developer satisfying itself of the feasibility and suitability of the Property, subject to such easements or encumbrances, prior to the date of closing of the Sale.

The Authority shall, at its own expense and within two business days of the effective date of this Agreement place an order for a Title Commitment to insure the real property conveyed hereunder.

Section 602. Time and Place for Delivery of Deed. The closing of the Sale and conveyance of the Deed referred to herein shall occur on or before March 31, 2019 (the "Closing Date"), or such other date as mutually agreed to by the parties, at the principal office of the Authority, and the Developer shall accept such conveyance and pay the Purchase Price to the Authority at such time and place.

Section 603. Recording of Deed. The Developer shall promptly file the Deed for recording among the land records of Sheboygan County. The Developer shall pay all costs for so recording the Deed.

Section 604. Conditions Precedent to the Developer's Obligations. The Developer's obligation to conclude the Sale contemplated herein shall be subject to the Developer's satisfaction, or waiver thereof, of each of the following conditions on or prior to ten (10) days before the Closing Date:

- (a) **Property Acquisition.** The Developer determining, after receipt of the survey and the environmental audit reports referenced below, and such other information as determined appropriate by the Developer, whether it will acquire the Property under this Agreement.
- (b) **Financing Contingency.** The Developer obtaining a written loan commitment from a lending institution of the Developer's choice in an amount and with such terms and conditions acceptable to the Developer, within the Developer's sole discretion, for the construction of the Project and any and all Improvements (as defined below) related thereto.
- (c) **Evidence of Equity Capital and Bank Mortgage Financing.** As promptly as possible, but not later than sixty (60) days after approval by the City of the Construction Plans, the Developer submitting to the Authority evidence reasonably satisfactory to the Authority that the Developer has the equity capital and commitments for mortgage financing necessary for the timely completion of construction of the Project and the Improvements.
- (d) **Title.** Within twenty (20) days after the Developer's receipt of the Title Commitment, the Developer notifying the Authority in writing of any unacceptable exceptions which are disclosed in the Title Commitment; in the absence of such notification, such exceptions shall be deemed accepted by the Developer. The Title Commitment shall contain such endorsements required by the Developer, which endorsements shall be obtained at the Developer's expense. In the event Developer disapproves of any matter pertaining to title, the Developer may request and the Authority shall, upon receipt of written request from the Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from the Developer. During such period that the Authority is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to title shall be extended for a commensurate period. Any mortgages, liens or judgments shown on the Title Commitment will be paid or satisfied by the Authority or insured over by the Title Company on or prior to the Closing Date.

In the event that the Authority elects to cure, but is unable to satisfy any such defect or disapproved matter within such fifteen (15) day period, or in the event that the Authority elects not to cure any defect or disapproved matter, the Developer may, within ten (10) days after receipt of written notice from the Authority that the Authority has been unable to cure or is unwilling to cure:

- (1) terminate this Agreement by providing written notice thereof to the Authority thereby cancelling the Sale; or

(2) take title to the Property “as-is”.

- (e) Survey. The Developer obtaining a current survey of the Property (the “Survey”) from the Authority made by a surveyor licensed in the State of Wisconsin.

Within thirty-five (35) days after execution of this Agreement and the Developer’s review of the Survey, the Developer shall notify the Authority in writing of any unacceptable exceptions which are disclosed in the Survey; in the absence of such notification, the Survey shall be deemed accepted by the Developer. In the event the Developer disapproves of any matter pertaining to the Survey, the Developer may request and the Authority shall, upon receipt of written request from the Developer, use its best efforts to correct such defect or disapproved matter and to effectuate the same within fifteen (15) days after receipt of such request from the Developer. During such period that the Authority is attempting to cure such defect or disapproved matter, the time for satisfaction or waiver of the condition pertaining to the Survey shall be extended for a commensurate period.

If such Survey continues to show the existence of any condition that would burden, interfere with or impair the Developer’s contemplated development of the Property, as determined by the Developer, within the Developer’s sole discretion, the Developer may

- (1) terminate this Agreement by providing written notice thereof to the Authority thereby cancelling the Sale; or
- (2) accept the Property “as-is” despite the existence of such condition on the Survey.

- (f) Governmental Permits, Licenses and Approvals. The Developer obtaining prior to Closing Date, all necessary planning and zoning approvals, licenses, and architectural approvals from the City, and/or any other applicable governmental entity or agency, for the Project and related Improvements, as determined by the Developer, within the Developer’s sole discretion. The Authority agrees to use its best efforts and cooperate with the Developer in the application for any such permits, licenses and approvals.

- (g) Utility Connections. The Developer obtaining written evidence, that sanitary sewer, storm sewer and potable water mains are located adjacent to the Property boundary line. In the event that sewer and water laterals are not stubbed off at the mains and located at the Property boundary line, the Developer shall be solely responsible for any and all costs and expenses related to bringing such sewer and water laterals to the Property boundary line.

- (h) Soil, Environmental, and Topographic Conditions. If soil reports obtained by the Developer show the existence of any condition that would burden, interfere with or impair the Developer’s contemplated development of the Property, as determined by the Developer in its sole discretion within sixty (60) days after receipt and review of the information relating to the soil and topographic conditions of the Property, the Developer may

- (1) terminate this Agreement by providing written notice thereof to the Authority thereby cancelling the Sale; or
- (2) accept the Property “as-is” despite the existence of such condition.

Notwithstanding the provisions of this subsection (h), the Developer has chosen to accept the Property “as-is,” despite the presence of environmentally hazardous materials, conditions, or substances or the existence of any recognized or other environmental condition.

Developer accepts responsibility of known and reported issues at the date of acceptance of this Agreement, including all conditions and information explicitly or implicitly contained or referred to in the Site Investigation Report Addendum created by Stantec dated July 26, 2018.

Developer is not responsible for unforeseen underground conditions. If unforeseen conditions become detrimental to the Project, Developer can terminate this Agreement by providing written notice thereof to the Authority. In this event, the Developer, at its own cost, will return the property to pre-project green space condition. Authority agrees to purchase the property back from Developer at Fifty Thousand and 00/100 dollars, less any costs paid by the Authority to reimburse for environmental purposes pursuant to Section 401. The Authority shall have the right to cure defects relating to unforeseen conditions.

ARTICLE VII. TIME FOR COMMENCEMENT AND COMPLETION OF IMPROVEMENTS

Section 701. Commencement. The construction of the Project shall be commenced in any event within ninety (90) days after the Closing Date of the Sale and, except as otherwise provided in this Agreement, shall be substantially completed by December 31, 2019.

ARTICLE VIII. SPECIAL PROVISIONS

Section 801. Minimum Investment. The Developer shall utilize the Property by constructing the Project and all related improvements, at a minimum investment of Four Million and 00/100 Dollars (\$4,000,000) (“Minimum Investment”).

Minimum Investment includes all costs for construction of all buildings and other improvements on the Property and leasehold improvements, including, without limitation, all hard costs and expenditures as defined in Exhibit B (Developer’s Construction Sources and Uses) made or incurred by the Developer, its successors or assigns, in connection with the Project, on or before the completion date of construction of the Project on the Property as required by this Agreement, or such later date as the parties may hereafter agree, including, without limitation, any and all costs (remediation costs or otherwise) the Developer may incur with respect to any environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property.

Any provision of this Agreement to the contrary notwithstanding, the Authority and the Developer hereby acknowledge and agree that the failure of the Developer, its successors or assigns, to satisfy the Minimum Investment requirements by the dates set forth herein shall not constitute a default or breach by the Developer under this Agreement nor subject the Developer, its successors or assigns, to any penalty, liability or remedy available to the Authority hereunder or otherwise available to it at law or in equity, provided that the cause of such failure by the Developer, its successors or assigns, is unavoidable delay due to (a) acts of God or other matters beyond the control of the Developer as referenced in Section 1204 below, or (b) environmental contamination, hazardous materials, conditions or substances, recognized environmental conditions or any other environmental condition, which may exist on, in or with respect to the Property not arising from the act or omission of the Developer, its successors or assigns; it being the purpose and intent of this provision that in the event of the occurrence or existence of such causes of delay, the time or times for satisfying the Minimum Investment requirements set forth herein shall be extended by the minimum period required for the completion of all necessary remediation of the Property, or a time period commensurate with the period of delay, as the case may be.

ARTICLE IX. PREPARATION OF PROPERTY FOR DEVELOPMENT

Section 901. Authority Responsibilities. The Authority shall, without expense to the Developer cooperate with the Developer, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the Developer in connection with the fulfillment of the Developer's obligations under this Agreement.

Authority shall cooperate as needed with the Developer in its effort to obtain two easements for drive access to the property. One easement to the south of the property will allow for a curb-cut on 10th Street. Drive entrance will be immediately west and in-line with New York Avenue. One easement on the northwest corner of the property will allow for a curb-cut and drive access to N. Water Street.

Section 902. Developer's Responsibilities. The Developer shall, without expense to the Authority:

- (a) **Assist Authority.** Cooperate with the City/Authority, other authorities, and other agencies, their departments, officers and employees, and provide such assistance as may be reasonably requested by the Authority in connection with the fulfillment of the Authority's obligations under this Agreement.
- (b) **Conduct Studies.** Prior to the Closing Date of the Sale of the Property from the Authority, conduct sufficient market, architectural and engineering studies, soils analyses, environmental assessments and any other investigations deemed necessary by the Developer to satisfy the Developer of the feasibility and suitability of the Property to the Project.

ARTICLE X. RIGHTS OF ACCESS TO PROPERTY

Section 1001. Right of Entry for Utility Service. The Authority reserves for itself, and any public utility company, as may be appropriate, the unqualified right to enter upon the Property at all reasonable times for the purpose of reconstructing, maintaining, repairing, or servicing the

public utilities located within the Property boundary lines and provided for in the easements described or referred to in Section 601 hereof.

Section 1002. Developer Not to Construct Over Utility Easements. The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 601 hereof, unless such construction is provided for in such easement or has been approved by the Authority, and unless the Developer indemnifies and agrees to hold harmless the Authority and any public utility company as may be appropriate from all loss or damage to property or injury to persons arising from such construction.

Section 1003. Access to Property. Prior to the Sale of the Property by the Authority to the Developer, the Authority shall permit representatives of the Developer to have access to the Property, at all reasonable times for the purpose of obtaining data and making various tests concerning the Property necessary to carry out this Agreement. After the Sale of the Property by the Authority to the Developer, upon advance written request, the Developer shall permit the representatives of the Authority access to the Property at all reasonable times which the Authority deems necessary for the purposes of this Agreement including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

**ARTICLE XI.
CONSTRUCTIONS PLANS; CONSTRUCTION OF IMPROVEMENTS;
CERTIFICATE OF COMPLETION**

Section 1101. 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 later than ninety (90) 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 Authority 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 Authority 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 Authority 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 Authority, 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 Authority.

If the Authority, 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 Authority, no later than ninety (90) days after the date the Developer receives written notice from the Authority of the Authority'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.

Section 1102. 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 1101 hereof with respect to such previously approved Construction Plans, the Authority 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 Authority unless rejection thereof, in whole or in part, by written notice thereof by the Authority to the Developer, setting forth in detail the reasons therefor, shall be made within thirty (30) days after the date of the Authority's receipt of notice of such change.

Section 1103. Approvals of Construction Plans and Evidence of Financing as Conditions Precedent to Conveyance. The submission of Construction Plans and their approval by the City as provided in Section 1101 hereof, and the submission of satisfactory evidence of equity capital and commitments for mortgage financing as provided in Section 604(c) hereof, are conditions precedent to the obligations of the Developer to purchase the Property and the Authority to convey the Property to the Developer pursuant to the Sale.

ARTICLE XII. REMEDIES

Section 1201. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach and, in any event, within seventy-five (75) days after receipt of such notice. 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 after the initial seventy-five (75) days, the aggrieved party may take such action as set forth under this Agreement or allowed by law as may be necessary or desirable in its opinion to cure and remedy such default or breach including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Section 1202. Termination by the Authority Prior to Conveyance. In the event that:

- (a) the Developer does not submit Construction Plans within the permitted time period, as required by this Agreement, or evidence that it has the necessary equity capital and mortgage financing, in reasonably satisfactory forms and in the manner and by the dates respectively provided in this Agreement therefor; or
- (b) the Developer does not pay the Purchase Price and take title to the Property upon tender of Deed by the Authority pursuant to the Sale, and if any default or failure referred to in subdivisions (a) and (b) of this Section 1202 shall not be cured within thirty (30) days after the date of written demand by the Authority;

then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the Authority or the Property shall, at the option of the Authority, be terminated by the Authority by written notice thereof to the Developer, in which event, neither the Developer (or assignee or transferee) nor the Authority shall have any further rights against or liability to the other under this Agreement.

Section 1203. Other Rights and Remedies of the Authority; No Waiver by Delay. The Authority shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of Article XI, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title and interest of the Developer and its successors in interest and assigns in the Property, and the reversioning of title thereto in the Authority. Provided, that any delay by the Authority in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article XII shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the Authority should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section 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 created by the default involved); nor shall any waiver in fact made by the Authority with respect to any specific default by the Developer under this Section be considered or treated as a waiver of the rights of the Authority with respect to any other defaults by the Developer under this Section or with respect to the particular default except to the extent specifically waived in writing. Prior to the exercise of any right contained in this Article XII, the Developer shall have the right to remedy any default for a period of thirty (30) days after notice of said default by the Authority. The remedy provided by this section shall expire upon the satisfaction of the requirements contained in Article XI.

Section 1204. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of this Agreement, neither the Authority nor the Developer, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the Property for development, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unavailability of materials, unusually severe weather, or delays of subcontractors due to any of the foregoing causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Authority with respect to the preparation of the Property for development or of the Developer with respect to construction of the Project, or progress in respect thereto, as the case may be, shall be extended for the period of the

enforced delay; provided, however, that the party seeking the benefit of the provisions of this Section shall, within ten (10) business days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

Section 1205. Rights and Remedies Cumulative. 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 either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own 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 or any other obligations of the other party.

Section 1206. Indemnification.

- (a) The Developer releases from and covenants and agrees that the Authority, the governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Authority Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Authority 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 Project, provided that the foregoing indemnification shall not be effective for any actions of the Authority Indemnified Parties that are not contemplated by this Agreement or which result from negligent acts or willful misconduct of the Authority Indemnified Parties in fulfilling the obligations of the Authority or their agents as set forth under this Agreement.
- (b) Except for any negligent acts or any willful misrepresentation of the Authority Indemnified Parties, the Developer agrees to protect and defend the Authority Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or other persons acting on its behalf or under its direction or control) with respect to the Project work to be performed by the Developer under this Agreement.
- (c) The Authority agrees to protect and defend the Developer, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Developer Indemnified Parties"), and further agrees to hold the Developer Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the negligence, willful misrepresentation of the Authority (or other persons acting on their behalf or under their direction or control) under this Agreement, or the transactions contemplated hereby. All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to

be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority, as the case may be.

ARTICLE XIII. MISCELLANEOUS

Section 1301. Conflict of Interests; Authority Representatives Not Individually Liable. No member, official or employee of the Authority 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 Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 1302. Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring title to the Property from the Authority to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 1303. 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 1304. Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the parties. Notwithstanding anything contained in this Agreement to the contrary, the Developer may assign this Agreement by one or more successive assignments at any time prior to closing to any related entity or affiliate of the Developer. Upon any such assignment, the assignee shall have the rights and obligations of the Developer hereunder and the Developer shall thereupon, automatically and without execution of further instruments or documents, be relieved and released from any obligations under this Agreement, without any further action or approval of the parties.

Section 1305. 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 Van Horn Development, LLC, Attn: Basil Buchko; 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 1306. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Wisconsin.

Section 1307. 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 1308. 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.

(Signature Page Follows)

IN WITNESS WHEREOF, the Authority 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.

**REDEVELOPMENT AUTHORITY OF
THE CITY OF SHEBOYGAN,
WISCONSIN**

VANHORN DEVELOPMENT

BY: _____
Roberta Filicky-Peneski, Chairperson

BY: _____

ATTEST:

Chad Pelishek, Executive Director

ACKNOWLEDGEMENT
STATE OF WISCONSIN

SS.

COUNTY OF SHEBOYGAN

This instrument was acknowledged before me
on

by _____

(Name(s) of Person(s))

as

(Type of authority: e.g., officer,
trustee, etc., if any)

of
*

(Name of party on behalf of wh
instrument was executed, if a

Notary Public,
Wisconsin
My commission
(Expires) Is _____

EXHIBIT "A"
Description of Property

