



*** All present are expected to conduct themselves in accordance with our City's Core Values ***

OFFICIAL NOTICE AND AGENDA

of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or sub-unit thereof.

ADDENDUM

Meeting: ECONOMIC DEVELOPMENT COMMITTEE MEETING
Date/Time: Thursday, July 17, 2014 at 4:30 PM
Location: City Hall, 2nd Floor Board Room
Members: Bill Nagle (Chair), Tom Neal (VC), Romey Wagner, David Oberbeck and Lisa Rasmussen

AGENDA ITEMS FOR CONSIDERATION/ACTION

- 11 Discussion and Possible Action on Proposed Amendment to the Development Agreement with Scannell Properties #92, LLC, regarding the property located at 7800 International Drive

Adjournment

Tom Neal (Vice Chair)

This notice was posted at City Hall and emailed to the Wausau Daily Herald newsroom on 7/16/14 at 10:00 a.m. Other Distribution: Media, Alderpersons, Department Heads, Rayala, Hebert, Lenz, Lawrence, Stratz.

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids & services. For information or to request this service, contact the City Clerk at (715) 261-6620.

AGR #
1395

CITY OF WAUSAU TID #5 DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into this 20th day of August, 2007, by and among the City of Wausau, a municipal corporation of the State of Wisconsin, hereinafter referred to as "City," and Scannell Properties #92, LLC, an Indiana limited liability company, hereinafter referred to as "Scannell."

RECITALS

WHEREAS, on July 8, 1997, and as amended on July 10, 2001, the Common Council of the City of Wausau adopted and authorized the expenditures for a tax increment finance district known as TID 5, which TID anticipated industrial park development in City's west industrial park; and

WHEREAS, Scannell desires to construct a building in TID 5 of approximately 370,000 square feet, with a fair market value of at least \$19 million, inclusive of building and land, and ~~Scannell's tenant intends to employ approximately 450 workers;~~ and City shall provide for acquisition of land, and provide sewer and site improvements, and provide for consideration for other improvements which acquisition and site improvements shall total approximately \$2,957,000.00; and

WHEREAS, the City's use of tax incremental financing is the necessary catalyst to enable Scannell to undertake and complete its development; and

WHEREAS, Scannell intends to complete this project by no later than October 31, 2008, and ~~Scannell's tenant intends for the approximately 450 total workers to be employed by September 1, 2009;~~ and

WHEREAS, City believes that this development within TID 5 is in the vital and best interests of the City and its residents and in accordance with the public purpose and conditions of applicable state and local laws and the standards under which TID was undertaken and implemented; and

WHEREAS, this Agreement is intended to provide for certain duties and responsibilities of City, Scannell, in order to cause the construction and development of said improvements within TID 5.

NOW, THEREFORE, it is hereby agreed as follows:

I. DEFINITIONS

As used in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section I. In addition, certain terms are defined elsewhere in the body of this Agreement.

Scannell
Argentis

"City" means the City of Wausau, Wisconsin.

"Contribution" means funds from the City's tax increment program in the amount of \$2,956,977.00. Notwithstanding any other terms or provisions in this Agreement to the contrary, the City shall have no obligation to contribute funds in excess of said amount.

"Conveyance Date" means the date title to the Development Site is conveyed to and accepted by Scannell.

"Development Site" has the meaning set forth in Section II.A of this Agreement.

"Force Majeure" means any one or more of the following: any acts of God, casualty, accident, breakage, repairs, energy shortages, the act, neglect or default of the other party to this Agreement, unusually adverse weather conditions, or any other event, circumstance or occurrence beyond the applicable party's reasonable control.

"Industrial Use Project" means the building and related improvements to be constructed by Scannell on the Development Site, as described in the Project Plan.

~~"Minimum Taxable Valuation Amount" means \$19,000,000.00.~~

"Project Plan" means the project plan for the development of TID 5, approved by the Common Council of City on July 8, 1997, as it has been amended and may be amended from time to time pursuant to the Tax Increment Law.

"Tax Increment Law" means Section 66.1105 of the Wisconsin Statutes, as amended.

"Term" means the term of this Agreement, which will be 15 years from the date of this Agreement.

"TID 5" has the meaning set forth in the first Recital to this Agreement.

II. FACTORY DEVELOPMENT

- A. In consideration of the City contributions as set forth below, Scannell shall use the Contribution in the amounts and for the purposes specified below to assist land acquisition, site preparation, construction and installation of facilities as described below for the industrial development site (hereinafter referred to as "Development Site," all more particularly described on "Exhibit A."
- B. Scannell shall construct or cause to be constructed the Industrial Use Project, which shall be a new, non-tax-exempt (i.e., subject to *ad valorem* real estate taxes, sometimes referred to herein as "taxable") industrial factory building and adjacent parking lot and other improvements on the Development Site, substantially as shown on "Exhibit A," with a total value of the land and all "taxable permanent improvements" (building and land) of not less than \$19 million before

December 31, 2008; that this figure shall be the taxable amount attributed to the City tax levy—exclusive of any manufacturing or other value taxed by the state.

1. Scannell shall provide or cause to be provided either an M.A.I. appraisal or other evidence of similar validity to an M.A.I. appraisal to City not later than December 31, 2008, to demonstrate the valuation of the land and taxable permanent improvements at the Development Site, or in the alternative, provide to the City assessor evidence of an agreed upon taxable valuation of at least the Minimum Taxable Valuation Amount.
- C. Starting in 2009, for each year during the Term that the valuation of the land and taxable permanent improvements at the Development Site is less than the Minimum Taxable Valuation Amount, Scannell shall pay City a sum equal to that amount of tax increment payable upon the Minimum Taxable Valuation Amount, less the amount of tax increment that is actually paid based on actual value of the Development Site, including the land and permanent improvements. "Tax Increment" is defined as the amount of real property tax levied by all taxing jurisdictions on the value of the land and taxable permanent improvements on the Development Site. Any payments to be made pursuant to this paragraph C shall hereinafter be referred to as the "Guaranteed Tax Increment." Said payments shall be due January 31 of the year the taxes for the Industrial Use Project are required to be paid, and every year thereafter during the Term; provided, however, that Scannell may elect to pay the Guaranteed Tax Increment in three (3) equal installments, on or before January 31, April 30 and July 31 of each year. It is the intent of this paragraph C that starting in 2009, and continuing thereafter during the Term, if the assessed value of the improved Development Site for real estate tax purposes does not equal or exceed the Minimum Taxable Valuation Amount, then Scannell will be obligated to pay to the City (in addition to payment of its regular real estate tax obligation) an amount equal to the additional real estate taxes that would have been due and payable if the assessed value of the Development Site (and improvements) equaled the Minimum Taxable Valuation Amount.
- Interest shall accrue on delinquent unpaid amounts due and owing in the amount of one and one-half percent (1-1/2%) per month.
- D. If the construction of the Industrial Use Project has not commenced by December 31, 2008, Scannell shall repay to City all money expended by City for acquisition and site improvements, up to and including \$2,956,977. If the construction of the Industrial Use Project has commenced but has not been substantially completed by December 31, 2008, as said date may be delayed as a result of Force Majeure, Scannell shall nonetheless be obligated to pay the Guaranteed Tax Increment.

III. CITY TIF FUNDS

In consideration of the above, City agrees to provide the Contribution to Scannell in the amounts, for the purposes specified, and the specified times, as set forth on "Exhibit B," attached hereto, to assist land acquisition, utility installation, and site preparation, and other construction and installation of facilities all described on "Exhibit B." The Contribution shall be disbursed to Scannell by multiple advances within twenty (20) days after receiving draw requests from Scannell or Scannell's general contractor, which draw requests are to be submitted on a monthly basis following commencement of construction, until the entire amount of the Contribution has been advanced. Scannell's anticipated draw schedule is attached hereto as "Exhibit C".

IV. SPECIFIC REQUIREMENTS

- A. Scannell shall convey to City, for one dollar, the approximate westerly twenty (20) acres of the "Schmidt" property (hereinafter "the Option Property"), approximately described and delineated on Exhibit "A". Scannell shall have its surveyor complete, and deliver to City, a new metes and bounds survey of the Option Property within 30 days of the execution of this Agreement.
- (a) The City hereby grants to Scannell, as the owner of the Development Site, an option to purchase (the "Option") the Option Property at a price equal to \$21,250.00 per acre and for a period of ten (10) years, which Option may be exercised by Scannell at any time during such 10-year period by delivering written notice to that effect to the City from both the fee owner of the Development Site (currently Scannell) and, if different from the fee owner, the tenant of the Development Site (initially to be Apogee Wausau Group, Inc.). If the Option is not exercised by the expiration of said ten (10) year period, it shall lapse and be deemed waived.
 - (b) The Option shall run in favor of Scannell and its successors as owner of the Development Site and may not be separately assigned by Scannell or said successors, and shall run with the land. At the request of either party, the parties shall execute and deliver a recordable memorandum of the Option.
 - (c) Any other terms or provisions herein to the contrary notwithstanding, the City shall not plat or subdivide the Option Parcel without the prior written consent of Scannell.
 - (d) Any deed restrictions or other restrictive covenants imposed by the City on the Option Parcel shall be in the form of "Exhibit D" attached hereto.
- B. Scannell shall submit to City the plans and specifications for the site and any improvements, and shall identify the general contractor, no later than October 1, 2007 subject to Force Majeure.

- C. Scannell shall pay all project costs, other than those specifically agreed to be paid by the City in this Agreement, which costs shall include but not be limited to building and any other permits required for the project; Scannell shall insure that this Industrial Use Project and the development, maintenance and operation thereof comply with all applicable federal, state, and local zoning, building, parking, and other applicable statutes, regulations, codes, ordinances, and other laws. Specifically, all of the City's required deed restrictions in the form of "Exhibit D" attached hereto and property descriptions shall be included in any conveyance and lease, and City specifically does not waive any of its regulations, codes, ordinances, or other laws by this Agreement.
- D. Neither Scannell nor any successors-in-interest as owners of the Development Site shall, at any time prior to the termination or expiration of the tax incremental district or of this Agreement, petition, City, the County of Marathon, the Wisconsin Department of Revenue, or any other taxing, assessing or other governmental authority, for a decrease in the assessed value of the improvements or any parts thereof, unless owner in good faith believes that such assessed value exceeds the fair market value, and only upon prior written notice to City.
- E. Scannell and any successors-in-interest shall maintain all portions of the Development Site in reasonably good order and condition.
- F. Scannell and any successors-in-interest shall obtain and maintain (or cause to be obtained and maintained) such insurance in respect of the development and operation of the Development Site as contemplated by this Agreement, in such amounts as are customarily obtained and maintained with respect to developments and operations of like size and character, including, without limitation, (a) casualty insurance covering owner's improvements, equipment, and other personal property at the Development Site, (b) commercial general liability insurance, and (c) contractor's multiple perils Builders risk insurance.
- G. Not more than once per calendar year during the Term, the City may request of Scannell or any successor-in-interest a report concerning progress toward completion of the project and concerning the work force employed at the site, separately measuring full-time-equivalent jobs continued and created. Scannell or such successor-in-interest shall provide the report to the City within sixty (60) days after each such request. The parties acknowledge that market factors, technology and other factors will influence and affect the number of jobs at the Industrial Use Project and that the failure to achieve or sustain the employment figure referred to in the Recitals of this Agreement shall not be a default under this Agreement.
- H. During the Term, Scannell and any successor-in-interest will cooperate in any reasonable way requested by City to accomplish the purposes of this Agreement, provided that such cooperation is at no cost or expense (other than the obligation described above to pay the Guaranteed Tax Increment).

- I. Except as set forth below, neither the improvements nor the Development Site may be sold, transferred or conveyed without the express written consent of City and approval by the Common Council of City, until such time as substantial completion of the Industrial Use Project has been achieved. Thereafter, sale, conveyance, or transfer may be made, provided that the party to whom sale, transfer, or conveyance is made is not a nonprofit organization, a government entity, or other entity that will cause the Development Site to be exempt from *ad valorem* property taxes and such party expressly agrees in writing to the terms and provisions of this Agreement or is otherwise bound by the terms of this Agreement, and deed restrictions and conditions that require compliance with this Agreement. Notwithstanding the foregoing, (i) Scannell shall have the right to sell, transfer or convey the Development Site to Apogee Wausau Group, Inc. and (ii) Scannell may, in its reasonable discretion, convey the Development Site to its lender or the Development Site may be conveyed in a foreclosure action, all without obtaining the consent of City. In addition, the conveyance of the Development Site by Scannell's lender shall not require the consent of City.
- J. Right of Entry. During construction of the improvements, City shall have the right to have its buildings inspectors (or the representatives of those agencies authorized to enforce applicable building codes) enter upon the Development Site at any time upon reasonable prior notice for the purpose of inspecting, construction, making surveys, and conducting tests and measurements, if and to the extent permitted by applicable codes, ordinances, statutes or other laws. The City shall not interfere with development or construction of the Development Site, except to the extent necessary in the ordinary course of enforcing code compliance by Scannell. Upon completion and occupancy of the improvements, such representatives of City shall have the right to enter upon the Development Site as provided by City ordinance or state statutes and regulations.
- K. Indemnification: Environmental. Scannell shall indemnify, hold harmless, and defend City and its officials, officers, agents, and employees (collectively, the "Indemnitees") from any and all liability, suits, actions, causes of action, claims, demands, losses, costs, damages, and expenses of any kind whatsoever, including but not limited to liability, damages, and expenses in connection with the loss of life, personal injury, or damage to property, or any of them (the "claims") brought because of injury or damages received or sustained by any person, persons, or property on account of or arising out of the construction or operation of the Industrial Use Project or occupancy of the Development Site, caused wholly or to the extent caused in part by any negligent act or negligent omission of Scannell, its agent, employees, partners, tenants, contractors, subcontractors, or invitees, or at any time after the Conveyance Date occurring on or in Industrial Use Project and/or the Development Site, except to the extent caused by the negligence or willful misconduct of any one or more of the Indemnitees. This requirement shall apply with equal force to all work performed by Scannell, and any architect, contractor, subcontractor, or any other party employed directly or indirectly or

retained by Scannell to perform work or supply materials relating to the construction, operation, or maintenance of the Industrial Use Project or the Development Site. Scannell will further indemnify, hold harmless, and defend City as provided herein from any claims, causes of action, suits, or governmental or administrative proceedings arising from the presence of any hazardous waste or substance as defined in any applicable state or federal law at the Development Site, or adjoining land if such substance or waste migrated thereto from the Development Site, or within the Industrial Use Project, if and to the extent such hazardous waste or substance was disposed, released or migrated from the Development Site after the Conveyance Date. In the event that any claim arises under this Agreement for which indemnification is required, each of the applicable Indemnitees shall tender the claim to Scannell immediately after (i) service of process of any pleading asserting a claim, or (ii) receipt of written notice a claim by the Indemnitee. Upon receipt of such tender (a "Tender") Scannell shall provide each of the applicable Indemnitees with written notice of the acceptance of the Tender and shall thereafter defend any such claim with counsel of Scannell's choice. Scannell shall have the sole authority to settle any claim in Scannell's sole discretion, provided that any such settlement shall not require any of the Indemnitees to pay money, assume or admit liability, undertake any material act or obligation, or agree to refrain from undertaking any act or obligation, unless expressly agreed by the applicable Indemnitees. Scannell's obligations under this subparagraph will survive the termination or expiration of the Tax Incremental District and this Agreement.

L. Warranties of Developer. Scannell represents and warrants to City as follows:

1. That Scannell is an Indiana limited liability company, duly organized and existing under the laws of the State of Indiana and in good standing under the laws of the state; and that all proceedings of Scannell necessary to authorize the negotiation and execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been taken in accordance with applicable law.
2. That this Agreement and all other documents required to be executed and delivered by Scannell pursuant hereto, have been and will be duly and validly authorized, executed, and delivered by Scannell, and will be enforceable against Scannell in accordance with their terms.
3. That the execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement, and the execution and delivery of the documents required to be executed, delivered, or acknowledged by Scannell pursuant thereto, will not violate any provision of Scannell's articles of organization, or its bylaws, or any other contract, agreement, court order, or decree to which Scannell may be subject.

V. FINDINGS AND DECLARATIONS

City. City makes the following findings and declarations:

- A. The Development Site lies within TID 5 and is both suitable for an industrial site and has been zoned for industrial use under the Tax Increment Law as evidenced by the Project Plan for TID 5.
- B. The Contribution is for project costs under the Tax Increment Law. The Contribution is a payment that is necessary or convenient to the creation of TID 5 and that is made to implement the Project Plan and effectuate its purposes. The Contribution is a grant to a developer of land that is located in the TID 5, and it reimburses costs of public works or improvements described in the Project Plan, including costs of acquiring land, providing roadways, clearing, grading and filling land. The parties to this Agreement specifically agree that this document constitutes the "Development Agreement" required by Wisconsin Statutes Section 66.1105(2)(f)2.d. with regard cash grants.
- C. The Contribution serves a public purpose by promoting industrial development, enhancing City's tax base, promoting employment opportunities, inducing appropriate development of the Development Site, and encouraging development of nearby parcels.
- D. The amount of the Contribution is the amount determined by City to be necessary to induce the Industrial Use Project.
- E. City is undertaking the Industrial Use Project to fulfill purposes of the Tax Increment Law.
- F. City is making the Contribution to benefit the community at large and does not expect any direct benefit from the Contribution. The Contribution is not compensation for any specific quantifiable service.
- G. The Agreement is necessary and convenient to implement the provisions and effectuate the purposes of the Project Plan.

Scannell. Scannell declares that "but for" the Contribution it would not undertake the Industrial Use Project.

VI. GENERAL REQUIREMENTS

- A. Parties and Interests. This Agreement is made solely for the benefit of the parties to this Agreement and their permitted assignees, and no other person, partnership, association, company, corporation, or other party shall acquire or have any rights under this Agreement or by virtue of this Agreement.

- B. Assignment of Rights Under this Agreement. Scannell may assign its rights under this Agreement to a lender as collateral security for a loan. Otherwise, no party may assign its rights under this Agreement without the written consent of the other party; provided, however, that Scannell shall also have the right to assign its rights under this Agreement to Apogee Wausau Group, Inc. without obtaining the consent of the City. Further, after the Industrial Use Project has been substantially completed, there shall be no restrictions on transfer or assignability by the owner thereof, provided that the transferee or assignee assumes the obligations under this Agreement for the duration of the Term.
- C. No Personal Liability. Under no circumstances shall any officer, official, director, commissioner, agent, or employee of (i) City, (ii) the Community Development Authority of the City of Wausau, or (iii) Scannell have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.
- D. Governing Law. The laws of the State of Wisconsin shall govern this Agreement.
- E. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.
- F. Amendment. No modifications, alteration, or amendment of this Agreement shall be binding upon any party until such modification, alteration, or amendment is reduced to writing and executed by both parties to this Agreement.
- G. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions of this Agreement.
- H. Exhibits. The Exhibits referred to in this Agreement (namely, Exhibits A, B, C and D are attached to and are a part of this Agreement.
- I. Approximations. Any dimensions, areas, and volumes set forth in the Exhibits are preliminary and tentative. Before the legal description of any parcel is made final, each party reserves the right to make minor changes in such dimensions, areas, and volumes to best accommodate and facilitate the purposes of this Agreement.
- J. Nondiscrimination. No portion of the Industrial Use Project shall be undertaken, operated, or transferred in a manner to permit discrimination or restriction on any basis prohibited by applicable law, and the Industrial Use Project shall be undertaken, operated, and transferred in compliance with all applicable laws, ordinances, and regulations relating to discrimination.

- K. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties entering into it and their respective successors and assigns, and shall be a covenant running with the land with respect to the Development Site. If title to the Development Site is conveyed by Scannell (or any subsequent transferor), the transferee (and any future transferees) acquiring title to the Development Site shall be obligated to comply with the terms and provisions of this Agreement for the duration of the Term. Upon the effective date of any such transfer, Scannell (or subsequent transferor, as applicable) shall be released of liabilities and obligations thereafter arising under this Agreement.
- L. Recording. The parties shall enter into a memorandum or short form of this Agreement, and either party may record the same in the office of the Register of Deeds for Marathon County, Wisconsin.
- M. Copy to be Sent to Joint Review Board. City shall send a copy of this Agreement to the Joint Review Board for the Tax Incremental District.
- N. Notices. All notices, demands, certificates, or other communications under this Agreement shall be in writing. They shall be deemed given (1) when hand delivered to the address below, (2) when transmitted by facsimile or electronic mail to the number below with electronic confirmation of receipt, or (3) two business days after being mailed by first-class mail, postage prepaid, to the address below. Any party may, by written notice to the other parties, designate a change of address for these purposes.

Address of City:

City of Wausau
Attention: Ms. Kristen Fish
Assistant Community Development Director
407 Grant Street
Wausau, WI 54403
Fax: (715) 261-6626
Email: kfish@mail.ci.wausau.wi.us

Address of Developer:

Scannell Properties #92, LLC
800 E. 96th Street, Suite 175
Indianapolis, IN 46240
Fax: (317) 843-5957
Email: dougl@scannellproperties.com

With a copy to:

Apogee Wausau Group, Inc.
Attention: General Counsel
1800 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, MN 55431

- O. Severability and Savings Clause. If any provisions of this Agreement shall be held or deemed to be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions of this Agreement or any constitution or statute or rule of public policy, or for any other reason, then such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. To the maximum extent possible, this Agreement shall be construed in a manner consistent with the powers of City, including, but not limited to, its powers under the Tax Increment Law, the Industrial Use Act, the Blighted Area Law (Section 66.1331, Wis. Stats.), the Blight Elimination and Slum Clearance Action (Section 66.1333, Wis. Stats.), and the Community Development Authority statute (Section 66.1335, Wis. Stats.), to achieve its intended purpose. Reference is made to Chapter 105, Laws of 1975, § 4 and Sections 66.1331(15), 66.1335(7), and 66.1337(7)(c), which provide that each of those statutes should be construed liberally to effectuate their purposes.
- P. Enforcement; Nonwaiver. If proceedings are initiated to cure an alleged default or to enforce this Agreement, the prevailing party in such proceedings shall be entitled to reimbursement from the other party plus reasonable attorneys and associated costs and disbursements incurred in such proceedings.

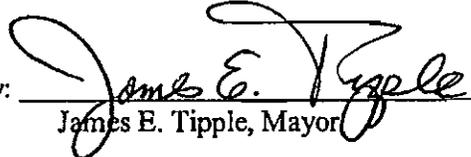
The rights and remedies of the parties to this Agreement, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it at the same or different times of any other such remedies for the same event or default or breach or any of its remedies for any other event of default or breach by any of the parties.

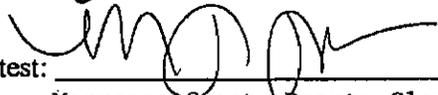
Any delay or failure by either party in instituting or prosecuting any action or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights or deprive it of or limit such rights in any way, nor shall any waiver in fact made by either party with respect to any specific default by the other party under this Agreement be considered or treated as the waiver of the rights of said nondefaulting party with respect to any other defaults by the other party under this Agreement, or with respect to the particular default except to the extent specifically waived in writing.

- Q. Time of Essence. Time is of the Essence in the performance of each and every obligation set forth in this Agreement.
- R. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the matters described herein.
- S. Force Majeure. Except with respect to payment obligations under this Agreement, if either party fails to perform any obligations hereunder in a timely manner, said party shall not be deemed to be in default hereunder if and to the extent said party has been prevented or delayed from performing as a result of Force Majeure.
- T. Opportunity to Cure. Except with respect to payment obligations under this Agreement, neither party shall be deemed to be in default under this Agreement unless said default continues for a period of thirty (30) days after receiving notice of the default from the other party, or for such longer period as is reasonably necessary to cure the default if cure has been commenced within said thirty (30) day period and is being diligently prosecuted.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officers, all as of the date of this Agreement.

CITY OF WAUSAU

By: 
James E. Tipple, Mayor

Attest: 
Maryanne Groat, Deputy Clerk

SCANNELL PROPERTIES #92, LLC

By: 
Name: Douglas H. Snyder
Title: Manager

EXHIBIT A
The Development Site Description and Depiction;
and the Schmidt Property Description and Depiction



Development Site



- Legend
-  Municipal E
 -  Parcels
 -  Lake/Pond

Scale: 1" = 750 feet

8/10/2007
AN

Wausau Window and Wall Systems
Property and Site Related Cost Estimate
July 18, 2007

I. Developer – Paid Costs

A.	<u>Property Due Diligence surveys, Engineering and Testing</u>	
1.	Phase I Environmental Report	\$ 5,000
2.	Geotechnical Investigation Reports	\$ 8,400
3.	Property Surveys ALTA	\$ 12,000
4.	Topographic Survey	\$ 7,800
5.	Site Engineering	\$ 42,500
6.	Platting Documents & Fees	\$ 2,750
7.	Engineering Inspections	\$ 3,500
8.	Site Testing Fees	\$16,000
9.	Legal Fees (Site)	\$20,000
10.	Land acquisition (Schmidt Property)	\$849,750
11.	Title Insurance (Land)	\$ 1,500
	Subtotal	<u>\$969,200</u>

II. Contractor – Paid Costs

B.	<u>Earthwork</u>	
1.	Mobilization	\$ 19,350
2.	Surveying Layout	\$ 12,355
3.	Erosion Control including Maintenance	\$ 38,923
4.	Clearing Grubbing	\$ 43,335
5.	Strip Topsoil	\$ 54,688
6.	Mass Excavation Cut/Fill (includes retention)	\$ 238,490
7.	Export Excess Fill Material	\$ 416,051
8.	Export Excess Topsoil	\$ 50,469
9.	Rock Excavation/Blasting	\$ 360,650
10.	Rock Area Sand Bed	\$105,904
11.	Building Pad Granular Fill	\$ 309,389
12.	Temporary Access	\$ 15,317
13.	Dewatering and Temporary Drainage	\$ 12,810
14.	Detention Basin Filter & Breaker Rock	\$ 68,211
15.	Grading	\$ 68,267
	Subtotal	<u>\$ 1,814,209</u>
C.	<u>Perimeter Wetlands Protection</u>	\$ 22,890
D.	<u>Retaining Walls to Avoid Wetlands</u>	\$ 73,275
E.	<u>Demolition of the Existing Road and Add Additional Access</u>	\$ 20,950
F.	<u>Move Building to Avoid Wetlands</u>	
1.	Access Road Grading Pavement	\$46,325
2.	Longer Sanitary Sewer	\$ 3,815
3.	Longer Water Line	\$ 4,905
4.	Longer Elec/Telephone Conduits	\$ 1,308
	Subtotal	<u>\$ 56,353</u>

Grand Total, A through F **\$ 2,956,877**

EXHIBIT B

Description of Purposes and Uses of the Contribution

"EXHIBIT C"

Anticipated Draw Schedule

9/1:	\$70,450
10/1:	\$1,175,537 (contains cost for the purchase of the Schmidt Property)
11/1:	\$892,307
12/1:	\$493,876
1/1:	\$104,012
2/1:	\$135,460
3/1:	\$85,235
Total:	\$2,956,977

EXHIBIT D

Deed Restrictions

**DEED RESTRICTIONS FOR
WAUSAU WEST BUSINESS AND INDUSTRIAL PARK**

1.) GRANTEE shall commence construction within one year of the date on which the conveyance to the subject property and the consideration for that conveyance are transferred (the date of closing).

2.) In the event GRANTEE fails to start construction or make substantial use of the land within one year of the date of purchase, the City of Wausau (CITY) shall have the option of repurchasing the land at the original sale price, plus the cost, less depreciation, if any, of any documented, mutually agreed upon improvements made to the property ("Repurchase Option"). "Improvements" shall include all labor and material costs not previously reimbursed by CITY in connection with the purchase, hauling, placement, and compaction of fill necessary to bring the land to grade. CITY shall exercise the Repurchase Option, if at all, by delivering written notice to that effect to GRANTEE within seven (7) days after the expiration of said one (1) year period. Any failure by CITY to exercise the Repurchase Option within said seven (7) day period shall be deemed to be a waiver by CITY of said right. Action on the Repurchase Option shall be by resolution adopted by the Common Council of CITY. If the Repurchase Option is exercised, conveyance to CITY shall be by warranty deed, free and clear of all liens or encumbrances created by act or default of GRANTEE.

In the event GRANTEE elects to convey all or any portion of said land, the land shall first be offered to CITY (an "Offer Notice") and CITY shall have a right of first refusal, meaning the option of repurchasing the land (or applicable portion thereof) at a price and terms acceptable to GRANTEE, in GRANTEE'S sole discretion, offered to GRANTEE, as seller, by a prospective buyer (the "ROFR").

Any Offer Notice to CITY shall be by registered mail, return receipt requested, mailed to the City Clerk, or may be personally delivered to the Office of the City Clerk. GRANTEE shall have no obligation to deliver any Offer Notice to CITY with respect to any offers by prospective buyers that GRANTEE does not intend to accept. Any Offer Notice to CITY may be based on a signed term sheet or letter of intent, or based on a purchase and sale agreement, at GRANTEE'S option.

CITY shall have seven (7) days after delivery of the Offer Notice to exercise the ROFR. If the ROFR is not exercised by CITY by delivering written notice to that effect to GRANTEE within seven (7) days after delivery of the Offer Notice, CITY shall be deemed to have waived the right to do so, in which event, the ROFR rights under this instrument shall be deemed terminated and of no further force or effect. Action on the ROFR shall be by a resolution adopted by the Common Council of CITY. If the ROFR is exercised, conveyance to CITY shall be by deed, subject to liens and encumbrances as set forth or referred to in the Offer Notice. If

CITY timely exercises the ROFR, then CITY and GRANTEE shall promptly enter into an agreement based on the terms and provisions set forth or referred to in the Offer Notice.

The ROFR is intended to apply only with respect to offers made by independent third-party purchasers. The ROFR shall not apply with respect to conveyances, transfers or sales (i) by GRANTEE to any persons or entities related to or affiliated with GRANTEE, including, but not limited to, any entity controlling, controlled by, or under common control with GRANTEE; (ii) in connection with a merger or consolidation involving GRANTEE and one or more other entity; (iii) that include more than just said land and improvements to said land, such as the sale of the business operating on and in said land and improvements, and/or the sale of said land and improvements bundled with other real property and/or other assets of GRANTEE; or (iv) involving any mortgagee of all or any part of said property, including but not limited to any deed or similar transfer in lieu of foreclosure, or any transfer by any mortgagee to any third party after said mortgagee acquires title to said property by foreclosure or deed or similar transfer in lieu of foreclosure. In addition, the ROFR shall not apply to any conveyance, sale or transfer to Apogee Wausau Group, Inc. or any entity controlling, controlled by, or under common control with Apogee Wausau Group, Inc.

The Repurchase Option and the ROFR run with the land as do all the restrictions contained on this document, and all heirs and assigns of GRANTEE and every owner of the parcel shall be subject to this restriction and to all the restrictions in this document. Notwithstanding any other terms or provisions herein, the ROFR shall terminate fifteen (15) years after the date hereof. Neither the Repurchase Option nor the ROFR are assignable by CITY. Any purported assignment by CITY shall be null and void, at GRANTEE'S option. Time is of the essence with respect to both the Repurchase Option and the ROFR.

3.) No building or driveway shall be constructed or erected, nor any addition made to the exterior of a building, until plans showing the nature and location on the site of the proposed improvements are approved in writing by the Economic Development Committee of the CITY or its successor committee, which approval shall not be unreasonably withheld, conditioned or delayed, and said committee shall not reject any submittal by GRANTEE in an arbitrary, capricious or discriminatory manner. If not expressly rejected in writing within seven (7) days after submittal, said committee shall be conclusively deemed to have granted its approval. To be effective, any rejection by said committee shall include a detailed description and explanation of the basis for rejection, to provide reasonable and adequate guidance to GRANTEE as to how to cure any problems in order to obtain the committee's approval. Along with submission of plans by GRANTEE, GRANTEE shall include a timetable showing anticipated completion dates of the improvements.

4.) All improvements placed on the premises and any alterations done thereto shall fully comply with CITY's zoning ordinances, and any and all other applicable laws, codes and regulations, and specifically, adequate provisions shall be made by the GRANTEE to comply with the applicable setback, parking and off-street loading provisions of the Zoning Code.

5.) All leases or premises in such site shall provide for termination or other penalty, and all conveyances or grants of other interests or premises in said site shall provide for reversion or other penalty, if the proposed improvements of the premises so leased or granted are

not begun in time represented by the proposed lessee or purchaser and accepted by the Committee or Council (i.e., within one year).

6.) There shall be no on-site dumping of anything which CITY indicates shall not be dumped.

7.) All railroad service to GRANTEE's property shall be subject to any agreements in effect between the Chicago and NorthWestern Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company or any other railroad company and CITY. Railroad lead tracks may not be used for loading or unloading purposes.

8.) The entire area between the building(s) of each site and the front property line, except for driveways, shall be landscaped with a combination of street trees, trees, ground cover and shrubbery. All unimproved areas not utilized for parking or outside storage shall be maintained in a reasonably weed-free condition. A proposed landscape plan for the entire parcel shall be submitted in conjunction with the submittal required in paragraph 3 above.

9.) No parcel adjoining Stewart Avenue shall have direct access onto Stewart Avenue unless approved by CITY.

10.) Before any outside area is used for storage, prior approval for such storage must be received, in writing, from CITY, with the exception of temporary outside storage uses, as the same may be required by GRANTEE.

11.) The Common Council and/or the Economic Development Committee or its successor committee may, unilaterally, in the future, by resolution, may exempt the land or any portion of the land from one or all of the above covenants or restrictions.

12.) These restrictions supersede any prior or simultaneous restrictions and/or regulations and/or covenants and/or encumbrances passed by the Common Council, and/or recorded in the office of the Marathon County Register of Deeds, which affect the land which is subject to this deed. Any prior or simultaneous restrictions, regulations, covenants and/or encumbrances which affect the land which is subject to this deed, whether or not in conflict with these restrictions herein, are null, void and of no further force or effect.

12.) These restrictions shall be considered deed restrictions and the covenants, burdens and restrictions shall run with the land and shall bind grantee, its successors and assigns for a period of thirty (30) years, at which time they shall be null, void and of no further force or effect. However, as stated in Section 2, above, the ROFR shall expire and be of no further force or effect fifteen (15) years from the date hereof.

RESOLUTION OF THE COMMON COUNCIL

Authorizing the execution of an agreement between the City of Wausau and Scannell Properties 92, LLC, for the construction of an industrial manufacturing facility, authorizing the financing for the City's portion of the project, and for the other necessary public improvements

Committee Action:

Fiscal Impact: Projections indicate that increment generated by the project, including tax from the plant will exceed the expenditures made by the City, which are estimated at \$2,957,000. This is not expected to negatively impact the tax levy.

File Number: 07-0814

Date Introduced: August 14, 2007

WHEREAS, the Industrial Park of Wausau (the "City") benefits all the residents and taxpayers of the City by serving as the industrial center for a large region surrounding the City, thereby stimulating the economy of the City and enhancing the City's tax base; and

WHEREAS, the current vitality of the Industrial Park is due, in large part, to the creation in 1997 of the City Tax Incremental District No. 5, which enabled the City to construct improvements to facilitate and be the catalyst for the construction of manufacturing and other industrial operations; and

WHEREAS, in 2001, the TIF district was amended; and

WHEREAS, the proposed development of Scannell will encompass a manufacturing operation of Wausau Window Wall, the improvements being approximately 19 million dollars in value, exclusive of machinery and equipment, and the operation employing approximately 450 workers; and

WHEREAS, the Common Council finds that this project furthers the purposes of Tax Increment Financing, is privately owned and operated, and financed only by new revenues created by the project (incremental property taxes); and

WHEREAS, the Common Council finds that this project is being done in furtherance of the City's industrial park expansion efforts in its industrial park; and

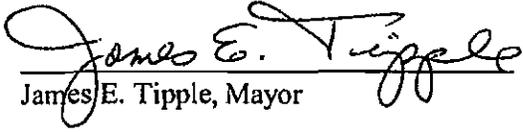
WHEREAS, the Common Council finds that the construction which will take place pursuant to the attached development agreement between the City of Wausau and Scannell is in the vital and best interest of the City and its residents and in accordance with the public purpose and conditions of applicable state and local laws and the standards under which the tax incremental district was undertaken and implemented, and

WHEREAS, the Common Council shall consider and act upon another amendment to TIF District No. 5, and the agreement authorized herein is contingent upon the adoption by all necessary bodies of that amendment.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Wausau, that contingent upon approval of Amendment #3 to TIF District No. 5, the following authorizations, directions, and orders are made and given:

1. **EXECUTION OF AGREEMENT.** The Mayor and Clerk are authorized and directed, on behalf of the City, to execute the attached development agreement between the City of Wausau and Scannell for the development of the Wausau Window Wall Manufacturing facility and for the necessary acquisition and site preparation for and the construction necessary and agreed upon for the project; and that a lease to Wausau Window Wall is approved and authorized.
2. **SPECIFIC AUTHORIZATION FOR ACQUISITION, DEMOLITION, SITE PREPARATION, UTILITY RELOCATION, AND CONSTRUCTION.** The Mayor and the proper City officials are hereby authorized and directed to take whatever action is necessary to acquire needed private property, relocate utilities, pay for site preparation, and do other construction, and enter into any necessary agreements for accomplishing the herein directed activities; money for these purposes is hereby appropriated from Tax Increment No. 5 funds currently in that account, funds to be placed within TIF 5 from future borrowing, and money placed in TIF 5 by advancing funds to that account from the general fund or from other TIF districts.
3. **AUTHORIZATION OF FINANCING FOR PROJECT.** The Common Council for the City of Wausau shall take whatever action is necessary to effectuate any appropriate borrowing so as to provide sufficient funds for all of the City's obligations for the project, specifically including a borrowing resolution for a promissory note, a bond, or other financing vehicle of whatever dollar amount is necessary to accomplish the project.
4. **FURTHER AUTHORIZATION.** The Mayor, the officers of the City, the attorneys for the City, and other agents or employees of the City are hereby authorized and directed to do all acts and things required of them by, or as a consequence of, this resolution for the full, punctual and complete performance of all of the provisions of this resolution, including negotiating and executing any agreements which are necessary to effectuate the provisions of this resolution and to comply with the terms of this agreement.
5. **PRIOR ACTS SUPERSEDED.** All prior resolutions, rules, ordinances or other actions of the Common Council or any parts thereof in conflict with the provisions or adoption of this resolution are hereby rescinded in so far as they may conflict.
6. **PROJECT BUDGET.** The tentative project budget (estimated costs) attached as Exhibit 1 is hereby adopted.
7. **SEVERABILITY.** In case one or more of the provisions of this resolution shall for any reason be held to be illegal or invalid, such a legality or invalidity shall not affect any other provisions of this resolution.
8. **EFFECTIVE DATE.** This resolution shall be effective immediately upon its adoption by the Common Council and execution by the Mayor and approval of Amendment #3 to TIF District No. 5.

APPROVED:


James E. Tipple, Mayor

Wausau Window and Wall Development Agreement Terms

1. Agreement Dated August 20, 2007 between the City of Wausau and Scannell Properties #92 LLC. – TID # 5

Scannell Obligations:

- **Construct 370,000 square foot facility non-tax-exempt facility by October 31, 2008**
Completed in 2007
- **Intend to employ approximately 450 workers by September 1, 2009**
In 2008, Wausau Window & Wall employed 454 people. As a result of the economic recession, Wausau Window & Wall was forced to go from three shifts to two, thus dropping employment total to 283 as of September 1, 2009. There are no remedies for failure to comply with the job requirements in the development agreement dated August 20, 2007. Not completed as of September 1, 2009. Wausau Window and Wall currently employs 417 people.
- **Minimum Taxable Value of \$19,000,000 before December 31, 2008**
Not completed
The State of Wisconsin assesses manufacturing property values. The assessments were as follows:
2013 - \$16,807,500
2012 - \$16,775,400
2011 - \$16,260,000
2010 - \$16,063,400
2009 - \$16,422,900
2008 - \$0.00
- **Provide Appraisal not later than December 31, 2008 or other evidence of value**
Completed in August 2008. The property was appraised at \$19,000,000.
- **Beginning in 2009 pay Guaranteed Tax Increment, if applicable.** Not completed.
- **May not petition for a decrease in assessed valuation.** Done
- **Maintain site in good order and condition.** Done
- **Maintain necessary insurance.** Done

City of Wausau Obligations:

- **Provide 20 acre option for 10 years at a price of \$21,250 per acre.** Done
- **Contribute a grant of \$2,957,000 to the project from TID # 5.** Done

2. Agreement Dated March 29, 2011 between the City of Wausau and Wausau Window and Wall Systems – TID #6

Wausau Window and Wall Obligations:

- **Obtain re-zoning for property from M2 to B Commercial.** Done
- **Clear site including black top surfaces and maintain as grass land.** Done
- **Sale proceeds in excess of \$1.2 million shall be split equally between WWW and City of Wausau to a maximum amount of \$400,000.**
1415 West Street is currently listed at \$1,550,000 by Newmark Grubb Pefefferle
- **Communicate and coordinate with the City regarding offers to purchase**
The parties communicate on a regular basis regarding the property.

Prior to the demolition of the building, the property had an assessed value of \$1,824,700. Currently the property has an assessed value of \$439,700. Wausau Window & Wall's 2013 tax obligation on the project was \$19,598.24

City of Wausau Obligations:

- Reimburse demolition and clearing costs of no more than \$400,000. Done - the actual expenditure was \$259,670.
- City retains first right of refusal

3. Agreement Dated May 27, 2014 between the City of Wausau and Apogee Wausau Group – development agreement pending final approval of the Economic Development Committee on July 17, 2014 – TID #5

Wausau Window and Wall Obligations:

- Create 124 new full time jobs by June 1, 2017
- Transfer 1.028 acres as defined in the agreement to the City via warranty deed

City of Wausau Obligations:

- Contribute a grant of \$500,000 to the project from TID #5
- The B.A. Esther Greenheck and Judd S. Alexander Foundation each contributed \$50,000 towards workforce development for Wausau Window & Wall. The City of Wausau will administer the funding, as specified by the respective foundations.