

DEVELOPMENT AGREEMENT

BETWEEN

KTW ENTERPRISES, LLC

AND

THE VILLAGE OF COTTAGE GROVE

This DEVELOPMENT AGREEMENT, between KTW ENTERPRISES, LLC with its principal offices located at 254 Greenway Circle Deerfield, Wisconsin 53531 (DEVELOPER) and THE VILLAGE OF COTTAGE GROVE, a Wisconsin municipal corporation with its principal offices located at 221 East Cottage Grove Road, Cottage Grove, Wisconsin 53527 (VILLAGE) shall become effective upon the closing of the transaction as outlined in Article II B.

WHEREAS, DEVELOPER and the VILLAGE have exchanged various documentation involving the proposed purchase of land from the VILLAGE, (PARCEL) more particularly described as:

Easternmost 2 acres of Lot 11 Cottage Grove Commerce Park

TAX I.D. #0711-041-2973-1

WHEREAS, DEVELOPER has received a recommendation for approval with conditions from the VILLAGE ARCHITECTURAL REVIEW COMMITTEE, VILLAGE PLAN COMMISSION and the VILLAGE BOARD on the Site Plan

NOW THEREFORE, in consideration of the aforementioned recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the existence and sufficiency of which is hereby acknowledged by the parties, the DEVELOPER and the VILLAGE agree as follows:

ARTICLE I

A. The representations and recitations set forth within this document are material to this DEVELOPMENT AGREEMENT and are hereby incorporated into and made a part of this DEVELOPMENT AGREEMENT as though they were fully set forth in this Paragraph.

B. The parties mutually agree DEVELOPER and the VILLAGE are separate and distinct entities and unless expressly provided for herein, none of the parties shall be considered to be the agent of the other and shall not have any general authority to enter into any contract, assume or impose any obligation or make any warranties on behalf of the other.

C. DEVELOPER and the VILLAGE agree to use their best efforts to satisfy all the contingencies and obligations contained in this DEVELOPMENT AGREEMENT.

D. DEVELOPER agrees to construct the BUILDINGS and IMPROVEMENTS on the PARCEL in accordance with:

1. This DEVELOPMENT AGREEMENT;
2. Any applicable regulations of any governmental entity with jurisdiction over the IMPROVMENTS and the PARCEL;
3. The VILLAGE Ordinances, VILLAGE COMPREHENSIVE PLAN and the COMMERCE PARK COVENANTS; and
4. The approvals and conditions contained from the June 10, 2019 VILLAGE ARCHITECTURAL REVIEW COMMITTEE meeting, the June 12, 2019 VILLAGE PLAN COMMISSION meeting and the June 17, 2019 VILLAGE BOARD meeting as summarized in the VILLAGE ACTION REPORT dated which are hereby incorporated as if fully set forth (attached as EXHIBIT A).

ARTICLE II

PROPOSED TRANSACTION

A. The VILLAGE and DEVELOPER have executed an OFFER TO PURCHASE and various amendments setting forth the terms and conditions for the sale/purchase of the PARCEL.

Copies of this documentation will be attached as EXHIBIT B following the closing of this transaction and will be collectively referred to as the PARCEL PURCHASE DOCUMENTATION.

B. Except as otherwise provided herein, this DEVELOPMENT AGREEMENT shall become effective upon the closing of the transactions as outlined in the attached EXHIBIT B, the PARCEL PURCHASE DOCUMENTATION.

C. The closing is currently scheduled for August 30, 2019.

ARTICLE III

FINANCIAL CONSIDERATIONS

A. **PUBLIC PURPOSE**

The parties acknowledge a municipality's responsibility to create safeguards to ensure funding involving the VILLAGE is being utilized for a public purpose.

In fulfillment of that responsibility, the VILLAGE has, following review, concluded this DEVELOPMENT AGREEMENT is being implemented in satisfaction of various public purposes including:

1. Providing greater employment opportunities pursuant to Wisconsin Statutes 66.52(1), see eq. 66.52(1) (a) and 66.431(2);

2. Providing the broadening, preservation and enhancement of the VILLAGE'S tax base, see eq. 66.52(1), 66.52(1) (a).

B. **TIF**

The DEVELOPER is not requesting any TIF assistance from the VILLAGE..

For informational purposes only, the parties acknowledge the PARCEL lies within the VILLAGE TAX INCREMENTAL FINANCING DISTRICT NUMBER 5 (TIF 5) .

ARTICLE IV

RESPONSIBILITIES OF PARTIES

A. A material consideration of this DEVELOPMENT AGREEMENT involves various promises, obligations and representations exchanged between the parties.

B. If the value of the PARCEL together with all improvements constructed by the DEVELOPER equals or exceeds ONE MILLION TWO HUNDRED THOUSAND (\$1, 200,000.00) on or before January 1, 2021:

(i) , the requirements of ARTICLE X-B (Village's right to repurchase the property) of the Declaration of Protective Covenants and Restrictions of the Cottage Grove Interstate Commerce Park shall be automatically waived by the VILLAGE

(ii) DEVELOPER shall not be responsible for any Development Guarantee Payments.

ARTICLE V SUPPLEMENTAL GENERAL CONDITIONS

A. **WAIVER**

No Waiver of any provision of this DEVELOPMENT AGREEMENT shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written agreement to this default under this DEVELOPMENT AGREEMENT be deemed a waiver of any subsequent default or defaults of the

same type. The VILLAGE'S failure to exercise any right under this DEVELOPMENT AGREEMENT shall not constitute the approval of any wrongful act by DEVELOPER or the acceptance of any improvement.

B. **AMENDMENT/MODIFICATION**

This DEVELOPMENT AGREEMENT may be amended or modified only by a written amendment approved and executed by the parties.

C. **DEFAULT**

A default is defined herein as either party's breach of, or failure to comply with, the terms of this DEVELOPMENT AGREEMENT.

D. **ENTIRE AGREEMENT**

This written DEVELOPMENT AGREEMENT and written amendments, and any referenced attachments thereto, shall constitute the entire DEVELOPMENT AGREEMENT between the parties.

E. **DISPUTE RESOLUTION**

Any disputes between the parties shall be submitted to mediation. In the event mediation is unsuccessful, either party may then commence litigation.

F. **ASSIGNMENT**

DEVELOPER shall have the right to assign its rights but not its obligations as set forth herein.

G. **SEVERABILITY**

If any part, term, or provision of this DEVELOPMENT AGREEMENT is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not effect the

validity of any other part, term or provision and the rights of the parties will be construed as if the part, term or provision was never part of the DEVELOPMENT AGREEMENT.

H. **BENEFITS**

The benefits of this DEVELOPMENT AGREEMENT to DEVELOPER shall not be assigned without the express written approval of the VILLAGE. Such approval may not be unreasonably withheld, but any unapproved assignment is void. The burdens of this DEVELOPMENT AGREEMENT shall run with the land shall be binding on the heirs, successors and assigns of DEVELOPER. There is no prohibition on the right of the VILLAGE to assign its rights under this DEVELOPMENT AGREEMENT. However, no act of the VILLAGE shall constitute a release of DEVELOPER from its liability under this DEVELOPMENT AGREEMENT.

I. **IMMUNITY**

Nothing contained in this DEVELOPMENT AGREEMENT constitutes a waiver of the VILLAGE'S sovereign immunity under applicable law.

J. **NOTICE**

Any notice required or permitted by this DEVELOPMENT AGREEMENT shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

TO: VILLAGE OF COTTAGE GROVE
ATTN: VILLAGE ADMINSTRATOR
221 E. COTTAGE GROVE ROAD
COTTAGE GROVE, WI 53527

WITH COPY TO: VILLAGE ATTORNEY
LEIGHTON W. BOUSHEA
2945 TRIVERTON PIKE DRIVE
MADISON, WI 53711

TO: KTW ENTERPRISES, LLC
254 GREENWAY CIRCLE
DEERFIELD, WISCONSIN 53703

K. **RECORDATION**

The VILLAGE may record a copy of this DEVELOPMENT AGREEMENT or Affidavit indicating the existence of this DEVELOPMENT AGREEMENT in the Register of Deeds office.

L. **REPRESENTATION**

The parties acknowledge this DEVELOPMENT AGREEMENT was drafted by Leighton W. Boushea who serves as the attorney for the Village of Cottage Grove. DEVELOPER acknowledges Attorney Leighton W. Boushea cannot and has not provided any legal counsel to DEVELOPER.

THE PARTIES AFFIRMATIVELY REPRESENT THEY HAVE THE AUTHORITY TO COMPLETE THIS TRANSACTION, AND HEREBY AGREE TO ENTER INTO AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS DEVELOPMENT AGREEMENT.

(SIGNATURES ARE ON SEPARATE PAGE)

VILLAGE

VILLAGE OF COTTAGE GROVE
DANE COUNTY, WISCONSIN

DATE

By: _____
Village President John Williams

DATE

Attest: _____
Village Clerk Lisa Kalata

DEVELOPER

KTW ENTERPRISES, LLC

DATE

By: _____

DATE

By: _____

This instrument drafted by:
Village Attorney Leighton W. Boushea
BOUSHEA, SEGALL and KLIMINSKI LAW OFFICES
2945 Triverton Pike Drive, Suite 101
Madison, WI 53711
608/221-0079