

TAX INCREMENT DISTRICT NO. 6
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the ___ day of _____, 2016, by and among Encapsys Southpoint, LLC, a Wisconsin limited liability company ("Developer"), Encapsys, LLC, a Delaware limited liability company ("Encapsys") and the CITY OF APPLETON, a Wisconsin municipal corporation (the "City").

RECITALS

Developer, Encapsys and the City acknowledge the following:

A. Developer has been engaged to assist Encapsys in procuring a site, and developing and leasing a new facility which will house Encapsys' world headquarters. The development will include Class "A" office space, laboratories and a pilot plant.

B. Subject to Encapsys' receiving the financial assistance set forth in this Agreement, Encapsys is prepared to enter into a lease to occupy a new building to be constructed by Developer (the "Project") on the real property described on Exhibit A, attached hereto (the "Property"). The Property is located within the City in Tax Increment District #6. All references to the Project include the Property.

C. The City has determined that development of the Project on the Property will spur economic development, expand the City's tax base and create new jobs. Accordingly, the City has created the tax increment district encompassing the Property (the "District") and adopted a project plan (the "Project Plan") that provides for, among other things, the financial assistance set forth in this Agreement, pursuant to Section 66.1105, Wisconsin Statutes (the "Tax Increment Law"). The City has determined that such financial assistance is a Project Cost under the Tax Incremental Law.

D. The City has determined that the amount of financial assistance to be provided under this Agreement is the amount necessary to induce development of the Project. The Project will not proceed without the financial assistance set forth in this Agreement.

E. The City, pursuant to Common Council Action dated _____ has approved this Agreement and authorized the execution of this Agreement by the proper City officers on the City's behalf.

F. The Developer and Encapsys have approved this Agreement and authorized the appropriate officers to execute this Agreement on the Developer's and Encapsys' behalf.

G. All terms that are capitalized but not defined in this Agreement and that are defined under the Tax Increment Law shall have the definitions assigned to such terms by the Tax Increment Law.

AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals and the promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

ARTICLE I DEVELOPER AND ENCAPSYS ACTIVITIES

A. Subject to paragraph D, below, Developer shall construct the Project in accordance with all applicable City zoning and building codes, ordinances and regulations. Developer warrants and represents to the City that the Project will contain at least 37,000 square feet of space and that total development costs expended on the Project (inclusive of personal property) will be not less than \$17,000,000.

B. Subject to paragraph D, below, Encapsys shall enter into a lease to occupy the Project for a term of at least ten (10) years (the "Lease").

C. Developer and Encapsys warrant and represent to the City that but for the assistance to be provided by the City under Article II, herein, Encapsys would not enter into the Lease and Developer would not be able to proceed with the Project.

D. Developer, Encapsys and City acknowledge that several of the specific undertakings of the parties will require approvals from directors, boards or the City Council as applicable. The parties' agreements are conditioned upon the obtaining of all such approvals in the manner required by law. The parties cannot assure that all such approvals will be obtained; however, they agree to use their best good faith efforts to obtain them on a timely basis.

ARTICLE II CITY OBLIGATIONS

A. City shall cooperate with Developer throughout the development of the Project and shall promptly review and/or process all submissions and applications in accordance with applicable City ordinances.

B. Subject to all of the terms, covenants and conditions of this Agreement and applicable provisions of law, and as an inducement by the City to Encapsys and Developer to carry out the Project, the City will pay to Encapsys a development investment (the "Investment"). The principal amount of the Investment shall be the lesser of: 1) Three Million Seven Hundred Forty Thousand Dollars (\$3,740,000.00); or 2) twenty-two percent (22%) of the total equalized value of the real and personal property comprising the Project as of January 1 of the year in which the Project is first fully assessed. Total equalized value shall be the value of the Project (real and personal property), as determined by the Wisconsin Department of Revenue, less the base value of the Property within the District.

If the Project is not fully assessable on January 1, 2018, the principal amount of the Investment will be reduced by the difference between the Tax Increments that would have

been generated by the Project if the Project was fully assessed as of January 1, 2018 and the actual Tax Increments generated by the Project based upon the January 1, 2018 assessment.

The Investment will be paid to Encapsys as follows:

1. The City shall pay the Investment to Encapsys in annual installments of principal and interest. Each annual installment shall be equal in amount to one hundred percent (100%) of the Tax Increments attributable to and actually received from the Property during each calendar year. In 2023, the final year of Tax Increment Financing District #6, the City shall pay the remaining principal and interest balance of the Investment in full. No Tax Increments are pledged to the payment of the Investment.

2. The Investment shall be deemed earned as of the date that a Certificate of Occupancy has been issued.

3. Interest on the Investment, at the rate of four percent (4%) per annum, shall begin to accrue as of the date upon which a certificate of occupancy is issued.

4. The City shall make the annual installments of principal and interest on August 15 of each year, with the first installment due on August 15 of the calendar year following the first tax year in which there is a positive Tax Increment.

5. Funds received from each installment shall be applied first to accrued interest and then to principal. All accrued interest that is not fully paid in a given year shall be added to the outstanding principal balance of the Investment.

6. Annual payments of principal and interest shall cease upon the earlier to occur of (a) full payment of the Investment (plus all accrued interest); or (b) termination of this Agreement, as provided herein.

7. The City may prepay the Investment, in its sole discretion, at any time, with no prepayment penalty.

C. This Agreement fully evidences the City's obligation to pay the Investment. No separate instrument will be prepared to separately evidence the City's obligation to pay the Investment. The Investment shall not be included in the computation of the City's statutory debt limitation because the Investment is limited and conditional and no taxes will be levied or pledged for its payment. Nothing in this Agreement shall be deemed to change the nature of the City's obligation from a limited and conditional obligation to a general obligation.

D. The City covenants to Encapsys and Developer that until the Investment, plus interest thereon, has been paid in full, the City shall not close the District prior to its statutory expiration date.

E. The City shall, upon Encapsys' request, provide to Encapsys an accounting of the status of the District including, but not limited to, the outstanding principal balance of the Investment and annual Tax Increments received from the District.

ARTICLE III
PAYMENT OF TAXES

A. Throughout the duration of the Lease, all ad valorem property taxes properly assessed against the Property will be paid timely and in full.

B. In the event that any property owned by Developer within the District becomes exempt from ad valorem property taxes during the life of the District, then for the remaining life of the District, the Developer will make (or cause to be made) annual payments in lieu of taxes in amounts equal to what the ad valorem property taxes would have been for such other property had it not been exempt. If the Developer conveys any property within the District to any party (related or unrelated), the terms of such sale shall impose as a covenant upon all successor owners of the property the foregoing obligation for payments in lieu of taxes during the life of the District. The City shall be a beneficiary of such covenant and entitled to enforce same against the successor owners.

C. As long as the District is in existence, the Property and all buildings and improvements thereon shall be owned and taxable for real estate tax and special assessment purposes. The City may waive any or all of the restrictions upon execution of a payment in lieu of taxes (PILOT) agreement on a form acceptable to the City.

ARTICLE IV
NO PARTNERSHIP OR VENTURE

Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the City and Developer or any contractor or subcontractor employed by Developer in the construction of the Project.

ARTICLE V
CONFLICT OF INTEREST

No member, officer or employee of the City, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

ARTICLE VI
WRITTEN NOTICES

Any written notice required under this Agreement shall be sent to the following individuals:

FOR THE CITY:

City of Appleton
Community and Economic Development Department
100 North Appleton Street
Appleton, WI 54911-4799
Attention: Karen Harkness

With a copy to:

City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attn: James P. Walsh

FOR DEVELOPER:

Encapsys Southpoint, LLC
c/o Paul Klister
Commercial Horizon
3500 East Destination Drive
P.O. Box 115
Appleton, WI 54912-0115

With a copy to:

Bruce T. Block, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202

FOR ENCAPSYS:

With a copy to:

ARTICLE VII
ASSIGNMENT

No party to this Agreement may assign any of its interest or obligations hereunder without first obtaining the written consent of the other party. Notwithstanding the foregoing, City consent shall not be required in connection with either of the following: (i) an assignment by Encapsys of its right to receive the Investment to a related entity or to a successor entity that acquires substantially all of the stock or assets of Encapsys and that continues to occupy the Project pursuant to the Lease; or (ii) an assignment by Encapsys of its right to receive the Investment as security to a lender that advances funds to pay for the costs of improvements to the Project. With respect to an assignment under clause (ii) above, in the event of a default under such loan, the City shall make all payments due under the Investment directly to the lender, provided that the requirements of Article VIII are satisfied.

ARTICLE VIII
CONDITIONS TO PAYMENT; TERMINATION OF AGREEMENT

A. The City shall have no obligation to make any payment of the Investment to Encapsys unless and until all of the following shall have occurred:

1. Developer shall have completed the Project in substantial compliance with the requirements of Article I, paragraph A of this Agreement.

2. Encapsys shall have entered into the Lease and provided the City's Director of Community and Economic Development and Director of Finance and the City Attorney with a copy of the fully-executed Lease.

3. Encapsys shall have commenced occupancy of the Project.

B. This Agreement, and the City's obligation to make any further payments of the Investment, shall terminate when either of the following shall have occurred:

1. The Investment, plus all interest thereon, is paid in full.

2. The statutory life of the District expires (provided that the City fulfills its obligation under Article II, paragraph B.1.)

C. The City shall have the option to terminate this Agreement and its obligation to make further payments of the Investment, in its sole discretion by delivering written notice to Encapsys, when either of the following occurs:

1. Encapsys ceases to occupy at least fifty percent (50%) of the occupiable space within the Project for twelve (12) consecutive months.

2. Encapsys assigns the Lease to an unrelated entity that is not a purchaser of substantially all of the stock or assets of Encapsys.

ARTICLE IX
MISCELLANEOUS

A. Under no circumstances shall any officer, official, director, member, manager, commissioner, agent, or employee of City, Developer or Encapsys have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

B. The laws of the State of Wisconsin shall govern this Agreement.

C. 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.

D. 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 all parties to this Agreement.

E. Any 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.

F. 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 the City, including but not limited to, the City's powers under the Blight Elimination and Slum Clearance Law and the Tax Increment Law, to achieve its intended purpose. Reference is made to Section 66.1333(17) of the Wisconsin Statutes and Chapter 105, Laws of 1975 § 4, which provide that the Blight Elimination and Slum Clearance Law and the Tax Increment Law should be construed liberally to effectuate their purposes.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF APPLETON:

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Kami L. Lynch, City Clerk

STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2016, Timothy M. Hanna, Mayor and Kami L. Lynch, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

James P. Walsh, City Attorney
J:\Attorney\WORD\jpw\Encapsys\Dev Agrm - City - 07-29-16.doc
Dated Updated: July 29, 2016
By: Christopher R. Behrens

DEVELOPER:

Encapsys Southpoint, LLC

By: _____

Printed Name: _____

Title: _____

STATE OF WISCONSIN)

: ss.

OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2016, _____, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin

My commission is/expires: _____

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ENCAPSYS:

Encapsys, LLC, a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

STATE OF WISCONSIN)

: ss.

OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2016, _____, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin

My commission is/expires: _____

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SCHEDULE OF EXHIBITS

A. Legal Description of Property

DRAFT

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT