

COPY

**DEVELOPMENT AGREEMENT
BY AND AMONG
THE CITY OF APPLETON, WISCONSIN
AND
GATEWAY OF APPLETON, LLC AND STEVE
WINTER
DATED AS OF June 15, 2005**

This Development Agreement is made and entered into as of the 15th day of June, 2005, by the CITY OF APPLETON, Wisconsin, a Wisconsin municipal corporation (the "City") and Gateway of Appleton, LLC (the "Developer") and Steve Winter, (the "Guarantor").

ARTICLE I PURPOSE; DEFINITIONS

Section 1.01. Purpose of Agreement. The parties hereto have worked cooperatively regarding initial planning, financing and feasibility of the development of real properties to be located at the northeast corner of U.S. Highway 41 and Ballard Road, further identified as Lot 30 of the Northeast Business Park Plat #3, Appleton, Wisconsin (the "Real Property"). The parties have reached an understanding regarding participation in such Development and intend to enter into this Development Agreement to record the understandings and undertakings of the parties and to provide the framework within which the Development may proceed.

Section 1.02. Certain Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

"City" means the City of Appleton.

"Developer" means Gateway of Appleton, LLC.

"Development" means the development of real properties to be located in Lot 30 of the Northeast Business Park Plat #3, City of Appleton, Outagamie County, Wisconsin including a fifty thousand (50,000) square foot medical office, clinic and surgery center located on the south portion of said parcel.

"Development Area" means the land contained in Lot 30 of the Northeast Business Park Plat #3, consisting of approximately 16.59 acres more or less and the property identified at the Southwest corner of Evergreen Drive and Gateway Drive in the Town of Grand Chute and further identified in Section 2.01 hereinafter consisting of approximately one-half (½) acre more or less as described in Exhibit A.

"Guarantor" means Steve Winter.

"Site Plan" means the conceptual site plan of which is attached hereto as Exhibit B.

ARTICLE II PARTIES UNDERTAKING

Section 2.01. City's Conveyance of Property. The City agrees at the time of closing to convey to the Developer, all of Lot 30 of the Northeast Business Park Plat #3 located in the City of Appleton, at a cost of \$100,000 per acre. Total purchase price shall be \$1,659,000.

Additionally, the City agrees at the time of closing to convey to the Developer, all of that piece of property owned by the City, at the southwest corner of the intersection of Evergreen Drive and Gateway Drive, in the Town of Grand Chute, and described as follows:

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

The purchase price shall be at a cost of \$100,000 per acre, with the price for this ½ acre parcel being \$50,000.

Section 2.02. Covenants and Conditions of the Developer. The Developer, as part of the Development Agreement, agrees as follows:

A. To purchase the 16.59 ± acres of Lot 30 in the Northeast Business Park Plat #3 in the City of Appleton for \$100,000 per acre as identified in Section 2.01 above and all of that piece of property owned by the City, at the southwest corner of the intersection of Evergreen Drive and Gateway Drive, in the Town of Grand Chute, and described as follows:

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

The purchase price shall be at a cost of \$100,000 per acre, with the price for this ½ acre parcel being \$50,000.

B. Development Plans and Specifications. Prepare (or have its consultants, tenants or tenant's consultants prepare) architectural drawings, plans and specifications for the Development which are approved by the City as may be normal, customary or required in order to proceed with the Development in accordance with all applicable rules, codes, regulations, ordinances and law. Plans shall be approved by the City of Appleton prior to commencement of construction.

C. Cooperation. Cooperate with the City so as to facilitate the City's performance under and satisfaction of the conditions under Section 2.03.

D. Financial Commitment. A letter from the Developer's bank confirming that the Developer has the ability to finance the development and attached hereto as Exhibit C.

E. The Developer shall use its reasonable efforts to acquire the unplatted lands owned by Donald R. and Judith Schmidt ("Schmidt"), located in the Town of Grand Chute, at the northwest corner of the Development Area. Should the Developer be successful in acquiring said property, the Developer shall annex said property to the City. Developer further agrees that upon annexation, said property shall be subject to the same restrictive covenants on said property as are currently in effect on Lot 30 of the Northeast Industrial Park Plat #3 in the City of Appleton.

F. The Developer shall use its reasonable efforts to acquire the unplatted lands owned by James J. and Bernice VanAsten ("VanAsten"), located in the Town of Grand Chute, generally on the northeast corner of the Development Area. Should the Developer be successful in acquiring said property, the Developer shall annex said property to the City. Developer further agrees that upon annexation, said property shall be subject to the same restrictive covenants on said property as are currently in effect on Lot 30 of the Northeast Industrial Park Plat #3 in the City of Appleton.

G. The Developer agrees to convey the south portion of the Development Area to FVOSA Real Estate Partners, LLC, for the purpose of construction of an office, clinic, and surgery center. Said conveyance shall occur within thirty (30) days of the closing between the City and the Developer. Failure of the Developer to convey the property to FVOSA shall permit the City to reacquire the entire parcel at the price paid by the Developer to the City for acquisition, less the commission paid by the City on the original purchase.

H. The Developer agrees to commence construction on at least one building on that portion of the Development Area not conveyed to FVOSA pursuant to the restrictive covenants contained on Lot 30 of the Northeast Industrial Park Plat #3, within twenty-four (24) months of closing. Should construction of said property fail to commence within twenty-four (24) months, the City, at its option, may reacquire that portion of the Development Area not conveyed to FVOSA at a cost of \$55,000 per acre not to exceed \$450,000 for the entire property previously described in this paragraph.

I. The Developer agrees that any building constructed on the Development parcel shall be a minimum of thirty thousand (30,000) square feet.

J. The Developer agrees that the entire property as indicated on Exhibit A shall remain taxable. Developer agrees to a deed restriction, indicating such taxable status, and giving the City the right of approval of change of use, being recorded.

Section 2.03. Covenants and Conditions of the City. Prior to closing, the City agrees to use all reasonable efforts to:

A. **Authorize Funding.** Authorize the sale of the property in the Development Area.

B. **Cooperation.** Cooperate with the Developer so as to facilitate the Developer's performance and satisfaction of the conditions under Section 2.02.

ARTICLE III TERMINATION & POST DISBURSEMENT CONDITIONS

Section 3.01. Developer's Right to Terminate. Prior to closing, the Developer shall have the right to terminate this Agreement by written notice delivered to the City not less than three (3) days prior to the effective date of such termination for only the following reason, and in the event of such termination, neither party hereto shall have any further obligation to continue to perform its obligation hereunder thereafter.

A. **Municipal Approval.** Developer fails to obtain any and all necessary governmental approvals from any governmental body, entity, or agency having jurisdiction over the Development;

Section 3.02. City's Right to Terminate. The City shall have the right to terminate this Agreement by written notice delivered to the Developer not less than three (3) days prior to the effective date of such termination in the event the City fails to authorize the sale of said property to the Developer. In the event of such termination, neither party hereto shall have any further obligation to perform its obligations hereunder thereafter.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF CITY

Section 4.01. Authority. The City represents and warrants to the Developer that the City has the power, authority, and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City, as the case may be, under this Agreement.

Section 4.02. Delivery of Agreement. The City represents and warrants to Developer that the City is empowered and authorized to execute and deliver this Agreement and any other

agreements and documents, if any, required hereunder to be executed and delivered by the City as the case may be. This Agreement has been and each such document at the time it is executed and delivered will be duly executed and delivered on behalf of the City. When executed and delivered to Developer, all such agreements shall constitute a legal, valid, and binding obligation of the City in accordance with its terms.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF DEVELOPER

Section 5.01. Valid Existence. Developer represents and warrants to the City that the Developer is a limited liability corporation.

Section 5.02. Authority. Developer represents and warrants to the City that this Agreement and all other documents required to be executed and delivered by Developer at closing have been duly and validly authorized, executed, and delivered by Developer and will be enforceable against Developer in accordance with their terms except as limited by bankruptcy, insolvency, or similar laws of general application affecting the enforcement of creditor rights.

Section 5.03. No Conflict. Developer represents and warrants to the City 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 Developer will not violate any provision of Developer's articles or bylaws or any applicable statute, rule, regulation, judgment, order, or decree of the state of Wisconsin or a court having jurisdiction over Developer or its properties.

ARTICLE VI PAYMENTS TO BE MADE BY DEVELOPER

Section 6.01. Annual Tax Guarantee. The City agrees to uniformly apply tax assessment procedures and practices with respect to the Development Site and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing, the Developer and Guarantor, jointly and severally, shall guarantee to the City a minimum real estate tax valuation for the Development for the years and in the amounts as set forth in the Schedule on Exhibit D attached hereto and incorporated herein by reference (the "Minimum Real Estate Tax Valuation"). It is understood by the parties hereto that the Developer's and Guarantor's annual tax payment guarantee will continue until tax payments are made in 2020 pursuant to Exhibit D.

Section 6.02. Minimum Real Estate Tax Valuation. The Minimum Real Estate Tax Assessed Valuation shall be paid in the following manner: Commencing with the 2007 calendar year (assessed valuation as of January 1, 2006) and for each calendar year thereafter, the Developer and Guarantor shall pay to the City an amount equal to the valuation of the properties as indicated on Exhibit D, times the total applicable tax rate, less the actual amount of the real estate tax assessed. The Developer and Guarantor shall not be required to make any tax guarantee payment to the City if the real estate assessed valuation exceeds the valuations indicated in Exhibit D, in any given year. The Minimum Real Estate Tax Payment Guarantee

shall be released from year to year, as long as this Agreement is in effect, by the amount of the assessed value of land and any improvements thereon.

Section 6.03. Form of Guaranty. At the time of approval of the Development Agreement by the City of Appleton, the Developer and Guarantor shall execute and deliver to the City within three (3) business days the annual tax guaranty substantially in the form attached as Exhibit E hereto.

Section 6.04. Should the City reacquire any portion of the Development Area pursuant to Sections 2.02(g) and 2.02(h), the Developer and Guarantor shall be relieved from the tax guarantee for that portion of the property.

Section 6.05. The parties recognize that the Development Area is located within Appleton Tax Increment Financing District #4. The parties agree that upon the closing of TIF #4, the Developer's and Guarantor's minimum tax payment guarantee shall be reduced to that portion of the tax rate for the City of Appleton. In any event, the Developer's guarantee expires at the end of 2019, with taxes payable in 2020.

ARTICLE VII SUBORDINATION

This Development Agreement and any interest the City may have in and to the Development is and at all times shall remain subordinate to any mortgages or other liens which Developer may now or hereafter place against the Development for the purpose of financing the construction and operation of the Development including any refinancing or renewals of any such mortgage(s). This subordination provision shall be self-operative and no other instrument shall be deemed necessary or required to effectuate its intent and purpose. Notwithstanding the foregoing, the City agrees to execute on or before ten (10) days after written request from Developer a written Subordination Agreement in confirmation of and in conformance with the terms of this paragraph in such form as Developer or its mortgagees may reasonably request.

ARTICLE VIII ASSIGNMENT

Developer shall have the right to assign this Agreement with the written consent of the City, which consent shall not be unreasonably withheld and which shall be deemed granted if not withheld by written notice to Developer from City given on or before ten (10) days after Developer requests in writing that City Consent to an assignment of this Agreement. This provision shall not apply to assignments by partners, shareholders, or members of the Developer to other parties, shareholders, or members of the Developer nor shall it apply to a sale or transfer of less than a majority interest of the Developer, except with City approval.

ARTICLE IX DEFAULT PROVISIONS

Section 9.01. Notice of Default. In the event either party is in default hereunder (the "Defaulting Party"), the other party (the "Non-defaulting Party") shall be entitled to take any action allowed by applicable law by virtue of said default provided that the Nondefaulting Party first gives the Defaulting Party written notice of default describing the nature of the default, what action, if any, is deemed necessary to cure the same, and specifying a time period of not less than thirty (30) days in which the default may be cured by the Defaulting Party.

Section 9.02. Remedies Upon Developer's Default. In the event Developer defaults under the terms of this Agreement and fails to cure the default after a notice within the time period provided pursuant to Paragraph 9.01 above, the City without prejudice to any other rights or remedies afforded City by applicable law may compel conformance of this Agreement by bringing an action for a specific performance hereof.

ARTICLE X NOTICES

All notices, demands, certificates, or other communications under this Agreement shall be sufficiently given and shall be deemed given when hand delivered or when mailed by first class mail, postage prepaid, properly addressed as indicated in the following:

To the Developer:	Gateway of Appleton, LLC Attn: Mr. Steve Winter 3315A North Ballard Road Appleton, WI 54911
To the Guarantor:	Mr. Steve Winter 3315A North Ballard Road Appleton, WI 54911
To the City:	City of Appleton Economic Development Department 100 North Appleton Street Appleton, WI 54911-4799 Attn: Peter Hensler
With a copy to:	City of Appleton City Attorney's Office 100 North Appleton Street Appleton, WI 54911-4799 Attn: James Walsh

Any party may, by written notice to the party(ies), designate a change of address for the purposes aforesaid.

**ARTICLE XI
NONDISCRIMINATION**

In the performance of work under this Agreement, the Developer agrees not to discriminate against any employee or applicant for employment nor shall the developer or any portion thereof be sold to, leased, or used by any party in any manner to permit discrimination or restriction on the basis of race, religion, marital status, age, color, sex, sexual orientation, physical condition, disability, national origin or ancestry, and that the construction and operation of the Development shall be in compliance with all effective laws, ordinances, and regulations relating to discrimination on any of the foregoing grounds.

**ARTICLE XII
NO PERSONAL LIABILITY**

Under no circumstances shall any alderperson, officer, official, commissioner, director, member, partner, or employee of the City, have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability. The limitation on personal liability included in this section shall extend to Developer's assignment of this Agreement to a partnership or to a limited liability company consistent with Article VIII.

**ARTICLE XIII
MISCELLANEOUS PROVISIONS**

Section 13.01. Entire Agreement. This document contains the entire agreement between Developer and the City and it shall inure to the benefit of and shall be binding upon the parties hereto and the respective heirs, executors, successors, and assigns. This Agreement may be modified only by a written Amendment signed by the parties, which Amendment shall become effective upon the recording in the Office of Register of Deeds for Outagamie County.

Section 13.02. Survival of Warranties, Representations and Agreements. Any warranty, representation, or agreement herein contained shall survive the closing.

Section 13.03. Governing Law. The internal laws of the State of Wisconsin shall govern this Agreement without giving effect to this conflict of law provisions.

Section 13.04. 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.

Section 13.05. 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.

Section 13.06. Severability. If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any

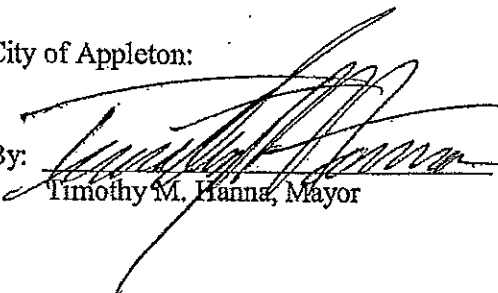
other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

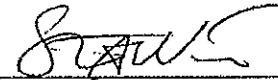
Section 13.07. City Authorization. The execution of this Agreement by the City was authorized by resolution of the Common Council adopted March 16, 2005.

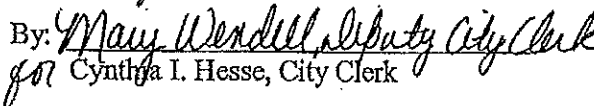
IN WITNESS WHEREOF, the parties have duly executed this Agreement, or caused it to be duly executed, as of the 15th day of June, 2005.

City of Appleton:

Developer: Gateway of Appleton, LLC


By: 
Timothy M. Hanna, Mayor

By: 
Printed Name: _____
Title: _____

By: 
Cynthia I. Hesse, City Clerk

By: _____
Printed Name: _____
Title: _____

Guarantor:

By: 
Steve Winter

STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)

Personally came before me this 15th day of June, 2005, the above-named Stephen A Winter the MEMBER and _____ the _____ of Gateway of Appleton, LLC, 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: permanent

EXHIBIT A
LEGAL DESCRIPTION

Parcel I

Lot Thirty (30) of Northeast Business Park Plat #3, City of Appleton, Outagamie County, Wisconsin.

Tax Key No. 31-1-6510-30

Parcel II

The East ½ of the following: A parcel of land in the Northwest ¼ of the Northwest ¼ of Section 18, Township 21 North, Range 18 East, Town of Grand Chute, Outagamie County, Wisconsin more fully described as follows, to-wit:

Commencing at the Northwest corner of said Section 18; thence South 89°08' East 715.00 feet along the North line of said Section 18 to the point of beginning; thence continuing South 89°08' East along the North line of Section 18, being the centerline of Evergreen Road, 200.00 feet to a point; thence South 0°52' West, at right angles to Evergreen Road 225.00 feet to a point; thence North 89°08' West, parallel with Evergreen Road, 200.00 feet to a point; thence North 0°52' East, 225.00 feet to the point of beginning, LESS the North 24.75 feet for highway purposes and excepting therefrom land recorded as Document No. 1289353.

Tax Key No. 10-1-1687-00

**EXHIBIT B
SITE PLAN**

EXHIBIT C
DEVELOPER'S FINANCIAL COMMITMENT



**Wolf River
Community Bank**

June 14, 2005

Mr. Peter Hensler
City of Appleton

Re: Land Acquisition Northeast Business Park, Appleton, Outagamie, Wisconsin

This is to advise you that *Wolf River Community Bank* is extending the commitment dated April 27, 2005 for Gateway of Appleton LLC. This commitment will be extended through June 17th, 2005.

If you need further information, please feel free to contact our office.

Sincerely,

John F. Morford
Vice President

Member FDIC

309 E. Main Street
P.O. Box 459
Hortonville, WI 54944-0459
Phone: (920) 779-7000 Fax: (920) 779-7004

1008 N. Shawano St.
P.O. Box 329
New London, WI 54961-0329
Phone: (920) 982-0055 Fax: (920) 982-0058

www.wolfriverbank.com

2 P. 7 869 0N

Jun. 14. 2005 2:00PM



April 27, 2005

Mr. Stephen A. Winter
Gateway of Appleton LLC
3315A North Ballard Road
Appleton, WI 54914

RE: Land Acquisition Northeast Business Park, Appleton, Outagamie, Wisconsin

Dear Mr. Winter:

Wolf River Community Bank, ("Lender") is pleased to advise you that your loan requests has been approved. Wolf River Community Bank will lend Gateway of Appleton LLC ("Borrower") a permanent loan in the amount of up to Six Hundred Sixty Nine Thousand Dollars (\$669,000.00)("Loan A"). In addition, Wolf River Community Bank will lend Gateway of Appleton LLC ("Borrower") a short term loan in the amount of up to One Million Forty One Thousand, Three Hundred Dollars (\$1,041,300.00)("Loan B"). The funds are to be used for the benefit of the borrower on the terms and conditions set forth below.

Please be advised that Lender's commitment to the Loan is contingent upon:

- A. Borrower's written acceptance of this commitment as hereafter provided on or prior to May 15th 2005;
 - B. Borrower's completion of the Conditions Precedent to Closing as hereinafter set forth, to the satisfaction of the Lender, prior to the closing date of May 30th 2005;
 - C. The execution and delivery of the Loan Documents as hereinafter provided on or prior to the closing date.
1. **Term:** The term of the Loan A shall commence at the closing of the Loan and shall continue for 2 years. The loan will not be amortized, and will call for interest only payments. The term of the Loan B shall commence at the closing of the Loan and shall continue for 30 days. The loan will not be amortized, and will call for interest only payments.

Member FDIC

309 E. Main Street
P.O. Box 459
Hortonville, WI 54944-0459
Phone: (920) 779-7000 Fax: (920) 779-7004

1008 N. Shawano St.
P.O. Box 329
New London, WI 54961-0329
Phone: (920) 982-0055 Fax: (920) 982-9058

www.wolfriverbank.com

2. **Interest Rate:** So long as there is no default under the Loan or any of the Loan Documents, the rate of interest on the principal balance of Loan A which remains unpaid and outstanding from time to time shall be Six and One Eighth percent (6.125%) per annum during the term of the Loan. So long as there is no default under the Loan or any of the Loan Documents, the rate of interest on the principal balance of Loan B which remains unpaid and outstanding from time to time shall be Wall Street Prime.

3. **Repayment:** Commencing on the first day of the month following the closing of these transactions, payments of interest (in arrears) in consecutive monthly installments will be made no later than the fifteenth day of each month thereafter through the remaining term of the loan.

In the event that any monthly installments of principal and Interest or other payment due under the Loan is not received within fifteen days of its due date, the Borrower shall pay Anchorbank a late charge in the amount of 5 percent (5%) of such delinquent amount.

4. **Prepayment:** Borrower may prepay the loan balance at any time without penalty.

5. **Loan Documents:** Repayment of the Loan shall be evidenced and secured by the following Loan Documents ("Loan Documents"):

- a. A mortgage note (the "note") which shall evidence the Loans to Borrower.
- b. A first mortgage (the "Mortgage") on the Real Estate. The Mortgage shall contain such restrictions on the transfer of the property as Lender, in its sole discretion, shall deem appropriate.
- c. An assignment of all-existing and future leases and rental payments relating to the property.
- d. A collateral assignment of all licenses and permits as may be issued and or required by governmental authorities having jurisdiction thereof relating to the use of the Property, if warranted.
- e. Such other agreements, assignments or security interests as Lender may, at its sole discretion, deem necessary or advisable to adequately protect its interests in connection with the Loan.
- f. Borrower will provide Lender with copies of all leases relating to the property.
- g. The Loan Documents and this commitment shall be construed in accordance with the laws of the State of Wisconsin.

- 6. **Required Financial Statements:** During the entire term of the Loan, on an annual basis, Borrower shall cause to be furnished to Lender operating statements for Borrower, a Balance Sheet and Statement of Income and Expenses, and a financial statement for each borrower and guarantor. All statements shall be in form and content acceptable to Lender, and shall be certified to be true, correct, and complete.
- 7. **Tax Escrow.** So long as there is no default by Borrower, Lender shall not require that the Borrower escrow amounts necessary for the payment of real estate taxes. However, in the event of a default, Lender may thereafter require the deposit, in escrow, of amounts necessary to reasonably anticipate the payment of real estate taxes.
- 8. **Insurance Escrow.** So long as there is no default by Borrower, Lender shall not require that the Borrower escrow amounts necessary for the payment of premiums for insurance required of the Borrower. However, in the event of a default, Lender may thereafter require the deposit, in escrow, of amounts necessary to reasonably anticipate the payment of premiums on all required insurance.
- 9. **Conditions Precedent to Closing:** Lender's obligation to make the Loan to Borrower shall be subject to the following conditions:
 - a. Fee simple title to the Property shall be vested in Borrower and shall be good and marketable and free of all liens, restrictions, and encumbrances, which have not been approved in writing by Lender.
 - b. All Loan Documents shall be in such form and contain such provisions, as Lender deems necessary and desirable and shall be duly executed and delivered by Borrower.
 - c. The opening of an operating account for Gateway of Appleton LLC at Wolf River Community Bank.
 - d. Lender shall have received, prior to closing of the Loan, the following, which shall be in form and substance satisfactory to Lender and its counsel:
 - 1. **Financial Statements and Tax Returns:** A current financial statement for Borrower certified by the party providing the same as true, correct, and complete.
 - 2. **Credit Report:** Lender shall obtain credit reports on Borrower and Guarantors.

3. **Certificates:** Evidence that the property is properly zoned for and all necessary occupancy permits have been issued by the proper regulatory authorities.
4. **Casualty and Public Liability Insurance:** Certificates of insurance from a company showing that the property is insured by casualty and extended coverage insurance, liability insurance, and business interruption insurance.
5. **Title Insurance:** A commitment for an ALTA loan policy of title insurance written by a title insurance company without standard exceptions, with a liability limit of not under the Mortgage, subject only to such defect and exceptions as shall have been approved in writing by Lender and containing such endorsements as Lender shall require.
6. **Survey:** Original improvement survey dated within 90 days of the date of closing of the Loan certified by Borrower and any entity guaranteeing title to the real estate. Lender may waive this provision if Title Company provides the proper endorsement.
7. **Appraisal:** An appraisal showing the value of the Real Estate to be not less than Eight Hundred Eighty Five Thousand Dollars (\$885,000.00). Loan to Value will not exceed 80% of the appraised value or cost, whichever ever is the lesser of the two, of all Real Estate securing the Loan. The appraisal shall be obtained after the closing of this transaction and shall only cover the parcel the borrower will retain.
8. **Governmental Approvals:** Evidence that all governmental requirements relating to the operation and use of the Property have been satisfied.
9. **Compliance with Environmental Law:** Evidence that the property is free from environmental hazards, or toxic waste or materials, and is in compliance with all environmental laws, regulations and rules imposed by any governmental entity having jurisdiction over the Property. As part of the evidence, Borrower shall furnish Lender with an Environmental Questionnaire certified by the Lender.
10. **Participation or sale of Loan:** Lender shall have the right to sell the Loan or an undivided ownership or participation interest in the Loan.
10. Lender shall have the right to inspect the Property prior to closing and from time to time during the entire term of the Loan.

11. Commitment Fee: If this commitment is accepted by Borrower as hereinafter provided, Borrower shall pay to Lender as consideration for Lender's agreement to be bound by the terms and conditions of this commitment a \$5,000.00 loan fee. Borrower acknowledges and agrees that the entire loan fee is earned by Lender upon acceptance of this commitment by Borrower and is non-refundable.

12. Closing Costs: All expense incurred by Lender and Borrower arising from this commitment or in connection with the closing of the Loan shall be paid by Borrower, including without limitation, title company charges, survey charges, taxes, assessments, and appraisal fees. The Borrower shall pay all such expenses when due and owing.

13. Expiration: This commitment shall expire automatically and without necessity of any further notice by Lender to Borrower if not accepted on or prior to May 15th, 2005, or in the event the Loan is not closed on or prior to May 30th, 2005, and in either event, Lender shall have no obligation or liability to make the Loan or refund any portion of the loan commitment fee received by it. Any extensions of the commitment must be in writing and signed by Lender.

14. Termination: Lender may terminate this commitment and its obligations hereunder by written notice mailed or faxed to Borrower if:

- a. Borrower fails to satisfy, observe or comply with material terms, conditions, covenants, agreements, and provisions herein contained;
- b. Insolvency, receivership, consolidation, bankruptcy or similar proceedings are commenced by or against the Borrower;
- c. Borrower fails to disclose to Lender all information and material relating to the Loan or the Property and improvements, or Borrower misrepresents any facts deemed by Lender to be material or substantial, relating to the Loan, the Property, the improvements, or the financial condition of the Borrower.
- d. Any warranty or representation made by Borrower in the application of supporting documentation furnished in connection with the obtaining of the commitment for the Loan or any warranty, representation, or statement in the Loan Documents or in any statement or certificate furnished pursuant to any of the foregoing, shall be materially false, misleading or inaccurate.

15. Commitment Non Assignable: This commitment shall not be assignable by operation of law or otherwise, except with the written consent of Lender.

16. Personal Liability: The repayment of the indebtedness evidenced by the Note and the performance of all obligations contained in the Loan Documents are the liability of Stephen A. and Theresa E. Winter.

17. Survival of Commitment: The terms and conditions of this commitment letter shall survive closing provided, however, in the event that the Loan is closed and the terms and conditions of the Loan Documents for the Loan are inconsistent with the terms and conditions of this commitment, the Loan Documents shall control. Subject to the preceding sentence, all warranties, representations, terms, conditions, covenants and provisions set forth herein shall survive the closing of the transaction contemplated hereby.

18. Time is of the Essence: Time shall be of the essence with respect to all aspects of this commitment. No waiver of the terms or conditions of the commitment shall be effective unless made in writing by both the Borrower and Lender.

Please evidence acceptance of this commitment by executing the duplicate copy of this commitment, which is enclosed herewith, and return it to the undersigned.

Very Truly Yours,

Wolf River Community Bank

By: 
Harold L. Hermansen
Vice President

AGREED TO AND ACCEPTED

Acceptance of the terms of the above commitment acknowledged this
, 2005.

19th day of July

BY:



Gateway of Appleton LLC
Stephen A. Winter Managing Member

EXHIBIT D
TAX ASSESSED VALUATION SCHEDULE

Tax Year	Assessed Value	Tax Payable In
2005	\$0	2006
2006	\$9,000,000	2007
2007	\$12,000,000	2008
2008	\$12,000,000	2009
2009	\$12,000,000	2010
2010	\$15,000,000	2011
2011	\$15,000,000	2012
2012	\$15,000,000	2013
2013	\$15,000,000	2014
2014	\$15,000,000	2015
2015	\$15,000,000	2016
2016	\$15,000,000	2017
2017	\$15,000,000	2018
2018	\$15,000,000	2019
2019	\$15,000,000	2020

This assessed value schedule shall apply to the entire Development Area.

EXHIBIT E
TAX GUARANTEE

THIS GUARANTEE made by Gateway of Appleton, LLC (the "Developer") and Steve Winter (the "Guarantor") to and for the benefit of the City of Appleton, Wisconsin, a Wisconsin Municipal Corporation (the "City").

WITNESSETH:

WHEREAS, City and Developer have entered into a Development Agreement dated March 16, 2005 (the "Development Agreement"); and

WHEREAS, as a part of the Development Agreement, Developer and Guarantor have agreed to guarantee to the City an annual minimum real estate tax valuation as follows:

Annual Tax Guarantee. The City agrees to uniformly apply tax assessment procedures and practices with respect to the Development Site and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing Developer and Guarantor, jointly and severally, shall guarantee to the City the minimum real estate valuation described in this paragraph for the years and in the amounts set forth in the schedule in Exhibit D attached hereto and incorporated herein by reference (the "Minimum Real Estate Tax Valuation"). It is the intent of this provision that the Developer's and Guarantor's Minimum Real Estate Tax Valuation shall be in effect over a 15-year period commencing with tax payments made in 2007, for value as of January 1, 2006, and ending with the year 2020.

The Minimum Real Estate Tax Valuation payment shall be paid in the following manner: Commencing with the 2007 calendar year (valuation as of January 1, 2006) and for each calendar year thereafter until the Minimum Real Estate Valuation expires, the Developer and Guarantor shall pay to the City the amount, if any, by which the Minimum Real Estate Tax Valuation for each calendar year exceeds the actual real estate tax valuation generated from the Development for such calendar year. The Minimum Real Estate Tax Payment Guarantee shall be released from year to year, as long as this Agreement is in effect, by the amount of the assessed value of land and any improvements thereon.

By January 15th, starting with calendar year 2007, the City shall provide Developer and Guarantor with: (1) an itemization of the actual real estate tax valuation received from the Development, and (2) a calculation of the amount, if any, by which the Minimum Real Estate Tax Valuation for the Development for such calendar year exceeds the actual real estate tax payment allocable to the Development for the preceding calendar year. If for any given calendar year the Minimum Real Estate Tax Valuation exceeds the actual real estate tax valuation, Developer and Guarantor shall pay the amount of tax on such excess of such excess to the City in a single installment due on January 31st following the end of each calendar year. If the amount of the actual real estate tax valuation exceeds the Minimum Real Estate Tax Valuation, no additional payment shall be due from Developer or Guarantor.

WHEREAS, the City requires the Developer and Guarantor to execute and deliver to the City at Closing its guarantee of payment of the Minimum Real Estate Tax Valuation to the City in accordance with the terms of the Development Agreement.

NOW THEREFORE, subject to all other terms and conditions of the Development Agreement and for value received, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Guarantor, does hereby unconditionally, absolutely and irrevocably guarantee the payment to the City of the Minimum Real Estate Tax Valuation in accordance with the terms of the Development Agreement. Developer and Guarantor hereby waives notice of acceptance of this Guaranty. Developer and Guarantor consents to City proceeding directly against Developer and Guarantor on this Guaranty without first exhausting any remedy or remedies which City may have pursuant to the Development Agreement.

IN WITNESS WHEREOF, the Developer has executed this Agreement on the 15th day of June, 2005.

Gateway of Appleton, LLC (Developer)

By: 

By: _____

Guarantor, Steve Winter:

By: 